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WATER QUALITY ACT OF 1987 (WQA87)

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99TH CONGRESS -- BILLS INTRODUCED: H.R. 8, Jan. 3, 1985

99 Cong. Introduced Bill H.R. 8; WQA87 Leg. Hist. 38

[*1]

99TH CONGRESS 1ST SESSION
H.R. 8

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1985

Mr. HOWARD (for himself, Mr. ANDERSON, Mr. ROE, Mr. SNYDER, and Mr. STANGELAND) introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

[**1] SECTION 1 <WQA87 § 1>. This Act may be cited as the "Water Quality Renewal Act of 1985".

AUTHORIZATIONS OF APPROPRIATIONS

[**2] SEC. 2. (a) <FWPCA § 104> Section 104(u) of the Federal Water Pollution Control Act is amended --

[*2] (1) in clause (1), by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,";

(2) in clause (2), by striking out "and $3,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988"; and

(3) in clause (3), by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(b) <FWPCA § 106> Section 106(a)(2) of the Federal Water Pollution Control Act is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal year 1983, 1984, 1985, 1986, 1987, and 1988".

[*3] (c) <FWPCA § 112> Section 112(c) of the Federal Water Pollution Control Act is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(d) <FWPCA § 208> Section 208(f)(3) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1982" and inserting in lieu thereof "September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) <FWPCA § 208> Section 208(j)(9) of the Federal Water Pollution Control Act is amended by inserting after "1982," the following: "and $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983. September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(f) <FWPCA § 304> Section 304(k)(3) of the Federal Water Pollution Control Act is amended by striking out "1983" and inserting in lieu thereof "1988".

(g) <FWPCA § 314> Section 314(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and $30,000,000 for [*4] fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(h) <FWPCA § 517> Section 517 of the Federal Water Pollution Control Act is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, and $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

AUTHORIZATIONS FOR CONSTRUCTION GRANTS

[**3] SEC. 3 <FWPCA § 207>. Section 207 of the Federal Water Pollution Control Act is amended by striking out "and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year" and inserting in lieu thereof "for the fiscal years ending September 30, 1982, and September 30, 1983, not to exceed $2,400,000,000 per fiscal year; for the fiscal year ending September 30, 1984, not to exceed $2,400,000,000; for the fiscal year ending September 30, 1985, not to exceed $2,900,000,000; and for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $3,400,000,000 per fiscal year". [*5]

COMPLIANCE DEADLINES

[**4] SEC. 4. (a) <FWPCA § 301> Section 301(b)(2)(C) of the Federal Water Pollution Control Act is amended to read as follows:

"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(b) <FWPCA § 301> Section 301(b)(2)(D) of the Federal Water Pollution Control Act is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) <FWPCA § 301> Section 301(b)(2)(E) of the Federal Water Pollution Control Act is amended by striking out "1984" and inserting in lieu thereof "1987".

(d) <FWPCA § 301> Section 301(b)(2)(F) of the Federal Water Pollution Control Act is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with [*6] subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) <WQA87 § 301> The Administrator of the Environmental Protection Agency shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

Category	Date by which the final regulation shall be promulgated
Foundries	June 30, 1984
Inorganic chemicals (phase II)	June 30, 1984
Nonferrous metals forming	October 31, 1984
Organic chemicals and plastics and synthetic fibers	February 28, 1985
Pesticides	November 30, 1984
Plastics molding and forming	September 30, 1984
Nonferrous metals (phase II)	November 30, 1984

INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

[**5] SEC. 5. (a) <FWPCA § 304> Section 304 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(l)(1) Not later than one year after the date of enactment of this subsection, the Administrator, in cooperation [*7] with the States and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of this subsection.

"(2) Not later than one year after the date of publication of the list required by paragraph (1) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each listed segment of the navigable waters, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (1) through the establishment [*8] of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

"(3) The Administrator shall implement each individual control strategy promulgated under paragraph (2) by modifying or requiring the modification of permits under section 402 of this Act.".

(b) <FWPCA § 509> Section 509(b)(1) of the Federal Water Pollution Control Act is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

CIVIL PENALTIES

[**6] SEC. 6. (a) <FWPCA § 309> Section 309(d) of the Federal Water Pollution Control Act is amended by striking out "$10,000" and inserting in lieu thereof "$20,000".

(b) <WQA87 § 313> The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which have the [*9] same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

STUDY OF EFFECTS OF DAMS ON WATER QUALITY

[**7] SEC. 7 <WQA87 § 524>. Section 516 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1985.".

CONTROL OF NONPOINT SOURCES OF POLLUTION

[**8] SEC. 8. (a) Title III of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

"NONPOINT SOURCE CONTROL IMPLEMENTATION PROGRAMS

"SEC. 319. (a) <FWPCA § 319> (1) The Governor of each State shall prepare and submit to the Administrator for his approval, a report which --

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not [*10] meeting applicable water quality standards or the goals and requirements of this Act;

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

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water [*11] quality management program approved under section 208 or 303 of this Act.

"(b) <FWPCA § 319> (1) The Governor of each State shall prepare and submit to the Administrator for his approval --

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activi- [*12] ty or program is consistent with, and assists the State in implementation of, such plan.

"(2) Each plan proposed for implementation under this subsection shall specify --

"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the rel- [*13] ative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

"(E) the methods, by category and subcategory of such sources of pollution (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs), which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to im- [*14] plement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

"(4) The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c) <FWPCA § 319> (1) Any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

[*15] "(2) If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e) <FWPCA § 319> (1) Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion [*16] of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion

thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) <FWPCA § 319> If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local [*17] public agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) <FWPCA § 319> Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h) <FWPCA § 319> (1) If any portion of the navigable waters in any State which is implementing a plan approved under this sec- [*18] tion is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the quality of such portion.

"(2) Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of [*19] pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i)(1) <FWPCA § 319> Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) <FWPCA § 319> An application for a grant under this subsection in any fiscal year shall be in such form and shall contain --

"(A) an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant; and

"(B) such other information as the Administrator may require.

[*20] "(3)(A) The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan <FWPCA § 319>; except that the Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent.

"(B) <FWPCA § 319> For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) <FWPCA § 319> No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for control- [*21] ling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5) <FWPCA § 319> (A) Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

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

"(6) <FWPCA § 319> Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) <FWPCA § 319> For each fiscal year beginning after September 30, 1986, the Administrator may give priority in making grants [*22] under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) <FWPCA § 319> There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated to carry out this subsection shall remain available until expended.

"(j) <FWPCA § 319> (1) Not later than January 1, 1985, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) Not later than January 1, 1988, the Administrator shall transmit to Congress a final report on the activities car- [*23] ried out under this section. Such report, at a minimum, shall include --

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) <FWPCA § 319> Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) <FWPCA § 304> Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION

[**9] SEC. 9 <FWPCA § 101>. Section 101(a) of the Federal Water Pollution Control Act is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

[*24] "(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".

LAKE RESTORATION GUIDANCE MANUAL

[**10] SEC. 10 <FWPCA § 304>. Section 104(h) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

ELIGIBLE CATEGORIES OF PROJECTS

[**11] SEC. 11. (a) The second sentence of section 201(g)(1) of the Federal Water Pollution Control Act is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) Section 201(n)(2) of the Federal Water Pollution Control Act is amended by striking out "$200,000,000" and [*25] inserting in lieu thereof "$500,000,000". The amendment made by this subsection shall apply to fiscal years beginning after September 30, 1984.

FEDERAL SHARE

[**12] SEC. 12. (a) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by striking out "55 per centum" and inserting in lieu thereof "65 per centum".

(b) The last sentence of section 202(a)(1) of the Federal Water Pollution Control Act is amended --

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by inserting after "correction" the third place it appears the following: "and project to address such problems".

(c) <FWPCA § 202> Section 202(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 per centum of the cost of construction thereof.".

[*26] (d) <WQA87 § 202> The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 per centum of the cost thereof.

(e) <FWPCA § 202> Section 202(a)(3) of the Federal Water Pollution Control Act is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that such equipment has not met design performance specifications, unless such failure

is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

AGREEMENT ON ELIGIBLE COSTS

[**13] SEC. 13 <FWPCA § 203>. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following new sentences: "Before taking final action on such plans, specifications, and estimates, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this [*27] section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations. Such eligibility determinations shall not preclude the Administrator from auditing a project pursuant to section 501(c) of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.".

GRANTEE CERTIFICATION OF TREATMENT PROCESS

[**14] SEC. 14. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following: "The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.". [*28]

GRANT CONDITIONS

[**15] SEC. 15. (a) <FWPCA § 204> Section 204(a)(1) of the Federal Water Pollution Control Act is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) <FWPCA § 204> Section 204(a)(2) of the Federal Water Pollution Control Act is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) <WQA87 § 205> The amendments made by subsections (a) and (b) of this section shall take effect two years after the date of enactment of this Act.

USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

[**16] SEC. 16 <FWPCA § 204>. Section 204(b)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the [*29] following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph, if the Administrator determines that such system was adopted after public notice and hearing.".

ALLOTMENT OF CONSTRUCTION GRANT FUNDS

[**17] SEC. 17. (a) <FWPCA § 205> (1) Section 205(c)(2) of the Federal Water Pollution Control Act is amended by adding after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Water Quality Renewal Act of 1984.".

(2) The third sentence of section 205(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(b) <FWPCA § 205> Section 205(e) of the Federal Water Pollution Control Act is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, and 1988" and by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of 1 per centum".

[*30] (c)(1) Section 205(g)(1) of the Federal Water Pollution Control Act is amended by striking out "1985" and inserting in lieu thereof "1988".

(2) Section 205(g) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".

(d) <FWPCA § 205> Section 205(i) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985" and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) <FWPCA § 205> Section 205(j)(3) of the Federal Water Pollution Control Act is amended by adding at the end thereof the [*31] following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator and the Governor of such State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".

(f) Section 205 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(l) One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1984, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.".

(g)(1) <WQA87 § 213> The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") shall make a grant from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1985 to the city [*32] of Avalon, California, for improvements to the publicly owned treatment works of such city.

(2) The Administrator shall make a grant of $2,337,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of such owners for the cost of construction of such plant.

(3) <WQA87 § 213> The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(4)(A) The Administrator shall make a grant to the Elk Pinch Public Service District, Kanawha County, West Virginia, from funds allotted to the State of West Virginia under section 205 of the Federal Water Pollution Control Act for fiscal years beginning after September 30, 1984. Such grant shall be in such amount, not exceeding $3,000,000, as is necessary to allow such district to maintain the approved user charge of $4.26 per thousand gallons and shall be in [*33] addition to the Federal share of eligible costs of such project otherwise allowable.

(B) As a condition to receiving a grant under this paragraph, the Elk Pinch Public Service District shall agree to take necessary steps, including litigation, to recover funds from parties against whom such district has claims for damages relating to the planning, designing, constructing, and financing of such wastewater treatment works. Amounts recovered under the preceding sentence, to the extent such amounts do not exceed the amount of grants made under this

paragraph, shall be paid to the Administrator and shall be added to the allotment of the State of West Virginia under section 205 of the Federal Water Pollution Control Act for the first fiscal year following such payment.

(5) <WQA87 § 213> Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Kentucky for fiscal year 1985 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(6) The Administrator shall make a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Califor- [*34] nia for fiscal years beginning after September 30, 1984, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS

[**18] SEC. 18. (a) Title II of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

"GRANTS TO STATES FOR REVOLVING FUNDS

"SEC. 220. (a) <FWPCA § 601> The Administrator shall make a grant to each State of the funds allotted to such State under this section for any fiscal year for deposit in a Water Pollution Control Revolving Fund established by such State under subsection (b)(2) of this section, for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(b)(1) <FWPCA § 602> A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the fund established by such State under this section an amount equal to 20 percent of the amount allotted to such State for such fiscal year.

"(2) <FWPCA § 602> Each State shall submit to the Administrator annually a certification --

"(A) that upon completion of any project for treatments works for which financial assistance is made [*35] available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(3) <FWPCA § 603> Each State shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. Such State shall deposit in such fund any Federal funds allotted to such State under this section, any amounts received by such State for repayment of loans made by such State with amounts in such fund, any amounts required to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which such State wishes to deposit in such fund.

"(c) <FWPCA § 603> (1) A State may use amounts in the fund established by such State under this section only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies.

"(2) In addition, to the extent provided by State law, any State may issue revenue or general obligation bonds using amounts in the fund established by such State under this section as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds [*36] of the sale of such bonds are deposited in such fund. No municipality or intermunicipal or interstate agency shall receive a loan from the fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of such loan.

"(3) A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(4) A State may provide financial assistance from the fund established by such State under this section for any project which is on the State's priority list under section 216 of this Act.

"(d) <FWPCA § 603> Notwithstanding any other provision of this section, a State may make assistance available under this section from the fund established by such State under this section to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works. If the recipient of a grant under section 201(g) of this Act for construction of treatment works receives an allowance under section

201(l)(1) for non-Federal funds expended for such planning and preparation and such recipient has received a loan under this first sentence of this [*37] subsection, such recipient shall promptly repay such loan to the extent of such allowance.

"(e) <FWPCA § 606> (1) Each State shall annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe.

"(2) 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 Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) <FWPCA § 606> The provisions of this title shall not apply to financial assistance under this section, except to the extent provided in this section.

"(g)(1) <FWPCA § 607> There is authorized to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

"(2) <FWPCA § 604> Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as if such funds were authorized to be appropriated [*38] under section 207 of this Act for such fiscal year. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.".

(b) Section 207 of the Federal Water Pollution Control Act is amended by striking out "and 209" and inserting in lieu thereof ", 209, and 220".

INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

[**19] SEC. 19 <FWPCA § 301>. Section 301(k) of the Federal Water Pollution Control Act is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which is otherwise applicable under such subsection,".

COAL REMINING OPERATIONS

[**20] SEC. 20 <FWPCA § 301>. Section 301 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(n)(1) Subject to paragraphs (2) and (3) of this subsection, the Administrator, or the State in any case in which the State has an approved permit program under section 402(b), [*39] may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any discharge, and with respect to discharges of iron and manganese, from the remined area of any coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. In no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins.

"(2) The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation provides a potential for improvement to water quality.

"(3) For purposes of this subsection --

"(A) the term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

[*40] "(B) the term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(4) Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

WATER QUALITY CRITERIA

[**21] SEC. 21. (a) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake.".

(b) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria

[*41] under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".

TEST PROCEDURES

[**22] SEC. 22. Section 304(h) of the Federal Water Pollution Control Act is amended by striking out ", within one hundred and eighty days from the date of enactment of this title," and inserting in lieu thereof", within ninety days from the date of enactment of the Water Quality Renewal Act of 1984,".

PRETREATMENT STANDARDS

[**23] SEC. 23. (a) Section 307(b) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) Upon the request of any source which is subject to two or more pretreatment standards which are promulgated under this subsection before the date of enactment of this paragraph and for which more than one compliance date is prescribed, the Administrator may establish a single compliance date for all such standards in accordance with this paragraph. Such a single compliance date shall be not later than one year after the first of such compliance dates or not later than the last of such compliance dates, whichever first [*42] occurs. The Administrator shall not establish a single compliance date under this paragraph unless the applicant demonstrates to the satisfaction of the Administrator that --

"(i) the establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date; and

"(ii) the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards, or the pretreatment standard with the later compliance date requires sufficient additional technology to justify such single compliance date.

"(B) Any application by a source under this paragraph for a single compliance date shall be made not later than 30 days after the date of enactment of this subparagraph. The Administrator shall provide public notice of such application not later than two weeks after its receipt and shall either approve or deny such application within 60 days after the last day of such two-week period.".

(b) Notwithstanding any other provision of law or rule or regulation to the contrary, the date for compliance with pretreatment standards under section 307(b) of the Federal Water Pollution Control Act for the electroplating point [*43] source category, as that category is described at page 9404 of volume 46 of the Federal Register (January 28, 1981), shall be December 31, 1984.

(c) <WQA87 § 309> The Administrator of the Environmental Protection Agency shall take such actions as may be necessary to increase the number of employees of such agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

(d) <FWPCA § 307> Section 307 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(e) In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may establish a date for compliance with the applicable pretreatment standard not later than two years after the date for compliance with such applicable standard (1) if the Administrator determines that (A) the innovative system has the potential for industrywide application, and (B) the action will not cause the publicly owned treatment works to be in violation of its permit under section 402, and (2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator) concurs with the [*44] proposed action of the owner or operator of such treatment works under this subsection.".

CRIMINAL PENALTIES

[**24] SEC. 24 <FWPCA § 309>. Section 309(c) of the Federal Water Pollution Control Act is amended to read as follows:

"(c)(1) Any person who --

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not [*45] more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) Any person who --

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State; [*46] shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of [*47] violation, or by imprisonment of not more than four years, or by both.

"(5) For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(6) For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

ADMINISTRATIVE PENALTIES

[**25] SEC. 25. Section 309 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(g)(1) <FWPCA § 309> Whenever on the basis of any information available to him --

[*48] "(A) the Administrator finds that any person is in violation of section 301, 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by a State,

he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $75,000.

"(2)(A) <FWPCA § 309> A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide [*49] such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

"(B) <FWPCA § 309> In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(C) The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(3) <FWPCA § 309> Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition [*50] may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) <FWPCA § 309> If any person fails to pay an assessment of a civil penalty --

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in

an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(5) <FWPCA § 309> The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall [*51] have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) <FWPCA § 309> Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) <FWPCA § 309> When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this subsection, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.".

CLEAN LAKES

[**26] SEC. 26. (a) <FWPCA § 314> Section 314(a)(1) of the Federal Water Pollution Control Act is amended by striking out "fresh water".

(b) <FWPCA § 314> Section 314 of the Federal Water Pollution Control Act is amended --

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu [*52] thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(c) Section 314 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(d)(1) <FWPCA § 314> The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) <FWPCA § 314> There is authorized to be appropriated to carry out this subsection not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and [*53] September 30, 1989. Sums appropriated shall remain available until expended.

"(e)(1) <FWPCA § 314> Any State may prepare, and submit to the Administrator for his approval --

"(A) a survey of water quality deterioration in lakes and other waters in such State which has resulted from high acidity which may be due to acid deposition, and

"(B) methods and procedures which may be applied to lakes and other waters in such State to restore water quality, insofar as such quality has deteriorated as a result of high acidity which may be due to acid deposition.

"(2)(A) <FWPCA § 314> The Administrator shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection. Such methods may include, but are not limited to, (i) innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and (ii) methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity.

"(B) The amount granted under this section to any State for any fiscal year shall not exceed 80 per centum of [*54] the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.

"(C) <FWPCA § 314> The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of high acidity which may be due to acid deposition. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.

"(3) <FWPCA § 314> There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal year ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Amounts appropriated under this subsection shall remain available until expended.

"(f) <FWPCA § 314> The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of [*55] lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(g) <FWPCA § 314> The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed. The Administrator shall submit a report of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this subsection. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $10,000,000 to carry out this subsection, to remain available until expended.

"(h) <FWPCA § 314> The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, [*56] shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users. Upon completion of the demonstration project the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Funds appropriated under subsections (c), (d), and (e) of this section and section 52 of the Water Quality Renewal Act of 1984 shall be available to carry out this subsection.

"(i) <FWPCA § 314> The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Com- [*57] mittee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $10,000,000 to carry out this subsection.

"(j) <FWPCA § 314> The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth Country, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $8,000,000 to carry out this subsection.

"(k) <FWPCA § 314> The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations of further

measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the [*58] Senate. There is authorized to be appropriated $3,500,000 to carry out this subsection.".

NPDES PERMITS

[**27] SEC. 27. (a)(1) Section 402(b)(1)(B) of the Federal Water Pollution Control Act is amended to read as follows:

"(B) are for fixed terms not exceeding ten years, except in the case of a permit which modifies any requirement of this Act under section 301(c), (g), (h), or (m) of this Act and except in any case in which the State determines that the applicant has not consistently complied with any permit held by such applicant under this section, in which cases such permits shall be issued for fixed terms not exceeding five years;".

(2) Section 402(b)(1) of the Federal Water Pollution Control Act is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:

"(D) must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and".

[*59] (b) <FWPCA § 402> Section 402(1) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, 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 with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances, or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.".

(c) <FWPCA § 402> Section 402 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(m) 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 [*60] 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 discharger of conventional pollutants identified pursuant to section 304(a)(4) of this Act which are introduced 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.

"(n)(1) The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) 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).

[*61] "(3) The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if --

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

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

"(4) 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 --

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

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

[*62] (d) <FWPCA § 402> (1) Section 402(c)(1) of the Federal Water Pollution Control Act is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

(2) Section 402(c) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection (A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be, or (B) in the case of any approval under subsection (n)(4), any phased component approved at the time of such return or withdrawal, as the case may be.".

AGRICULTURAL STORMWATER DISCHARGES

[**28] SEC. 28 <FWPCA § 502>. Section 502(14) of the Federal Water Pollution Control Act is amended by inserting after "include" in the last sentence thereof the following: "agricultural stormwater discharges and".

NEWTOWN CREEK, NEW YORK

[**29] SEC. 29. The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek [*63] sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modification. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SAN DIEGO, CALIFORNIA

[**30] SEC. 30 <WQA87 § 510>. (a) For purposes of protecting the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico, upon application of the city of San Diego, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such city for construction of a project consisting of --

(1) a publicly owned treatment works in such city to provide primary or more advanced treatment of not less than 60,000,000 gallons of municipal sewage and industrial waste per day for the city of Tijuana, Mexico; and

[*64] (2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the city of San Diego and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the city of San Diego.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Tijuana shall be at full Federal expense less any costs paid by the Government of [*65] Mexico as a result of agreements negotiated with the United States.

(f) Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(g) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(h) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) There is authorized to be appropriated to the Administrator to make grants under this section for fiscal years beginning after September 30, 1984, such sums as may be necessary. [*66]

NACO, ARIZONA

[**31] SEC. 31. (a) For purposes of protecting the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico, upon application of the county of Cochise, Arizona, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such county for construction of a project consisting of --

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona, and ap- [*67] proved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(f) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal [*68] sewage and industrial waste for the community of Naco, Arizona.

(g) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(h) There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

[**32] SEC. 32 <WQA87 § 511>. (a)(1) If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

[*69] (2) If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(b)(1) In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

[*70] (2) In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

(3) In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, [*71] the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) The Administrator of the Environmental Protection Agency shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any --

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, such circumstances not to include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treat- [*72] ment at the North River plant or Red Hook plant beyond the applicable deadline in subsection (a).

(c) Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) For purposes of this section, the "consent decree" is the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) The Administrator of the Environmental Protection Agency shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) It is the sense of the Congress that the Administrator of the Environmental Protection Agency should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

[*73] (h)(1) The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) The Administrator of the Environmental Protection Agency shall establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a) by December 1, 1984. The Administrator of the Environmental Protection Agency shall establish the methodologies, data base, and any other information required for making determinations under subsection (b) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection (h)(1) have been satisfied, and for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied. In carrying out such program, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such [*74] finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

BOSTON, MASSACHUSETTS

[**33] SEC. 33 <WQA87 § 513>. The Administrator of the Environmental Protection Agency is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

[**34] SEC. 34 <WQA87 § 512>. Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Envi- [*75] ronmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out this section.

CHIPPEWA TOWNSHIP, PENNSYLVANIA

[**35] SEC. 35. In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into

Brady's Run and the Beaver River, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove such raw sewage.

STUDY OF REGULATION OF DE MINIMIS DISCHARGES

[**36] SEC. 36 <WQA87 § 516>. The Administrator of the Environmental Protection Agency shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. The Administrator shall submit a report of such study along with recommendations to the Committee on Public Works and [*76] Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this Act.

STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

[**37] SEC. 37 <WQA87 § 517>. The Administrator of the Environmental Protection Agency shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations. The Administrator shall submit a report of such study to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this Act, along with [*77] recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

WATER QUALITY IMPROVEMENT STUDY

[**38] SEC. 38 <WQA87 § 308>. (a) The Administrator of the Environmental Protection Agency shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) Not later than two years after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. [*78]

STUDY OF TESTING PROCEDURES

[**39] SEC. 39. (a) <WQA87 § 518> (1) The Administrator of the Environmental Protection Agency shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(2) Not later than one year after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in paragraph (1) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) Biennially after the date of submission of the report under subsection (a), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants established under subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit [*79] to the committees referred to in subsection (a)(2) recommendations for modifying such procedures to improve their effectiveness.

STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

[**40] SEC. 40 <WQA87 § 519>. (a) The Administrator of the Environmental Protection Agency shall study --

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of the extent to which each such strategy identified may be expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each alternative strategy identified in paragraph (4).

[*80] (b) The Administrator shall, not later than two years after the date of enactment of this Act, submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

SULFIDE CORROSION STUDY

[**41] SEC. 41 <WQA87 § 522>. (a) In order to protect the Federal and other investment in treatment works, the Administrator of the Environmental Protection Agency shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

(b) The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of this Act. There is authorized [*81] to be appropriated $2,000,000 to carry out this subsection for fiscal years beginning after September 30, 1984.

GRANTS FOR ALTERNATIVE WATER SUPPLY TO REPLACE CONTAMINATED GROUNDWATER

[**42] SEC. 42. (a) <FWPCA § 319> The Administrator of the Environmental Protection Agency is authorized to make grants to (1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and (2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination. Such grants shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(b) <FWPCA § 319> An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include --

(1) a description of the source and extent of groundwater contamination;

[*82] (2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

(c) <FWPCA § 319> The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

(d) The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(e) <FWPCA § 319> The Administrator shall report annually to Congress on grants made under this section. Each such report shall include --

(1) information on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

[*83] (3) the average amount of such grants and the types of measures undertaken with such grants.

(f) For purposes of this section --

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals; and

(3) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(g) <FWPCA § 319> There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

DES MOINES, IOWA

[**43] SEC. 43 <WQA87 § 515>. The Administrator of the Environmental Protection Agency is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized [*84] to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

WASTEWATER RECLAMATION DEMONSTRATION

[**44] SEC. 44 <WQA87 § 514>. The Administrator of the Environmental Protection Agency is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

DISCHARGES INTO MARINE WATERS

[**45] SEC. 45. (a) <FWPCA § 301> Section 301(h)(2) of the Federal Water Pollution Control Act is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) <FWPCA § 301> Section 301(h)(3) of the Federal Water Pollution Control Act is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations [*85] which are necessary to study the effects of the proposed discharge".

(c) <FWPCA § 301> Section 301(h) of the Federal Water Pollution Control Act is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, the applicant has in effect a pretreatment program which, in combination with the treatment of discharg-

es from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) <FWPCA § 301> Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (b) of this section) and inserting in lieu thereof a semicolon and by adding after paragraph (8) (as so redesignated) the following new paragraph:

"(9) no effluent will be discharged from such works which does not receive primary treatment by [*86] screening, sedimentation, and skimming, and treatment for disinfection where necessary, and which does not meet the criteria established under section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged; and

"(10) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is an applicable pretreatment requirement in effect, the Administrator shall grant to the applicant removal credits to reflect the consistent removal of that pollutant achieved by the treatment works, provided that the following criteria are met:

"(A) there exists an effluent limitation on the treatment works for the pollutant and the revised requirement will not result in the effluent violating such effluent limitations;

"(B) the revised requirement will not result in interference with the method of disposal or reuse of sludge from the treatment works;

"(C) the revised requirement will not result in a pollutant interfering with the operation of such treatment works; and

[*87] "(D) all other criteria of this subsection are met.".

(e) Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the second sentence and inserting in lieu thereof the following: "For the purposes of this subsection, the phrase 'the discharge of any pollutant into marine waters' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone."

(f) The amendments made by this section shall not apply to any person whose application for a permit under section 301(h) of the Federal Water Pollution Control Act has been tentatively or finally approved by the Administrator of the Environmental Protection Agency on or before the date of enactment of this Act.

MAINTENANCE OF WATER QUALITY IN ESTUARIES

[**46] SEC. 46 <FWPCA § 320>. (a)(1) In any case where the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") determines, on his own initiative or upon request of one or more States any portion of which is located within the estuarine zone of an estuary, that the attainment or maintenance of that water quality in such estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution [*88] in more than one State, the Administrator shall convene a management conference. The members of such conference shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrying out this section. The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; and Albemarle Sound, North Carolina.

(2) In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

[*89] (3) Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of this section.

(b) The purposes of any management conference convened with respect to an estuary under subsection (a) shall be --

(1) to develop a comprehensive master plan for such estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conference;

(3) to recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems; and

(4) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(c) The master plan developed pursuant to paragraph(1) of subsection (b) may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous popula- [*90] tion of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(1) development of water quality standards for waters within the estuarine zone;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(d) A management conference convened under this section shall be convened for at least five years. Such conference may be extended by the Administrator, and if terminated after the initial five-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(e) For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include [*91] those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(f) The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 per centum of that State's or agency's cost of implementing the master plan for such fiscal year. There is authorized to be appropriated to carry out this subsection not to exceed $10,000,000 for the fiscal year ending September 30, 1984; not to exceed $30,000,000 for the fiscal year ending September 30, 1985; not to exceed $50,000,000 for the fiscal year ending September 30, 1986; not to exceed $75,000,000 for the fiscal year ending September 30, 1987; and not to exceed $75,000,000 for the fiscal year ending September 30, 1988. Amounts appropriated under this subsection shall remain available until expended.

(g) There is authorized to be appropriated to the Administrator not to exceed $10,000,000 per fiscal year for each of [*92] the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, for --

(1) expenses related to the administration of management conferences under this section;

(2) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of a comprehensive master plan under this section; and

(3) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

CHESAPEAKE AND NARRAGANSETT BAYS

[**47] SEC. 47. (a) <FWPCA § 117> (1) The Administrator of the Environmental Protection Agency (hereinafter in this section and section 49 and 50 referred to as the "Administrator") shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to --

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake [*93] Bay (hereinafter in this subsection referred to as the "Bay");

(B) coordinate Federal and State efforts to improve the water quality of the Bay;

(C) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(D) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

(2)(A) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made [*94] to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(B) A State or combination of States, may elect to avail itself of the benefits of this paragraph by submitting to the Administrator a plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State of combination of States that receives a grant under paragraph (2) shall, within 18 months after the [*95] date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) <FWPCA § 320> (1) The Administrator shall, at the request of the Governor of an affected State and after consultation with the Administrator of the National Oceanic and Atmospheric Administration and other appropriate Federal and State agencies and interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay (hereinafter in this subsection referred to as the "Bay"), as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve the Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate. Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

[*96] (2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within three months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will --

(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;

(B) review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality; and

(C) undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing, and disseminating such data; institute a sampling program where deficiencies are found [*97] to exist in present sampling programs; and develop and, as soon as practicable but not later than three years after the date of enactment of this section, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

(3) Any State that avails itself of the benefits of this subsection shall, not later than two years after receipt of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.

(c) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1) $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (a)(1);

(2) $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 for grants to States under subsection (a)(2); and

[*98] (3) $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (b).

NEW YORK AND NEW JERSEY HARBOR AREA

[**48] SEC. 48 <FWPCA § 320>. (a)(1) The Administrator shall --

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the New York and New Jersey Harbor area (hereinafter in this subsection referred to as the "Harbor");

(B) coordinate Federal and State efforts to improve the water quality of the Harbor; and

(C) determine the impact of natural and man-induced environmental changes on the living resources of the Harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals.

(2)(A) The Administrator shall, at the request of the Governor of a State affected by any interstate management plan relating to the Harbor developed pursuant to section 47 of this Act (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the [*99] management mechanisms contained in the plan in accordance with such section.

(B) An affected State or combination of States may, in addition, submit to the Administrator a plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State or combination of States that receives a grant under section 47 of this Act or subparagraph (B) of paragraph (2) shall, within 18 months after the date of re- [*100] ceipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the plan developed pursuant to such section 47 or subparagraph (B) of paragraph (2). The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) There is authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (a) of this section.

GREAT LAKES CONSUMPTIVE USES STUDY

[**49] SEC. 49 <WQA87 § 521>. (a) In recognition of the serious impacts that are expected to occur to the Great Lakes environment as a result of a projected fivefold increase in consumption of Great Lakes water, including loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, is authorized to conduct a study of control measures which can be implemented to

[*101] reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

(b) The study authorized by this section shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the effect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the effect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the economic effects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

(5) an analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies; and

[*102] (6) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $4,500,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

(d) For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

APPLICATION FOR OCEAN DISCHARGE MODIFICATIONS

[**50] SEC. 50 <FWPCA § 301>. Section 301(j)(1))(A) of the Federal Water Pollution Control Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which before December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than thirty days after the date of enactment of the Water Quality Renewal Act of 1984". [*103]

GREAT LAKES INTERNATIONAL COORDINATION OFFICE

[**51] SEC. 51. (a) <FWPCA § 118> (1) The Congress finds that --

(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

(C) the Environmental Protection Agency (hereinafter in this section referred to as the "Agency") should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

(2) It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of such agreement.

(b) <FWPCA § 118> (1) The Great Lakes National Program Office of the Agency is hereby designated as the Great Lakes International Coordination Office (hereinafter in this section referred to as the "Office"). The head of the Office shall also serve as [*104] principal liaison person on Great Lakes matters to the International Joint Commission, United States and Canada (hereinafter in this section referred to as the "Commission").

(2) The Office shall --

(A) develop and implement specific action plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978;

(B) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality;

(C) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to insure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement;

(D) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(E) serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

(3) The Administrator of the Agency shall ensure that the office should enter into agreements with the various orga- [*105] nizational elements of the Agency involved in Great Lakes activities in the appropriate State agencies specifically delineating --

(A) the duties and responsibilities of each such element with respect to the Great Lakes;

(B) the time periods for carrying out such duties and responsibilities; and

(C) the resources to be committed to such duties and responsibilities.

(4) The Administrator of the Agency shall, in the Agency's annual budget submission to Congress, include a funding request for the Office as a separate budget line item.

(c)(1) <FWPCA § 118> There are authorized to be appropriated for the purposes of carrying out subsection (b) and for the purpose of carrying out the functions, powers, and duties of the Office not to exceed --

(A) $8,000,000 for fiscal year 1986;

(B) $9,000,000 for fiscal year 1987;

(C) $10,000,000 for fiscal year 1988;

(D) $11,000,000 for fiscal year 1989; and

(E) $12,000,000 for fiscal year 1990.

(2) For the purpose of carrying out section 104(f) of the Federal Water Pollution Control Act there is authorized to be appropriated $10,000,000 for fiscal year 1985. Such funds [*106] shall be in addition to and not in lieu of any funds authorized to be appropriated under section 104(u) of such Act.

(d) <FWPCA § 118> (1) Within 120 days after the date of enactment of this Act, and at the beginning of each fiscal year thereafter, the Administrator of the Agency shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978.

The assessment shall show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts anticipated to be expended on Great Lakes Water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

(2) Within 150 days after the end of each fiscal year, the Administrator of the Agency shall submit to Congress a comprehensive report which --

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

[*107] (B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and

(C) describes the long-term prospects for improving the water quality of the Great Lakes.

RESEARCH ON EFFECTS OF POLLUTANTS

[**52] SEC. 52. (a) <WQA87 § 105> In carrying out the provisions of subsection (a) of section 104 of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

(b) There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,500,000 per fiscal year for each of the fiscal years ending September 30, [*108] 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

DEMONSTRATION PROGRAM ON ACIDIFIED LAKES

[**53] SEC. 53 <FWPCA § 314>. (a) The Administrator of the Environmental Protection Agency, in conjunction with the United States Fish and Wildlife Service, shall carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of limiting in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

(b) The Administrator of the Environmental Protection Agency shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate reports on the results of the demonstration program carried out under this section not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

[*109] (c) There is authorized to be appropriated to carry out this section not to exceed $25,000,000 for fiscal years beginning after September 30, 1984, to remain available until expended.

SEATTLE, WASHINGTON

[**54] SEC. 54. The Administrator of the Environmental Protection Agency is authorized to make a grant to the municipality of metropolitan Seattle, Washington, to construct necessary treatment works for providing secondary treatment for the area served by such agency. The Federal share of such project shall be 75 percent of the cost of construction thereof. There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

GRANTS FOR CARRYING OUT GROUNDWATER QUALITY PROTECTION ACTIVITIES

[**55] SEC. 55 <FWPCA § 319>. (a) Upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator of the Environmental Protection

Agency shall make grants under this section to such State for the purpose of assisting such State in carrying out groundwater quality protection ac- [*110] tivities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(b) An application for a grant under this section shall be in such form and shall contain such information as the Administrator of the Environmental Protection Agency may require.

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

(d) The Administrator of the Environmental Protection Agency shall include in each report transmitted under subsection (j) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

[*111] (e) There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

PULP MILL STUDY-REPORT

[**56] SEC. 56. The Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, shall conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to --

(1) the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1); and

(2) the Louisiana-Pacific Corporation, located at Ketchikan, Alaska (NPDES permit numbered AK000092-2).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than three months after the date of enactment of this Act. [*112]

NATIONAL GROUND WATER COMMISSION

[**57] SEC. 57. (a) There is established a commission to be known as the National Ground Water Commission (hereinafter in this section referred to as the "Commission").

(b) The duties of the Commission are to:

(1) Assess generally the amount, location, and quality of the Nation's ground water resources.

(2) Identify generally the sources, extent, and types of ground water contamination.

(3) Assess the scope and nature of the relationship between ground water contamination and ground water withdrawal and develop projections of available, usable ground water in future years on a nationwide basis.

(4) Assess the relationship between surface water pollution and ground water pollution.

(5) Assess the need for a policy to protect ground water from degradation caused by contamination.

(6) Assess generally the extent of over drafting of ground water resources, and the adequacy of existing mechanisms for preventing such over drafting.

(7) Assess generally the engineering and technological capability to recharge aquifers.

(8) Assess the adequacy of the present understanding of ground water recharge zones and sole source aquifers and assess the adequacy of knowledge [*113] regarding the interrelationship of designated aquifers and recharge zones.

(9) Assess the role of land-use patterns as these relate to protecting ground water from contamination.

(10) Assess methods for remedial abatement of ground water contamination as well as the costs and benefits of cleaning up polluted ground water and compare cleanup costs to the costs of substitute water supply methods.

(11) Investigate policies and actions taken by foreign governments to protect ground water from contamination.

(12) Assess the use and effectiveness of existing interstate compacts to address ground water protection from contamination.

(13) Analyze existing legal rights and remedies regarding contamination of ground water.

(14) Assess the adequacy of existing standards for ground water quality under State and Federal law.

(15) Assess monitoring methodologies of the States and the Federal Government to achieve the level of protection of the resource as required by State and Federal law.

[*114] (16) Assess the relationship between ground water flow systems (and associated recharge areas) and the control of sources of contamination.

(17) Assess the role of underground injection practices as a means of disposing of waste fluids while protecting ground water from contamination.

(18) Assess methods for abatement and containment of ground water contamination and for aquifer restoration including the costs and benefits of alternatives to abatement and containment.

(19) Assess State and Federal ground water law and mechanisms with which to manage the quality and quantity of the ground water resource.

(20) Assess the adequacy of existing ground water research and determine future ground water research needs.

(21) Assess the roles of State, local, and Federal Governments in managing ground water quality and quantity.

(c)(1) The Commission shall be composed of 19 members as follows:

(A) six appointed by the Speaker of the United States House of Representatives from among the Members of the House of Representatives, two of whom shall be members of the Committee on Energy and [*115] Commerce, two of whom shall be members of the Committee on Public Works and Transportation, and two of whom shall be members of the Committee on Interior and Insular Affairs;

(B) four appointed by the majority leader of the United States Senate from among the Members of the United States Senate;

(C) eight appointed by the President as follows:

(i) four from among a list of nominations submitted to the President by the National Governors Association, two of whom shall be representatives of ground water appropriation States and two of whom shall be representatives of ground water riparian States;

(ii) one from among a list of nominations submitted to the President by the National League of Cities and the United States Conference of Mayors;

(iii) one from among a list of nominations submitted to the President by the National Academy of Sciences;

(iv) one from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect ground water; and

[*116] (v) one from among a list of nominations submitted to the President from groups, organizations, or associations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to ground water; and

(D) the Director of the Office of Technology Assessment.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Not more than three of the six members appointed under subparagraph (A) and not more than two of the four members appointed

under subparagraph (B) may be of the same political party. No member appointed under paragraph (C) may be an officer or employee of the Federal Government.

(2) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for [*117] not longer than the 90-day period beginning on the date he leaves that office or becomes such an officer or employee, as the case may be.

(3) Members shall be appointed for the life of the Commission.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be entitled (subject to appropriations provided in advance) to receive the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(B) Members of the Commission who are Members of Congress shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(5) Five members of the Commission shall constitute a quorum but two may hold hearings.

[*118] (6) The Chairman of the Commission shall be appointed by the Speaker of the House of Representatives from among members appointed under paragraph (1)(A) of this subsection and the Vice Chairman of the Commission shall be appointed by the majority leader of the Senate from among members appointed under paragraph (1)(B) of this subsection. The Chairman and the Vice Chairman of the Commission shall serve for the life of the Commission unless they cease to be members of the Commission before the termination of the Commission.

(7) The Commission shall meet at the call of the Chairman or a majority of its members.

(d)(1) The Commission shall have a Director who shall be appointed by the Chairman, without regard to section 5311(b) of title 5, United States Code.

(2) The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

(3) With the approval of the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(4) The Commission shall request, and the Chief of Engineers and the Director of the Geological Survey are each authorized to detail, on a reimbursable basis, any of the personnel of their respective agencies to the Commission to assist it in carrying out its duties under this section. Upon [*119] request of the Commission, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this section.

(c)(1) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(5) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(f)(1) The Commission shall transmit to the President and to each House of the Congress a report not later than October 30, 1986. The report shall contain a detailed state- [*120] ment of the findings and conclusions of the Commission with respect to each item listed in subsection (b), together with its recommendations for such legislation and administrative actions, as it considers appropriate.

(2) Not later than one year after the date of enactment of this Act, the Commission shall complete a preliminary study concerning ground water contamination from hazardous and other solid waste and submit to the President and to the Congress a report containing the findings and conclusions of such preliminary study. The study shall be continued thereafter, and final findings and conclusions shall be incorporated as a separate chapter in the report required under paragraph (1). The preliminary study shall include an analysis of the extent of ground water contamination caused by hazardous and other solid waste, the regions and major water supplies most significantly affected by such contamination, and any recommendations of the Commission for preventive or remedial measures to protect human health and the environment from the effects of such contamination.

(g) The Commission shall cease to exist on January 1, 1987.

(h) There is authorized to be appropriated for the fiscal years 1985 through 1987 not to exceed $7,000,000 to carry out this section. [*121]

LIMITATION ON PAYMENTS

[**58] SEC. 58 <WQA87 § 2>. No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

TURNKEY CONTRACTS

[**59] SEC. 59. Section 203 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f)(1) <FWPCA § 203> After completion of an approved facility plan for a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) <FWPCA § 203> An agreement entered into under this subsection shall --

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a [*122] schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) <FWPCA § 203> Section 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

[*123] "(4)(A) Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) <FWPCA § 203> The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project. If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administra- [*124] tor shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) <FWPCA § 203> The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) <FWPCA § 203> In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) <FWPCA § 203> In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) <FWPCA § 203> A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

DEFINITION OF POINT SOURCE

[**60] SEC.60 <FWPCA § 502>. For purposes of the Federal Water Pollution Control Act, the term "point source" includes a leachate collection system. [*125]

STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS

[**61] SEC. 61 <WQA87 § 520>. (a) The Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such sources of pollution, in the following groundwater systems and aquifers:

(1) the groundwater system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona:

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington; and

(5) the Unconsolidated Quaternary Aquifer, Rock-away River area, New Jersey.

(b) After completion of each study under subsection (a), the Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall prepare a proposed management plan describing methods of implementing [*126] the measures and practices identified for each groundwater system and aquifer under subsection (a).

(c) The Administrator of the Environmental Protection Agency shall submit to Congress an interim report of the studies and proposed management plans under this section not later than one year after the date of enactment of this Act. The Administrator shall complete such studies and plans and submit to Congress a final report of such studies and plans not later than two years after the date of enactment of this Act.

(d) There is authorized to be appropriated $10,000,000 for fiscal years beginning after September 30, 1984, to carry out this section.

PUGET SOUND

[**62] SEC. 62 <FWPCA § 320>. (a) The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator"), in consultation with the Administrator of the National Oceanic and Atmospheric Administration, a representative of any other interested Federal agency as determined appropriate by the Administrator, representatives of the State of Washington, and representatives of interested local governments as determined appropriate by the Administrator, shall --

(1) develop a comprehensive master plan for Puget Sound, Washington;

[*127] (2) recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems to the water quality of such Sound; and

(3) monitor such Sound to determine the effectiveness of actions taken pursuant to the master plan.

(b) The master plan developed pursuant to paragraph (1) of subsection (a) may include, but need not be limited to, any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife and allows recreational activities in and on the water:

(1) development of water quality standards for waters within the estuarine zone of Puget Sound;

(2) development of toxicity-based standards for toxic pollutants;

(3)development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution. In developing a master plan under this section, the Administrator shall survey and utilize existing reports, data, and [*128] studies relating to Puget Sound that have been developed by or made available to Federal, State, or local agencies.

(c) The Administrator is authorized to make grants to the State of Washington if such State adopts a comprehensive master plan pursuant to this section for the Puget Sound. The amount of such grant for a fiscal year, shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of such State's cost of implementing the master plan for such fiscal year.

(d) There is authorized to be appropriated to the Administrator to carry out this section not to exceed $4,900,000 for the fiscal year ending September 30, 1985, $4,450,000 for the fiscal year ending September 30, 1986, and $2,400,000 for the fiscal year ending September 30, 1987. Amounts appropriated under this subsection shall remain available until expended.

TIME LIMIT ON RESOLVING CERTAIN DISPUTES

[**63] SEC. 63 <FWPCA § 201>. Section 201 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(p) In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall [*129] make a final decision on such appeal within 60 days of the filing of such appeal.".

SEWAGE SLUDGE

[**64] SEC. 64 <FWPCA § 405>. (a)(1)(A) Not later than six months after the enactment of the Water Quality Renewal Act of 1984, 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 human health or the environment.

(B) Not later than eighteen months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall identify those toxic pollutants not identified under subparagraph (1)(A) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

(2)(A) Not later than eighteen months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (1)(A) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such regulations shall require compliance no later than six months after their publication.

[*130] (B) Not later than thirty months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (1)(B) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such management practices and numerical limitations shall be adequate to protect the public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.

(C) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (1), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his 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, he 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.

[*131] (D) Any regulation issued under this paragraph shall be considered an "effluent standard of limitation" for purposes of section 308 or section 505 of the Federal Water Pollution Control Act.

(b) 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 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 paragraph, 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.

(c) For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is hereby authorized to be appropriated for fiscal year 1985 and ensuing fiscal years such sums as may be necessary but not to exceed $15,000,000.

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WATER QUALITY ACT OF 1987 (WQA87)

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99TH CONGRESS -- AGENCY TESTIMONY: EPA Testimony at Senate Environment and Public Works Subcommittee Hearings on Amending Clean Water Act, Mar. 26, 1985

99 Cong. Senate Hearings 1985; WQA87 Leg. Hist. 36

[*1]

AMENDING THE CLEAN WATER ACT

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
ENVIRONMENTAL POLLUTION
OF THE
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
NINETY-NINTH CONGRESS
FIRST SESSION
ON
S. 53
A BILL TO AMEND THE CLEAN WATER ACT, AND
FOR OTHER PURPOSES
AND
S. 652
A BILL TO AMEND THE CLEAN WATER ACT, AND
FOR OTHER PURPOSES

MARCH 26, 27, AND 28, 1985

* * * *

AMENDING THE CLEAN WATER ACT

TUESDAY, MARCH 26, 1985

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL, POLLUTION,
Washington, DC.

The subcommittee met at 10:03 a.m., in room SD-406, Dirksen Senate Office Building, Hon. John H. Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Symms, Bentsen, Mitchell, and Lautenberg.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. We want to welcome everyone here this morning as we start our hearings on amending the Clean Water Act, and we welcome you, Mr. Ravan.

This is the first of 3 days of hearings. Today, we will hear from the administration, and then in the next 2 days, we will hear from various groups and individuals.

As you know, our legislation on this subject was not enacted last year. As a result, the Construction Grants Program and the regulatory provisions of the law are up for reauthorization this year. They all expire on September 30.

We have two bills, before us, S. 53, which was introduced by the distinguished chairman of this full committee, Senator Stafford, and S. 652, which was introduced by me with Senators Stafford, Mitchell, Bentsen, and Durenberger.

Let's take the first one, S. 53. That is almost identical to the legislation which was reported out of this committee last year. It strengthens the current law by requiring greater control of toxic pollutants. It increases civil and criminal penalties <FWPCA § 309>, establishing a nonpoint pollution program <WQA87 § 317> and setting new requirements for sludge management and disposal <FWPCA § 405>.

The committee grappled with reauthorizing those and other provisions in S. 53 since 1982, so I don't expect this subcommittee will have much problem with those and won't spend a good deal of time on them. However, there have been concerns expressed over the provisions affecting the permit terms, antibacksliding compliance deadlines and non-point pollution. So, we will look at those areas carefully and see if any changes are warranted.

With respect to the Construction Grants Program, many members of this subcommittee and the full committee and members of the audience also remember the reforms we made in 1981, and [*2] those reforms began to gradually transfer Federal involvement to the State and local governments. Changes were made to more clearly focus the program on water quality; that is what we are trying to do, and we eliminated Federal funding for collectors and for most combined sewer overflow projects. The Federal share was reduced from 75 percent to 55 percent. The authorization level was reduced from $5 billion to $2.4 billion a year.

In 1981, we began to turn over to State and local governments more of the action. This legislation we have before us today will continue that policy.

S. 652 reauthorizes a total of $18 billion over 9 years for the construction of the publicly owned treatment works. Between now and the end of fiscal year 1986, 1987, 1988, $2.4 billion is authorized annually for the Construction Grants Program, which the Federal Government will give out to the States.

For the next 3 years after that, 1989, 1990, and 1991, we continue to authorize the funds at $2.4 billion, but we phase in the State Water Pollution Revolving Loan Fund Program, and this is achieved by creating a new title, title VI, in the Clean Water Act. Then in the remaining 3 years after that, 1992, 1993, and 1994, we wind down the program reducing authorizations at the rate of $600 million annually.

This proposal lives up to the commitment that I made at the time when we passed the 1981 amendments that we keep the funding at $2.4 billion for 10 years, that is, through 1991. We have also added and additional $3.6 billion over 3 years for added financial stability.

I know those testifying over the next few days may well say, "We need more money; it is not enough." I too would like to have more money. But, to those who are here and who are going to testify, and those who write and come to see me, we have got to remember there are other players in this drama. One of the key players resides at 1600 Pennsylvania Avenue. He only wants $6 billion in this program over 4 years compared to our $18 billion over 9 years. He has told us that his veto is drawn, and he has challenged us to "make his day."

I think we have a proposal that he can accept. I hope so.

Anyway, we are going to proceed with it.

S. 652 is responsible legislation which provides for a smooth transition to greater State and local responsibility. It assures that the construction of necessary facilities will move ahead so that we can continue to make impressive grants in water quality.

<FWPCA § 404> Now, a word on the Section 404 Program. As many of you know, I am quite disturbed over how this program is being run. The Department of the Army, through the Corps of Engineers, have made changes in the program which, in my judgment, fail to adequately protect our wetland areas. I am equally concerned that EPA is not exerting the veto it has under 404(c), the veto over environmentally unsound projects.

<FWPCA § 404> Now, in this particular reauthorization, we are not going to deal with section 404. I plan to hold oversight hearings on May 1 and 2 on section 404, and after that, we will determine whether or not legislative changes are necessary to strengthen the program.

[*3] Today, we have the EPA testifying on the administration's proposed legislation, which I believe you are sending and you have with you today; is that right, Mr. Ravan?

Mr. RAVAN. Yes, sir.

Senator CHAFEE. Obviously, we haven't had much time to review it, although we are familiar with the outlines of it. So, we look forward to hearing your testimony on this subject and welcome your reaction and the reaction of your Agency to the legislation we have proposed.

Mr. Ravan, you will be our principal witness today in your capacity as Assistant Administrator for Water. We also appreciate that this may well be your last appearance before us in that you have accepted a new position as EPA Regional Administrator in Atlanta, where I think you are from originally, aren't you?

Mr. RAVAN. Yes, sir.

Senator CHAFEE. Over the last 18 months, you have served EPA and our Nation well in carrying out your responsibilities and I, for one, want to express my appreciation to you. We will miss you, and we wish you well in your new duties as Regional Administrator in region IV.

Now, a word as to how we will proceed. After we have completed the hearings, we will be developing a markup vehicle which will contain provisions both from S. 53 and S. 652. We have scheduled a markup for next week to consider the legislation based on the hearings that we will have this week. It is my intent to try to complete the markup on that day, the 4th of April.

I would urge members that have amendments to let us know about them. Please let us know in advance, if it is possible. If there are any amendments that any of the members have, it is very helpful to us to let us know about them so that we can prepare for them for the markup.

What happens next? I have talked with the chairman of the full committee, Senator Stafford, he has given the Clean Water Act top priority. I will be talking with him as to when we can get a bill reported out and up before the full committee which we hope to have done before the end of April, and be ready to go to the Floor on the first part of May. We want to move quickly on this subject, because, as I mentioned before, this program must be reauthorized by September 30.

Senator Lautenberg, we are delighted you are here. If you have an opening statement, this would be the appropriate time.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. I thank you, Mr. Chairman. I am pleased to be here and to have Mr. Ravan here. I didn't realize this is a swan song appearance. He is leaving a legacy of good decisions.

In the early seventies, Mr. Chairman, the people of the country made a fundamental decision that they wanted a concerted effort to clean up the Nation's waters, waters for fishing, swimming, recreation, and drinking, and the Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972.

[*4] <FWPCA § 101> The act established the goal to restore and maintain the integrity of the Nation's waters which captures the essence of the people's desire for clean water.

During the 13 years the act has been implemented, there have been impressive strides made in cleaning up our Nation's waters, but much remains to be done. Our work on this committee, to reauthorize the act, must include amendments to solve those problems which are preventing us from achieving the goals of the act.

Of greater importance is future funding for the Construction Grants Program.

Properly running sewage treatment facilities is an essential ingredient in cleaning up the Nation's waters. Yet, it is clear that the existing construction grants funding is quite inadequate to meet the remaining national needs.

New Jersey alone has over $3 billion in eligible funding needs. The committee needs, Mr. Chairman, to explore some innovative mechanisms to provide funding for the construction of these facilities.

At the same time, we have to ensure that any new financing does not result in a disproportionate, adverse effect on older urban areas. EPA's recent task force report stated, "The heaviest financial burden for waste water treatment would fall on small communities and the older urban areas." The report also concluded, that, "Many communities are unable to meet waste treatment costs through user fees alone." Any new funding mechanism must address the ability of urban areas to raise funds for sewage facilities and the ability of its citizens to pay increased user fees.

The committee also has to address the following issues: Length of permits. Last year, the committee decided to extend the length of permits from 5 to 10 years, and we need to be sure that the extension of permits for facilities discharging toxic pollutants will not have an adverse effect on water quality. I hope the subcommittee will revise its decision to extend permits from 5 to 10 years.

<FWPCA § 319> The matter of nonpoint source pollution: As industrial dischargers have been cleaning up their wastes, non-point-source pollution is becoming an increasingly important source of pollutants entering the Nation's waters. We need to establish an effective non-point-source pollution program and to provide adequate funding to implement the program.

<FWPCA § 405> Sewage sludge from some municipalities in our region is now being dumped into the ocean. Other municipalities are considering using the ocean to dispose of their sludge. EPA needs to assist these and other communities in developing and implementing cost-effective, environmentally beneficial uses of sludge. EPA has failed to provide the assistance required in section 405 of the act, and we need to explore EPA's efforts in meeting the requirements of the act.

<WQA87 § 320> Estuaries are among the most productive natural systems. Many estuaries, however, have been severely degraded. We need to determine whether EPA has adequate legislative authority to protect these valuable areas.

Finally, Mr. Chairman, I am pleased that you have scheduled oversight hearings on section 404 <FWPCA § 404> dredge and fill programs.

[*5] The Corps of Engineers' issuance of a permit for the construction of Westway has heightened my concern in the direction that this program has taken over the last 4 years. I look forward to working with you, Mr. Chairman, and members of the subcommittee, on these critical issues.

Senator CHAFEE. Thank you very much, Senator Lautenberg. We look forward to working with you, and especially, I am pleased that you stated again your interest, which you have demonstrated before, in section 404 <FWPCA § 404>.

* * * *

[*6] Senator CHAFEE. All right, Mr. Ravan, why don't you proceed with your statement?

STATEMENT OF JACK E. RAVAN, ASSISTANT ADMINISTRATOR FOR WATER, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY WILLIAM WHITTINGTON, DIRECTOR, OFFICE OF MUNICIPAL POLLUTION CONTROL; AND REBECCA HANMER, DIRECTOR, OFFICE OF WATER ENFORCEMENT AND PERMITS

Mr. RAVAN. Thank you, Mr. Chairman, Senator Lautenberg. It is a pleasure for me to be here this morning. I have certain key persons on my staff to help us delve into these issues after my statement, and as it may seem appropriate, with your permission, Mr. Chairman, I will ask them to come forward and join me on particular questions or areas.

Senator CHAFEE. That is perfectly appropriate. It is good for us to get to know the members of your staff. Why don't you bring them up and then we can proceed.

Mr. RAVAN. I will ask Bill Whittington to join me.

Senator CHAFEE. Why don't you identify those with you now?

Mr. RAVAN. Bill Whittington, Pat Tobin, and Peter Perez.

Senator CHAFEE. Anybody else you want at the table?

Mr. RAVAN. I only want Mr. Whittington.

Senator CHAFEE. All right. Glad you are here. Go to it, Mr. Ravan.

Mr. RAVAN. Mr. Chairman, my statement is relatively short and it contains, I think, some new information.

As was pointed out this morning, we have learned a great deal about the problems of preserving and enhancing the quality of our Nation's water resources since the passage of the Federal Water Pollution Control Act Amendments of 1972. The basic strategy of that statute, namely, the use of technology standards together with water quality standards <FWPCA § 301> <FWPCA § 301>, has proven to be an effective approach to water pollution control. Remarkable progress has been made in the last decade or so. More, of course, remains to be done. As history has shown us, periodic adjustments to the act are necessary to ensure that we maintain our progress toward the achievement of the act's goals in the most efficient and effective manner possible.

[*7] To that end, members of this subcommittee, members of the regulated community, and we at EPA share a common desire to set the course of water pollution control for the future and to establish the necessary procedures and mechanisms to follow it.

Based on our first-hand experiences, as well as our vision of the problems that confront the program, we believe it is time to review this program and focus on adjustments in several areas. I would emphasize, Mr. Chairman, that we at EPA believe the changes now necessary are not major alterations in the structure or strategy of the act which would delay the program and result in serious resource demands. Rather, the focus of the administration's proposals, with several exceptions I will discuss, is on technical refinement of the act.

Perhaps the toughest issue before this subcommittee, Mr. Chairman, concerns the direction and future of the construction grants program. Let me address that first.

The administration's proposal calls for a $6 billion phaseout, reflecting concern with controlling the Federal budget deficit, a concern which all of us in Government share. This deficit has produced a different fiscal climate. It forces us to make hard choices, and alter some of our timetables. At the same time, I believe that the proposal provides a return to the ultimate State and local self-sufficiency in the construction of municipal wastewater treatment facilities.

Briefly, the proposed changes to title II would phase out the Construction Grant Program over a 4-year period beginning with an authorization of $2.4 billion in fiscal year 1986; $1.8 billion in 1987; $1.2 billion in 1988, $0.6 billion in fiscal year 1989, and thereafter ending the program. All funding would be restricted to the completion of currently ongoing phased or segmented projects. The reasoning behind this use of remaining Federal funds is to concentrate resources on completing what we have already started, and have committed to fund as a result of the 1981 amendments. To be eligible, such projects must have been initiated prior to the fiscal year 1986 budget submittal and must require additional funding to complete remaining segments. To further ensure that Federal funds are directed only to the eligible costs under these amendments for such phased or segmented projects, the 20 percent Governor's discretionary fund, which allows funds to be used for noneligible purposes, needs to be eliminated from title II. Similarly, the allotment formula used to allocate funds to States would be based on remaining phased or segmented project needs. Finally, other set-asides should be discontinued. The plan is to put as much of the funds as possible to finishing ongoing projects. Thus, no Federal funds should be set aside for new starts in rural areas or new innovative or alternative projects. Similarly, no Federal funds would be used for water planning activities. State management assistance under 205(g) would continue but should be limited to managing the Construction Grants Program phaseout. Section 205(g) <FWPCA § 205> funds would not be available for other purposes.

I want to talk now about where we have been and where we must go in terms of funding the necessary construction of municipal wastewater treatment plants. Prior to 1972, States and local governments paid for most wastewater treatment plant construc- [*8] tion to the tune of $51 billion compared to a $5 billion Federal appropriation.

Senator CHAFEE. What period does the $51 billion cover?

Mr. RAVAN. We looked back 20 years, Senator Chafee.

Senator CHAFEE. You mean from 1952 to 1972?

Mr. RAVAN. Yes, sir.

Of course, the 1972 Federal Water Pollution Control Act Amendments increased the Federal role dramatically, particularly in funding. Approximately $44 billion has now been appropriated, and, as the Federal role in the Construction Grant Program increased, the previously high State and local contribution dropped, and in my opinion, dropped dramatically.

In essence, Federal funding has simply substituted for, not supplemented, State and local financing.

In 1977, Congress passed major amendments clarifying the intent that States have the major responsibility to manage and implement title II. The theory behind the 1977 amendments was that State governments, which are close to the problems, should have the administrative capability to carry out their responsibilities. Gradually, the Construction Grants Program grew into a program now recognized nationwide as an effectively managed delegated program, a true Federal-State partnership. We have much to be proud of in making this successful transition.

In 1980, even more far-reaching reforms in the program began to be discussed, which eventually led to the 1981 amendments to the Clean Water Act, as the chairman pointed out. These major amendments signaled the EPA's Construction Grants Program was moving gradually from the prevailing high level of Federal financial involvement to a program focused on increased State and local self-sufficiency. The long-range implications of these amendments were significant. Funding eligibilities were limited so as to reduce the growing level of Federal financial commitment. To focus the grants program on existing rather than future needs, the Congress generally limited Federal funding to completing the construction of Federal facilities needed to intercept and treat wastewater discharges as prescribed by national technology standards and State water quality standards.

Today, we begin the final phase of this transition to State and local self-sufficiency. For our States and cities, this presents a tremendous challenge. For the past 13 years, they have relied heavily upon Federal tax levies. You will ask me: Are States and localities ready to become self-sufficient again, and what will be the Federal Government's future role?

I am confident we can make this final funding transition. I do not underestimate the budgetary realities that States and municipalities will face in reassuming increased fiscal responsibilities as this transition proceeds. But, over the last few years, States and localities have moved a long way toward developing both the institutional and financial capability to address their future needs on their own. Already, many States have acted aggressively in increasing the amount, diversity, and sophistication of their financial assistance programs for these localities. In short, at this critical juncture in our program, State governments are discovering that their responsibilities have not only been increased but also have become [*9] more varied. In the future, State governments will continue to play the pivotal role in the Construction Grants Program.

For their part, localities are beginning to develop diverse financing options as well. A few have turned to the private sector, which has recently shown an interest in long-term participation in the municipal wastewater treatment field. Other localities are examining different conventional and nonconventional financial routes. As required by the current act, user fees are under examination, as are other options for funding of future growth, rehabilitation and reconstruction, and more efficient operation and maintenance.

In the coming years, EPA will support these initiatives to smooth the path toward self-sufficiency. We will advise and assist technically, environmentally, scientifically, and in any way we can, the vast majority of responsible communities who are working to achieve compliance and self-sufficiency Working with the States, we will use the enforcement tools we have been given to cause non-compliers to meet their permit requirements. Our municipal policy spells out just exactly how we will accomplish this objective.

There will always be some who will say that the Federal funding role ends too soon. But believe that State and local governments have begun this path to assume full responsibility for the wastewater treatment program.

Let my turn my attention, Mr. Chairman, to civil enforcement for a moment.

<FWPCA § 309> Prior to preparing the administration bill, we made a careful review of existing civil enforcement authorities under the Clean Water Act as compared with other environmental statutes. I want to highlight two changes that we are proposing to the Clean Water Act. These changes concern administrative penalties and the maximum daily penalty assessment.

<FWPCA § 309> At present, we basically have two civil enforcement tools. The Agency may issue an administrative order requiring compliance by a violator, or the Agency may ask the Justice Department to file a civil action in the U.S. District Court for penalties and injunctive relief.

<FWPCA § 309> The administration's bill would add a third option: Authority for EPA to assess administrative civil penalties up to $10,000 per day per violation with a maximum penalty of $125,000. The option of administrative penalties is already available under many other environmental statutes.

<FWPCA § 309> Our intention is not to retreat from vigorous judicial enforcement. We need administrative penalty authority as a complement to our enforcement tools so that we can most efficiently and effectively assure compliance with the Clean Water Act. Many violations simply do not warrant the expenditure of judicial resources. But issuance of an administrative order, without penalties, has not proven powerful enough to motivate violators or deter other similar violators. Our experience with other administrative penalty authorities, such as Toxic Substance Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act proves that, used prudently in the right cases, this tool can be a strong force for achievement of quick compliance.

<FWPCA § 309> Administrative penalty authority particularly makes sense under the Clean Water Act. Often these penalty actions will result from [*10] self-monitoring. The factual issue will be straightforward enough that administrative alternatives to court litigation would allow an opportunity for a efficient method of resolving the matter. Our proposal includes the opportunity of more flexible hearing procedures that could be tailored to processing a large number of straightforward cases, while still ensuring procedural protection for the alleged violator.

<FWPCA § 309> There are differences between our administrative penalty provision and that contained in S. 53. For example, our provision allows a total administrative assessment of up to $125,000 versus the $75,000 ceiling. We favor the higher amount because it will signal to the regulated community the importance which the Agency attaches to compliance and enforcement. The higher amount is often necessary to recapture the economic benefits of noncompliance by a violator. In addition, our proposal and S. 53 differ with respect to court review. We favor court review based on the administrative record developed in the Agency's administrative proceeding, not a new trial in district court. Review would be based on whether there was substantial evidence in the record of the administrative proceeding to find a violation and whether the assessment of the penalty was an abuse of discretion.

<FWPCA § 309> Like S. 53, our bill, would raise the daily maximum civil penalty per day per violation for court actions from $10,000 to $25,000. This is consistent with the daily maximum civil penalty assessment under the Clean Air Act, TSCA, and RCRA. Enforcement consistency among the various environmental statutes should increase the regulated community's awarness of the importance of compliance.

<FWPCA § 309> The criminal penalties contained in 309(c) of the act have been increased. Existing misdemeanor penalties have been retained for negligent violations. However, the penalties for knowing violations of substantive provisions of the act or of permit conditions and limitations and sewage sludge disposal and pretreatment requirements, have been increased to felony level. Maximum fines for knowing first offenses have been increased to $50,000, together with maximum terms of imprisonment of up to 3 years. Also, the maximum term of imprisonment for the knowing making of false statements, representations, and certifications, or tampering with monitoring equipment required under the act, has been increased from 6 months to 2 years. The provision doubling the maximum fine and term of imprisonment for second convictions under the same paragraph of the act has been extended to this latter penalty.

<FWPCA § 309> Also, a new provision adopting from RCRA the concept of knowing endangerment has been added to section 309(c), providing for enhanced felony penalties for certain conduct which knowingly threatens "imminent danger of death or serious bodily injury." The substantial penalties for such conduct are equivalent to those contained in the existing RCRA knowing endangerment provision.

<FWPCA § 309> The proposed bill's new system of higher criminal penalties is roughly comparable with that now contained for comparable kinds of conduct in RCRA, as that statute was recently amended. We believe that these penalties, applied to the more serious instances of wrongdoing which cause or threaten to cause significant environmental harm or which have a significant impact upon EPA's abili-

[*11] ty to run an effective regulatory program, will have a substantial deterrent effect upon such conduct.

NPDES permits are the primary control mechanisms for achieving the majority of our Clean Water Act goals. Therefore, in developing the administration recommendations, we have attempted to identify those provisions most in

need of amendment to enhance our ability to continue to effectively implement this successful program. Our bill contains approximately a dozen amendments which will help the NPDES Program to face its new challenges.

<FWPCA § 301> The most important amendment in this group addresses the need for an extension of the BAT/BCT industrial compliance deadline. There is no question some kind of extension is necessary. The statute currently requires compliance by July 1984. We are mindful of the fact that the Agency has not been able to promulgate all needed BAT/BCT effluent limitations guidelines. Moreover, EPA and the States have not been able to issue all the permits setting forth individual requirements. Because of the current statutory language, we must issue permits which require immediate compliance, even where that is impossible through no fault of the permittee.

<FWPCA § 301> To alleviate this problem, we are recommending an extension that will realistically recognize the time necessary to issue guidelines and permits as well as providing dischargers with a reasonable period to achieve compliance. For limitations based on guidelines issued prior to July 1985, the outside deadline would be July 1, 1988. For limitations based on guidelines issued after that date, or for "best professional judgment" permits, compliance would be required no later than 3 years from promulgation or permit issuance, respectively. Of course, where compliance can be achieved prior to the outside date, that would be required.

<FWPCA § 301> Another amendment we are proposing which affects permitting concerns section 301(g) modifications for nonconventional pollutants. This amendment would ensure that variances are granted only in those instances where the Agency has adequate scientific information on aquatic and human health impacts. This is important, since many pollutants defined as nonconventional under the Act are, in fact, highly toxic. EPA's experience indicates that inadequate test methods and incomplete scientific information make it impossible to make the required findings under section 301(g) for many pollutants. This has led to inordinate delays, unproductive resource drains on Agency staff, and uncertain protection against toxicity. The administration proposal specifies those pollutants for which we have adequate data to determine whether the statutory factors are satisfied. The amendment also gives the Administrator the ability to add pollutants to the list where a petitioner demonstrates the availability of satisfactory test methods and data to make the necessary findings. This is appropriate in light of emerging scientific information in this area.

The balance of our proposed amendments regarding permitting are largely administrative and technical improvements and do not fundamentally change the structure of the NPDES Program. For instance, in order to improve program efficiency, we are requesting authority to issue permits with 10-year terms where that is appropriate. In another provision, we are seeking clarification of our au- [*12] thority to issue general permits. For several years, the general permit approach has been an effective device to deal with certain large categories of dischargers with identical control requirements.

We believe the adoption of these proposals will improve the NPDES Program and help us obtain the success in the future that has been achieved in the past.

In conclusion, Mr. Chairman, and other members of the committee, I don't believe there are any easy answers to the questions now before the subcommittee on the future of the Clean Water Act. I have attempted to address only a few of the proposals in the administration's program. My staff and I stand ready to assist the committee and, in the future, to work out meaningful dialog so that the proposal that is before the subcommittee can be finalized.

Thank you, Mr. Chairman. That concludes my prepared testimony.

Senator CHAFEE. Thank you, Mr. Ravan. I think we will go right to questions. Why don't we limit them to 8 minutes apiece, and go in order of appearance here, and then start through again. We will have plenty of time for everybody to ask questions.

Senator MITCHELL, do have an opening statement you would like to submit now or give?

Senator MITCHELL. I do have an opening statement, Mr. Chairman. In the interest of time, I will merely ask that it be submitted in the record at the appropriate place and proceed with questioning.

Senator CHAFEE. Fine. That certainly will be done.

Mr. Ravan, your approach to compliance is quite different from the one we have in our bill.

In other words, as you say in your statement, "Compliance would be required no later than 3 years from promulgation of permit issuance."

<FWPCA § 301> In the bill that we have we keep the same outside date of July 1, 1987. Maybe we ought to go another year to July 1, 1988. We can determine that. But nonetheless, we set a deadline where you have to comply. Your answer is: How can they comply before the guidelines have been issued? Our answer is: You better get the guidelines out. Industry can just delay and delay and, indeed, go to court and hold you up so that this stalling games goes on forever.

What is your answer to that?

Mr. RAVAN. <FWPCA § 301> Mr. Chairman, I would agree with you that past performance by the Environmental Protection Agency has not been, in particular, stellar. However, since the settlement of the principal cases involved with compliance, that is to say, the suit that outlined the need for some 34 principal guidelines for the major categories of industry, and beyond that some 126 toxic pollutants, the Agency's performance over the past 18 months to 2 years, I believe, has hopefully, increased the level of confidence of the subcommittee and full committee and, indeed, the American people.

<FWPCA § 301> We have, so far, published 24 of the necessary 29 industrial categorical guidelines, and we feel that we will complete this job within the next few months.

Senator CHAFEE. <FWPCA § 301> Next few months?

Mr. RAVAN. <FWPCA § 301> We hope to complete the process by March 1986 for the most complicated of the guidelines. Finally, my point is that [*13] the permittees, have in hand either a BPJ permit or the guidelines, but some time is necessary for achieving compliance. We consider 3 years necessary for engineering design and construction of the clean-up mechanisms.

Senator CHAFEE. <FWPCA § 301> Yes. I see the problem, but I also see the other side, which is, industry doesn't like it, and then they come in and sue and go to court and get you all tangled up. Therefore, there is never compliance. This has gone on for an awfully long time. I do understand industry's problem that they haven't gotten the guidelines so how can they comply, but frequently, the delay in the guidelines is that they have been harassing you people about your potential guidelines. Is that true?

Mr. RAVAN. <FWPCA § 301> I would hesitate to characterize it as harassment. Certainly, when you are working as hard as we are to comply with, first, the act; and second, court-ordered deadlines, you do not need an overabundance of letters, phone calls, and further attempts to extend the deadlines through court action.

I would simply point out that, Mr. Chairman, I think our performance most recently is indicative of some trust. I do believe that those industries with guidelines now in hand, have demonstrated that the guidelines work. While one may characterize it as harassment, the process is, indeed, complicated; it is very, very thorough; it is expensive, and it has been time-consuming.

<FWPCA § 301> Having said all that, with that guideline on the street, I believe industry is in a position to comply, and I would certainly agree with the subcommittee chairman and others that we do need an enforcement date for compliance.

Senator CHAFEE. All right. I obviously will spend more time on that before we are through. There is quite a difference.

Let's go to the Construction Grants Program, and Mr. Whittington can be part of this, if it is appropriate. There is obviously a great variance in what the administration has and what we have. You put in $6 billion, we put in $18 billion of Federal money, and ours extends over 9 years.

Under this, we provide $9.6 billion directly to the States <FWPCA § 207>, and the other for construction and $8.4 billion for the revolving fund <FWPCA § 607>. Now, we know that some communities won't meet the July 1988 deadline.

<FWPCA § 207> Do you think, Mr. Ravan, or Mr. Whittington, that the $9.6 billion will come close to buying out the Cores treatment needs of communities across the country?

Mr. RAVAN. <FWPCA § 207> Mr. Chairman, the core treatment needs estimate for construction does, indeed, vary between our number and yours. Clearly, the $6 billion as proposed by the President's budget is our number. This is our first look at changing the program, not only in terms of time, but in terms of entitlements as well. We certainly look

forward to working with the subcommittee not only this year, but in the future as true core requirements are better defined, either under the proposal that we have submitted or what may finally emerge from the Congress.

I would hesitate this morning to say what the specific number is. I believe our own $6 billion figure, is the best estimate of necessary requirements.

[*14] Senator CHAFEE. <FWPCA § 207> And you are not sure one way or the other? I personally believe that the $9.6 billion will get, or certainly come close, to buying out the core treatment needs of the communities.

Mr. RAVAN. <FWPCA § 207> Yes, sir; I think the difference probably lies in definiation of core treatment, Senator Chafee.

Senator CHAFEE. Well, if you come forward with $6 billion and we say $9 or $91/2 billion, then if you think your $6 billion is going to get it, isn't our $9.6 billion going to get it?

Mr. RAVAN. Yes, sir.

I believe your number will cover it plus a little.

Senator CHAFEE. Well, it is not that complicated in mathematics. So the answer is yes.

Mr. RAVAN. The answer is yes as to the core needs. I believe we are in agreement that whatever moneys are made available should be applied to those core treatment needs which drive water quality increases. Our only disagreement, basically, is the number.

Senator CHAFEE. All right. I am informed my time is up.

Senator Lautenberg. You have 8 minutes.

Senator LAUTENBERG. Thank you, Mr. Chairman.

Mr. Ravan, I am one of those who say that we are not going to have enough in here to do this job, as you mentioned in your comments. I have to ask you a question. You made reference to the 20-year period during which $50-some billion was spent by communities in developing their appropriate sewage treatment facilities.

What has been spent? Do you know, in addition to Federal Government funding since 1972, whether there has been any moneys that have come from local, State, or private sources to deal with the water problem?

Mr. RAVAN. Yes, sir, they certainly have. At least 25 percent; in some cases more than that.

Senator LAUTENBERG. That is 25 percent as a requirement of the formula, right?

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. How about funds? Would you be bold enough to say that there has not been any funding beyond that which is attached? Private companies are spending money on pretreatment systems, are they not? It is required, is it not?

Mr. RAVAN. I believe there are two sides to that, Senator Lautenberg. Certainly, with regard to municipal, public wastewater treatment, the investment beyond that required as a match for the receipt of the title II construction grant has been -- I believe I could characterize it as minuscule -- very, very minor, as opposed to the industrial investment, and, some of the that is in terms of pretreatment needs. The industrial sector has devoted a great deal of money, in excess of $60 billion, over that same period of time.

Senator LAUTENBERG. OK. So then your statement that the Federal Government has become the source for funding in substitution for other sources is somewhat in question because, in fact, there has been, and continues to be, a lot of money spent on sewage treatment facilities.

Mr. RAVAN. Yes, sir. One could, I believe, argue about the substitutionary effect of the Federal Grant Program. Our numbers show that the State and local governments, have done very well in putting up their local share. However, the major portion of funding [*15] was provided by the Federal Government, some $44 billion already plus whatever we add now. This will probably total approximately $50-billion-plus for the most recent 20-year period. This money is a substitution for the $50 billion or so provided in the previous 20-year period which was largely put up by State and local governments.

Senator LAUTENBERG. Yes. There is also a difference in awareness; there is also a difference in compliance required by law.

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. So the game has changed in relation to the arithmetic.

Mr. RAVAN. Yes, sir, significantly changed.

Senator LAUTENBERG. I have some questions I would like to get brief answers to. In EPA's future role in municipal wastewater treatment, the Agency concluded that the gradual transition was needed to increase the State and local role in wastewater treatment financing.

How does your proposal provide for a gradual transition? The effect of what you are proposing, I think, would almost cause a precipitous change in the character. How do you see it as a gradual transition?

Mr. RAVAN. Senator, given, quite honestly, some past performances of EPA in terms of change, even in some cases, a regulatory change, may, in fact, be characterized as the most normal thing we have done.

The administration proposal indeed, provides, for a 5 year, 1985-89, a phaseout period. Generally speaking, one can design and construct a facility in that period of time. So I would say it is a relatively reasonable period of transition.

Senator LAUTENBERG. Are you talking about individual project that have already begun?

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. But the need, of course, is substantially greater, you would admit that, than those that have already begun?

Mr. RAVAN. Clearly, Senator Lautenberg. In fact, the needs survey for fiscal year 1984, showed our Nation's need on the order of magnitude, depending on where you draw the line, up to $100 billion. I don't think there is anybody who believes that the Federal tax dollar can support every one of those.

So, it has now become a question of when, and how much.

Senator LAUTENBERG. The fact of the matter is that with that much legitimate need, the transition phasing looks like it is going to be fairly abrupt as opposed to gradual? I mean, for those that are in development, it is going to be gradual; for the others, it is a shock.

You are aware that in New Jersey, municipalities which are not providing adequate sewage treatment are currently subject to construction bans in our State?

Mr. RAVAN. Yes, sir, I am generally aware that the State has that authority.

Senator LAUTENBERG. We have 70 North Jersey municipalities presently subject to bans on construction because of inadequate sewage treatment facilities.

[*16] It is a severe penalty on those communities. Development is there to be had, and we can't move ahead with it because these communities cannot adequately supply the sewage facilities.

Does the administration continue to support the requirement that the sewage treatment plants achieve secondary treatment by 1988? I didn't see that in your testimony.

Mr. RAVAN. Yes, sir, we certainly do.

Senator LAUTENBERG. How does the administration expect these municipalities to meet that kind of a deadline? Financing is not going to be there. It is impossible for these cities to be able to raise the funds, do the planning, et cetera, to comply with that if they are left to fund it on their own.

Mr. RAVAN. Senator Lautenberg, I would agree with you, first of all, that this is, in fact, coming right down to the horns of a dilemma. The promise of the 1972 water quality amendments seemed to say that, from the Federal tax dollar, there would come some percentage of support for new requirements, increased, stringent requirements, to achieve our water quality standards.

In fact, the law itself does not provide that the Federal tax dollar will forever purchase and pay for these requirements. As I tried to point out in my testimony, there may be some debate about the degree of the substitutionary effect, but as compared to industry and what they have done, our municipalities have, indeed, lagged behind, not speeded up.

One could hope that the Federal tax support for this program to the tune of some $44 billion, would have acted as an incentive to carry on with what had gone before. Actually, we saw the grants in most cases acting as a disincentive. In fact, the cities tended to wait -- and this was as much EPA's problem as it was the cities -- for the receipt of a grant, meaning, "I will clean up when you give me a grant."

The courts have already ruled on this; that approach is not the case although, up until 1984, allowed that perception, at least, to continue.

The fact of the matter, is the cities, as well as our industries, should be cleaned up to the degree necessary regardless of a grant. I think that was the intent all along.

Senator LAUTENBERG. Again, as we deal with the funding for these past few years, we are forced to examine the scope of not only awareness but a requirement to comply, and that certainly has enlarged in these last years. So, even though there has been significant support with Federal dollars, the fact is that relative to the objective, it is a smaller percentage, I think, than we saw being invested in the earlier 20-year period that you talked about.

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. I will come back again, Mr. Chairman. Thank you.

Senator CHAFEE. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Let me pursue, Mr. Ravan, just briefly the line of questioning that Senator Lautenberg started on. You argued in your prepared statement and in here repeatedly, the substitution argument. There is ome ambiguity in the figures you provide in your statement. The phrase you use is, "Prior to 1972, States and local gov- [*17] ernments paid for most wastewater treatment plant construction, $51 billion compared to $5 billion in Federal" -- of course, prior to 1972, could be any period of time. You have used the phrase "20 years before," and "since." Obviously, there haven't been 20 years since 1972. Let me ask you specifically, what does the phrase, "Prior to 1972," mean, in point of time?

Mr. RAVAN. We studied the 20 years immediately prior to 1972, Senator.

Senator MITCHELL. This should more accurately read, "From 1952 to 1972."

Mr. RAVAN. Yes, sir.

Senator MITCHELL. Now, then, you use a figure of $44 billion has been appropriated, and as the Federal role in construction increased, the previously high State and local contribution dropped off. OK; $44 billion; is that from 1972 to 1984?

Mr. RAVAN. Yes, sir. That would include 1984.

Senator MITCHELL. All right. So we are now talking about from 1952 to 1972, $56 billion was spent, which was $5 billion, Federal; from 1972 to 1984, $44 billion was spent.

Now, you don't say what portion of that was Federal and what portion State and local. What are those figures, so we just get some kind of a comparison here.

Mr. RAVAN. Yes, sir. My statement should have been more complete, and it is only stated that way to try to be brief. The $44 billion is, indeed, the Federal tax dollar investment. There is, in addition to that, 25 percent from State and local governments, which would drive the --

Senator MITCHELL. Twenty-five percent of what?

Mr. RAVAN. Of the $44 billion.

Senator MITCHELL. $44 billion. What is the comparable dollar figure for State and local expenditures during that 12-year period?

Mr. RAVAN. $12 to $17 billion of State and local assistance, driving the total investment to approximately $57 billion during that period.

Senator MITCHELL. $12 to $17 billion. If you take the midpoint, it would be $14 or $15 billion; that would give you $59 or $60 billion. All right.

So, if I can summarize, because I have got some questions on this, what you are saying is that in the 20 years prior to 1972, a total of $56 billion was spent; $51 local, $5 Federal? In the 12 years since, a total of $59 billion was spent, $25 local, $44 Federal. Is that accurate?

Mr. RAVAN. Yes, yes. And if you will allow me, I will refine those numbers so that the record may reflect the totals more accurately.

Senator MITCHELL. Fine. Because it is very unclear from your statement, so we can know what the basis for your argument is.

Let me say that I am very disappointed regarding the administration's plan to terminate the construction grant program. As you know, I have joined Senator Chafee in sponsoring amendments to the act which provide a longer period, and as he has pointed out, establishment of a State revolving fund. At the same time, I am concerned that while loan funds may be appropriate for wealthy and financially secure communities, Mr. Poorer Community will [*18] not be able to support loans and will be at a disadvantage in an attempt to comply with the law.

In considering the loan fund concept, and I understand that was originally developed by EPA, have you considered the impact on financially stressed or relatively poorer communities?

Mr. RAVAN. The worse the financial condition of the local community, Senator Mitchell, obviously, the worse the impact of diminishing Federal funds.

<FWPCA § 601> Clearly, the State revolving fund, and let me underline State, is a method whereby assistance could, in fact, be delivered to those smaller towns, especially those in distress.

Senator MITCHELL. You understand that the EPA study of revolving loan funds suggests allowing States to use funds to either grants for loans and suggests a bonus program for States which set up loan programs. Could you describe, in your view, the relative advantages or disadvantages of a grant/loan option, and do you think that is one way of easing the impact on the poorer communities?

Mr. RAVAN. <FWPCA § 601> Yes, sir. The State revolving fund concept was, indeed, a part of our look to the future funding of wastewater treatment at the Environmental Protection Agency.

<FWPCA § 603> The State revolving fund should have maximum flexibility, and the State, as it develops these funds, would provide for either loans or loan guarantees. Those revolving loans, in fact, may vary depending upon financial capability of the local community involved.

One way to set up the State revolving fund was as you described, and it was one of the options coming out of the study.

Senator MITCHELL. Let me switch to another area now, toxic pollution. As you know, Senator Stafford's reauthorization bill provides an aggressive and expanded program to control toxic discharges <FWPCA § 303> <FWPCA § 304>. The bill places major responsibilities on States for the identification of water quality, limited segments, and adoption of effluent limits to protect those segments <FWPCA § 303> <FWPCA § 304>. At the same time, the bill looks to the EPA to develop additional guidelines for industries which discharge toxic pollutants in significant amounts. On that, I would like to ask you a series of questions, all related.

Would you describe the Agency's plans, if any, for development of additional guidelines? What industries will you address first? How many additional guidelines do you believe are needed, and do you have an overall strategy for development of these documents?

Mr. RAVAN. Yes, sir: I would be happy to, and I will ask Miss Hanmer to interject if I should fail to completely respond to certain aspects of your question.

First of all, the issue of toxics is an important one. We look to a period of time beyond the implementation of BAT by industry. We look to a time when, those plumes being discharged will decrease based upon the fact that the BAT controls should be in place.

There are two significant parts of the act that should bring this about.

First, there is the list of 126 toxic pollutants, which are of principal concern to us as, and have been identified both by the Congress and the courts. Second, we are, indeed, refining, even now, our list of categories of guidelines necessary to control those toxic pollutants. Our knowledge and information, in this area is, indeed, in- [*19] complete. Monitoring data will be used to determine where the amount of toxic pollutants being discharged by an industrial category warrants the development of an effluent guideline. We will not hesitate to publish new effluent guidelines to help control toxics when necessary.

In the water column itself, we have begun serious work. We are probably 2 years down the road, now, on monitoring by living organisms in the water the effects of these toxic pollutants and what we should do to further control them.

Another area of work has to do with toxics and sediments and how those sediments may affect the water quality of the water above the sediments.

We are, indeed, finding that there are segments in water quality streams that are affected by those sediments, and what we may describe as toxic hotspots.

Miss Hanmer, would you like to add to that?

Senator MITCHELL. Let me ask Miss Hanmer: Given the Agency's past problems in the development of fiscal year guidelines, are you confident that you have the resources to develop, promptly, high quality guidelines in the area of toxics?

Ms. HANMER. Right now, we are placing our primary responsibility with our present resources, which would be for fiscal year 1985 and the proposal for 1986, on finishing up the effluent guidelines for what we in the enforcement program regard as the most important remaining categories, especially the organic chemicals industry.

As we are getting in the data from permit applicants, which have to supply to us data on the toxics contained in their discharges, we are continually identifying what new categories we may need effluent guidelines.

But, frankly, our highest priority is focussed on those guidelines that presently are under development and are not yet out, specifically, the organic chemicals industry and pesticides.

Senator MITCHELL. I have a number of other questions, is my time up?

Senator CHAFEE. Your time is up. Everybody will get another chance. We will have another round.

We are delighted that the ranking member of the committee is here, Senator Bentsen.

Senator, do you have an opening statement? If not, would you like to ask questions at this time, or both? You can do both.

Senator BENTSEN. Thank you, Mr. Chairman, I apolize for not being here at the opening, but we had a conflict in the Intelligence Committee, and I had to be there.

I would like to say that the idea of phasing out Federal involvement by 1990 and no new starts, I think, is much too abrupt, and I believe it is poorly planned to permit a successful continuation of the program. In fact, I think it would be unacceptable to the Congress and the States and to the American people.

Mr. Chairman, I would like to have my complete remarks in an appropriate place in the record, if I may.

Senator CHAFEE. All right, your statement will follow the other opening statements.

[*20] Senator BENTSEN. I would also like to ask some questions concerning new starts.

When you talk about eliminating all new starts, that is going to mean many new projects high on the priority list and necessary to meet the 1988 municipal deadline and other requirements would not be funded. Why shouldn't projects be allowed that can be completely funded during the life of the Construction Grant Program? Why shouldn't they continue to be eligible?

Mr. RAVAN. Senator Bentsen, as I pointed out earlier, clearly, at this time we are facing a deficit problem; our program is viewed as a contribution in trying to eradicate that problem.

Second, if all the resources available under this program are, indeed, dedicated to treatment needs, Core needs rather than some other new projects that might be started under the program, that is, interceptors, CSO's and the like, we believe that most of the Core needs for treatment which drive water quality needs, will, indeed, be met.

I agreed with the subcommittee chairman that the number for those Core needs is somewhere between our number and, I believe, your number of $8 billion.

Senator BENTSEN. Another one that concerns me is the administration recommending an end to the 20 percent discretionary authority of the Governor to fund categories of treatment works that would not otherwise be eligible.

I hope this committee does not accept that recommendation and that that 20 percent discretionary authority will be continued.

Now, if it is, the committee will consider clarifying that this 20 percent can also be used to fund the reserve capacity which is not otherwise eligible.

Do you see any pitfalls in that approach?

Mr. RAVAN. Senator Bentsen, the principal pitfall, I believe, goes to the same problem that Senator Lautenberg brought to the sub-committee. It is new capacity, so-called reserve capacity, in some communities and new capacity or new tie-ons in other communities.

Generally speaking, these needs are for new and developing areas. There are exceptions to that that I can address. However, for the most part, these needs tend to identify the growth path for new areas and communities, whose economic and growth opportunities are most likely able to bear the cost of extending the sewer system.

I would urge the committee, especially in an era of scarce resources, to make new tie-ons, the reserve capacity, new growth, et cetera, pay its own way.

Senator BENTSEN. Because of the limitation of time, I will not pursue that one, but I will go on to ask, have you discussed our viewpoint on the revolving loan fund provisions?

Mr. RAVAN. Yes, sir; We have discussed the State revolving fund extensively throughout the last year.

Senator BENTSEN. I mean this morning?

Mr. RAVAN. Yes, sir; to some extent this morning.

Senator BENTSEN. Why don't you elaborate on it a little more for my benefit, will you, please?

Mr. RAVAN. Yes, sir.

[*21] <FWPCA § 601> Again, let me emphasize the revolving fund is not a terribly innovative idea, but I think it does provide one way, as pointed out in out 1-year study effort, the States could, in fact, make the transition from a principally Federal-funded tax dollar program to a State and/or local program. The funds for the State revolving funds, as we pointed out, could come from a number of sources.

Senator BENTSEN. Do you think you have enough flexibility? Do you think they are technically adequate as they are now stated?

Mr. RAVAN. They would be technically adequate. Each state can best design the logic of the revolving fund to suit its needs. We are not mandating the design.

Senator BENTSEN. <FWPCA § 402> You are recommending the authority to issue general permits for classes of facilities.

Mr. RAVAN. Yes, sir.

Senator BENTSEN. That is a major change in the act which doesn't allow general permits except under section 404 <FWPCA § 404> in limited circumstances. I can, however, see the general permits might be appropriate for some types of facilities.

<FWPCA § 402> Do you have specific examples where those general permits might be used?

Mr. RAVAN. Yes, sir, we do. I will let Miss Hanmer give the specific categories. General permits, though, are a very good tool for the Agency.

Ms. HANMER. <FWPCA § 402> As a result of a lawsuit in the midseventies, the court indicated that EPA, even though general permits were not specifically authorized in the statute, could use general permits as a tool in our permit program, and we have been using it as a tool in the program.

<FWPCA § 402> The largest category of discharges covered by general permits is the oil and gas drilling category in the outer Continental Shelf. In fact, if we were not using general permits for this type of permitting, we would have a great difficulty getting these permits produced at all.

Other categories basically include things like feedlots or cooling water. We would not use general primary for permits industries for example. General permits are most readily used for the types of discharges that are susceptible to engineering fixes. These fixes are the same for large numbers of industries, and in this way we can specify by rule what people have to do and have reasonable assurance that it is an effective way to regulate as opposed to giving them permits.

For the oil and gas drilling areas, I think it has been our most used permitting mechanism.

Senator BENTSEN. Yes. Thank you very much, Mr. Chairman. I will have some other questions.

Senator CHAFEE. Thank you.

Senator Symms, do you have a statement you would like to put in?

Senator SYMMS. No, Mr. Chairman.

Senator CHAFEE. Why don't you proceed with your questions?

Senator SYMMS. I thank you for being here, Mr. Ravan. I will carefully look back through your entire statement. I have just scanned it. I notice you make some mention in there about private treatment plants showing some hope for the future. We had some [*22] hearings in the Joint Economic Committee last year on the broad question of privatization as a way to reduce the Federal budget, and Parsons Corp., CH2M Hill, Morrison-Knudson, and other companies that are leaders in this tell me all the time that if we don't do anything to disrupt the tax code that the water treatment of this country can be taken care of by selling service contracts.

Are you working with Treasury to be sure that they don't recommend something that will do away with that opportunity? What does that look like to you in the future?

Mr. RAVAN. Senator Symms, we did, in fact, discuss this in our study for the program that was just completed. We, have had a number of discussions. Those discussions are ongoing with the Department of the Treasury officials. I must report that neither of us have reached any final conclusions with regard to the tax structure that might be needed or necessary or to act as an incentive or a substitution for the grants program.

Senator SYMMS. If I understand it correctly, Chandler, AZ, for example, is the one that they keep citing to me that they have sold a service contract. A private company, the Parsons Corp., has built a treatment plant, and then they operate it. I guess the only question which comes up is whether they have to have industrial revenue bonds to make it work?

I don't think they do, but what is your opinion on that?

Mr. RAVAN. Sir, I think that the necessary foundation for the so-called private approach is that you have to have two willing partners. You need a public entity of city, town, municipality, country, that wants to explore this opportunity, and you need a private concern that is committed not to short-term but to long-term improvements in that community.

After that, quite honestly, it simply boils down to service provided versus price for that service. I think this is a good idea. Two or three of our cities across the Nation are trying it. Actually, it is an old idea with regard to drinking water.

Senator SYMMS. Right.

Mr. RAVAN. Wastewater treatment, I believe, offers an opportunity in this area.

Senator SYMMS. The city of Boise for years has had a private drinking water treatment plant. They also have a publicly owned treatment plant. Morrison-Knudson, which happens to be head-quartered in Boise, ID, a large engineering and construction firm, wants to get into this business of going out and doing the capital expenditures and selling

long-term contracts and operating these plants for municipalities all over the country. There is a place in Alabama. Is it Brewton, AL?

Mr. RAVAN. Auburn, AL.

Senator SYMMS. Auburn, AL.

In fact, the mayor of Auburn was here last week talking about that. Are those working out well?

Mr. RAVAN. Yes, sir; they are showing real promise. Those two particular projects are in early phases and others may follow.

Again, I am simply suggesting to the subcommittee and to the cities and towns across the country that they might take a look at this option. It will not work for all cities and municipalities, but in some cases, it does, indeed, provide an opportunity for the future.

[*23] Senator SYMMS. It would appear to me that one way to help the budget situation is to open the door and share information and encourage this and not do anything with the tax code that would discourage this. I think that the service contract on a long-term basis is the key to it, so they could do that and then they could invest in the plans to have the normal depreciation and tax incentives for capital expansion and be in a profitable position and could go in and help clean up the Nation's water supply.

On another subject, I would like to, Mr. Chairman, submit a question on a problem we have in Lake Pend Oreille. The water quality continues to deteriorate year by year, and there is some discussion as to whether that is being caused solely by a pulp mill that is up river or also from cabins around the lake. I would like to submit a question to you on that.

Mr. RAVAN. Yes, sir.

Senator SYMMS. If could, for the record. (See p. 53.)

My last question is on pretreatment. We have a problem in Idaho, as you may know, Hewlitt-Packard is a company that has joined with the city and pays them for some of their water treatment operations from a plant that they have in Boise. Yet if we adhere strictly to the national standards, then they have to treat the water twice. I think there is some 75 cases like this in the country. What is your position on that?

Mr. RAVAN. Senator Symms, our position on that has not changed. However, I would like to further elucidate our position.

I believe that the pretreatment program, to date, in the Federal categorical standards actually is showing that it does work. It is time to follow the program that is presently on the books. I certainly urge the subcommittee to adopt this approach because while this has been a very, very painful and slow process we are, in fact, making good progress. With the publication of regulations to allow correction for the kind of situation that you have described if we don't need to treat it twice the pretreater can, in fact, get credit for having taken those steps. There is no need to charge the publicly owned treatment works a second time around.

Our regulation covering removal credits is available, and I would hope to work with your particular situation and others across the country to make certain that, in fact, it is not causing double pain where it is not necessary.

Senator SYMMS. So you think that we will be able to work that out?

Mr. RAVAN. Yes, sir; I do.

Senator SYMMS. That is all we really want to do, is to have the water we put back in the Boise River be of higher quality than the water already in the river. We just want to get credit for the good job they have done out there. That is all the people are talking about.

I thank your very much.

Thank you, Mr. Chairman.

Senator CHAFEE. Senator, you have a little more time if you would like to use it?

Senator SYMMS. That is fine. Thank you.

[*24] Senator CHAFEE. Mr. Ravan let's go back to the subject Senator Bentsen was discussing, namely, the task force about the future funding for POTW.

As I understand, you had a year's study on this matter?

Mr. RAVAN. Yes sir.

Senator CHAFEE. As you know, in the bill we have cited, we have this revolving loan fund?

Mr. RAVAN. Yes sir.

Senator CHAFEE. I am sure you have had a chance to look at that. Under this, States must commit their funds to the projects within 1 year or they lose these moneys to reallotment.

Mr. RAVAN. Yes, sir.

Senator CHAFEE. That is what our bill provides.

Mr. RAVAN. Yes, sir.

Senator CHAFEE. Do you think this is a reasonable time for the States to establish these funds?

Mr. RAVAN. Yes sir; I do. That might not be the case if we had not had the program since 1972, but at the present time, I think we have developed a priority list, water quality standards, permitting, et cetera. The requirement to place those funds within 12 months, I think would be reasonable.

Senator CHAFEE. Also, as you recall, these don't start until 1989. That is when, under our legislation, the funds come in.

In our bill, we have a 15-percent contribution that is required from the States to match the Federal contribution, 15 percent of the Federal. Obviously, we want to leverage as much as we can with the Federal contribution.

My question to you is: Do you think the 15 percent is reasonable? Should it be more? Should it be less, based on your experience with the past and your thoughts?

Mr. RAVAN. Sir, certainly. I think it would be reasonable. The State and local governments under the previous program were accustomed to paying 25 percent. Therefore, I would think that they would consider a 15-percent match reasonable.

Senator CHAFEE. Do you think it is a little low, even?

Mr. RAVAN. It might be a little low, yes, sir.

Senator CHAFEE. On the one hand, we want the States to have their own programs, and we don't want to saddle them with a lot of redtape.

On the other hand, we don't want Federal dollars squandered or spent on lower priority projects. We are walking this thin line here.

What would you consider an adequate assurance that a State is complying with the requirements? In order to receive the funds, the States have to agree to give adequate assurance to the Administrator that the treatment works is constructed prior to 1995 with funds from the revolving fund that will meet the same requirements applicable to grants requirements funded under the regular program. We have to get assurance from them that they are going to use these revolving funds with adequate assurance that they are going to be constructed in the proper fashion.

Mr. RAVAN. Yes, sir.

Senator CHAFEE. What do you think we can get out of that?

[*25] Mr. RAVAN. Mr. Chairman, our study of that point actually deals with both dollar availability as well as what I would refer to as, the regulatory burden. Some people would simply call it redtape.

I believe that there will come a time when our proficiency and technology of building wastewater treatments in this country is adequate, at least to the point that this regulatory burden can be relieved. Your requirement to carry through 1995, to me, as I examined the program this last year, seems to be a bit long.

I would suggest that the first time around, in other words, the first use of the money out of the revolving fund might very well carry with it the requirements that you suggested. However, I believe there also must come a day, hopefully, as quickly as possible, when the States would be given absolute flexibility for utilization of these funds, and I would only want to audit for basic honesty and the purpose of the grant.

Senator CHAFEE. Under the current law, as you know, we have the minimum of 4 percent for the innovative and alternative projects.

Your bill deletes the I/A completely.

Why do you do that, because of the short-term phaseout or you don't think the I/A is working well?

Mr. RAVAN. The earlier, Mr. Chairman, I believe that our focus should be upon treatment coordinated with available dollars. That is, in fact, our reasoning. The I/A Program has seen some successes, and we are not philosophically against I/A.

Senator CHAFEE. Yes, except if you eliminate it.

Mr. RAVAN. Only because we would like those dollars to be focused upon treatment.

Senator CHAFEE. I never understood that the I/A was not involved with treatment, just an innovative approach. I remember when we first put that in here. We were trying to get people to get the communities to try something different instead of putting the plans off the shelf somewhere.

Mr. RAVAN. That is right, sir, especially with regard to land treatment types of systems, and smaller types that did not need physical-chemical treatment.

Senator CHAFEE. That is right.

Mr. RAVAN. Again, as the administration proposal that we have for you this morning, is asking for funding for those present, ongoing phased, segmented projects, which are, indeed, for the most part, aimed toward treatment.

Therefore, the I/A 4-percent provision would be eliminated.

Senator CHAFEE. Has it been your experience -- and you have looked at this with a 4 percent mandatory I/A -- that States have gone to lower priorities than they normally should have in order to get the 4 percent?

Mr. RAVAN. No, sir; I would say that the program has been fairly well balanced. We have had States that took maximum advantage of the 4 percent, and we have had States that did, in fact, lose money on reapportionment, reprogramming.

Senator CHAFEE. Did any of the States go up to 7.5 percent which they could have done?

Mr. RAVAN. We don't believe so, Senator, but I would be happy to submit more information on that for the record.

[*26] Senator CHAFEE. I guess my specific question to you is: How do you think the I/A's worked out? Has it produced anything exciting?

Mr. RAVAN. Nothing specific comes to mind, Senator, that really was exciting, or a major breakthrough for treatment technology. It is more likely that I/A has provided for alternatives, better alternatives, perhaps, in some instances, for communities.

We are not philosophically against the I/A proposal.

Senator CHAFEE. I am informed my time is up.

Senator Lautenberg.

Senator LAUTENBERG. Yes. Thank you, Mr. Chairman.

Mr. Ravan, has the administration done a thorough study on the effect that your proposal would have on user fees in the urban areas of this country with large needs?

Mr. RAVAN. Senator Lautenberg, the proposal I have before you with the $6 billion phase-out, is that what you are referring to?

Senator LAUTENBERG. Yes.

Mr. RAVAN. No, sir; I don't believe there is a thorough study.

Senator LAUTENBERG. There is a suggestion in your report that user fees might be one part of the resources necessary to fund the projects in the future.

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. I would suggest, Mr. Ravan, that without some idea of what those fees might be like attacks the credibility of your recommendation. If user fees go through the roof, it limits growth potential, it imposes a terrible burden on the older cities and the urban areas.

In EPA's recent report on Federal and municipal wastewater treatment, EPA concluded that a gradual transition was necessary to increase the State and local role in wastewater treatment financing. I believe that the administration's proposal fails to provide adequate assistance, as I earlier said, therefore, prevents gradual transition.

The proposal leaves local municipalities, which have been waiting for Federal grants, facing the prospect of sewer bans. Your proposal will also result in retarding the growth essential in the President's perspective on how we finance our way out of debt, and that is, through growth in our economy. Many municipalities will just have to slow down in terms of their own development.

We have, in New Jersey, over $3 billion in unmet needs for eligible facilities, just to make the point to you, Mr. Ravan, as you review the proposal you have made to us.

The EPA task force report suggested a 10-year program to establish a revolving loan program; is that correct?

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. What was the basis for 10 years as opposed to any other period?

Mr. RAVAN. Senator Lautenberg, the time period that is, in fact, tied to the amendments of 1981. Those amendments, as you know, were fully implemented October 1984, and some sort of time period looking toward the period 1981 to 1991 or, indeed, 1984 to 1994 seemed to us to be at least a good study period for the work that we were doing with regard to that task force.

[*27] Senator LAUTENBERG. So, therefore, if there is any challenge to that particular time cycle, it is whether or not 10 years will provide the funding adequate to the States to fund the necessary treatment work, something that concerns me a great deal.

This goes back to an earlier question. What effect would the switch from grants to the revolving loan fund suggested by the report have on local sewage rates? Do you know? Do you have any idea what that might be?

Mr. RAVAN. Senator, clearly, the so-called sewer ordinances and/ or sewer rates or user charges as they are variously termed in the trade are going to have to increase. One of the aspects of a large Federal assistance program, as had been the case, we have noted, is that user fees, as such, for the sewer service provided are, indeed, low, and in my opinion, too law.

Senator LAUTENBERG. Do you think the users would agree with you?

Mr. RAVAN. Some users will disagree heatedly because they have experienced user fees, especially on the sewer side, in past periods of this program.

However, my own experience over this some period of time, having been involved with this program both publicly and privately since 1971, tells me that America's best bargain today is, indeed, the clean water that we have provided, and, in fact, especially in our urban areas, we should, indeed, be willing and ready to pay for the service provided at the local level.

I don't believe that the consumer gets his or her best deal by arriving at those dollars through the Federal system.

Senator LAUTENBERG. Except that what we have is a national problem. The effects of having untreated or improperly treated water flowing into the estuaries and ultimately into the total aquatic system is something that affects everybody, and you just can't restrict its result to the local community.

One could take a narrow view -- it has been done lots of times -- to say, "To the devil with it. We will just get rid of it," and eventually it winds up some place else.

So, therefore, it does cause the Federal Government to be involved in a very significant way. I don't think there are bargains out there when we look at what we have to pay for municipal services, whether it is the safety service or trash removal, et cetera. It costs communities a lot of money to deal with problems of this nature and especially one that affects the world we live in. I think it is pretty easy to say that the fee has got to be paid whether it is paid to Government and then transmitted back or whether it is going to be paid by way of user fees directly.

There is no fee disposal, as they say.

The report says that the heaviest financial burden for wastewater treatment would fall on the older urban areas; correct?

Mr. RAVAN. Yes, sir.

Senator LAUTENBERG. It says many communities in that report cannot afford to meet all of the costs for wastewater treatment facilities through user fees alone. How did the task force proposal address those problems?

Mr. RAVAN. We saw, Senator, that there would be generally, three categories of financing for the future.

[*28] First, the categorical grant under title II which is presently available for some phaseout period of time would, indeed, provide, regardless of whose number you use, some $8-plus billions for that remaining program.

Second, there would be the need for, because of the conclusion you have just pointed out, a State revolving fund and/or some sort of mechanism for assistance for the local communities, especially those who are, in fact, unable to meet the full load.

Then, third, there would be, as Senator Symms pointed out, an opportunity for the private approach to meet the wastewater treatment needs. Those three categories are what we suggest.

Senator LAUTENBERG. We would hope that those on whom the burden falls can handle their fair share of it. I am not optimistic that we can do that, and I think that the communities are going to be in for some shock when they see what their responsibility is going to be: their costs for providing these. Many of these communities have problems with credit anyway, and to be issuing bonds supported by a revolving fund to whom they have to repay their obligations can seriously strain the creditworthiness of the ability of these communities to borrow to handle this and repay the revolving fund.

Thanks, Mr. Chairman.

Senator CHAFEE. Senator Mitchell.

Senator MITCHELL. Thank you, Mr. Chairman.

Mr. Ravan, in a recent report to Congress, the EPA indicated that as much as half the remaining water pollution problems are attributable to nonpoint sources of pollution; that the administration has put forward a program which provides no grant support or practically no staff for dealing with nonpoint pollution. Beyond that, the Agency has opposed amendments to the act to address nonpoint pollution.

First, let me ask you: Don't you agree that nonpoint pollution is a serious national problem?

Mr. RAVAN. Yes, sir, I do. I would refer to those statistics, if I may. I believe 17 of our States have remaining problems in attaining water quality standards. In over 50 percent of those 17 States, the problem is nonpoint sources.

Senator MITCHELL. Is it not a problem in the other States?

Mr. RAVAN. Yes, sir; there are areas where nonpoint source is the problem.

Senator MITCHELL. I understand that the Agency recently developed a nonpoint pollution policy which calls for better coordination of Federal agency activities related to nonpoint pollution control.

Does that policy provide for any mandatory action by Federal agencies to assure these programs and budget will implement the policy, or is it essentially a voluntary program?

Mr. RAVAN. It is, in fact, essentially voluntary.

Senator MITCHELL. What we have here is clear evidence of a problem, the EPA not acting, and if the attempts to implement the voluntary program don't succeed, and I must say, past experience with that has not been very good. I

think it is time to do something about it, and I think personally that the nonpoint source provisions of S. 53 are a good start <FWPCA § 319>.

[*29] <FWPCA § 319> <FWPCA § 205> Now, several environmental groups have recently suggested to this committee that we consider making implementation of nonpoint pollution control problems eligible, construction grant funds, if the nonpoint program would be cheaper than the cost of advanced wastewater treatment. Would you support funding of nonpoint programs with title II funds if needed pollution control could be achieved at a lower cost?

Mr. RAVAN. <FWPCA § 319> <FWPCA § 205> Sir, given the administration's proposal for phasing out of the construction grants program, I doubt that it would be a good time to add new eligibilities to that particular entitlement. That does not take away from the necessity to address nonpoint source pollution broadly across the Nation.

Senator MITCHELL. That last sentence hardly squares with the policy that you have proposed and your position by any effort on the committee to do it.

Mr. RAVAN. I believe Senator, if I may just address that policy for a moment, what we found, again, in a very concentrated effort over the past 12 months on nonpoint source was that if, indeed, the Federal Government first; and perhaps State governments thereafter; and local governments thereafter, would simply utilize the dollar as well as other resources that they have presently available to them, we could take substantial steps toward the alleviation of nonpoint source pollution. As you know, the five major categories of nonpoint source have to do with constituencies across the Nation who, I believe, indeed, can do something about nonpoint source pollution. And, if the Federal departments, with available resources, would simply tune the application of those dollars so that nonpoint sources would first be eliminated or alleviated, we would be a long way toward controlling our nonpoint source problems.

I am not suggesting to you or anyone else that this will cure our problem, but it will certainly be better than anything else we have seen today.

Senator MITCHELL. Of course, wishing for somebody to do something is a long way from having them do it. I think overall, your comments really support the need for some action as proposed in the legislation to which I referred. I would like, if I could because of time constraints, to go on to another area, and that is the permit terms.

The proposal for extending of NPDES permit terms from 5 to 10 years has been an area of considerable debate and concern, as you know. EPA and the industry argue that longer terms are needed to prevent permit backlogs and provide relief.

On the other hand, environmental groups and other groups are concerned that the delay will slow the implementation of toxic controls. Do you agree that the 10-years permit will delay implementation of toxic controls? If so, what is your comment on the proposal on the idea of limiting 10-year permit terms to those permits which address conventional pollutants which retain a 5-year period for toxic controls?

Mr. RAVAN. Senator, I believe the 10-year permit, first of all, is a good idea. I am basing that on experience in the program today, as well as what we know and understand about the implementation of BAT controls first, and then toxic additional controls thereafter. Also, I think it is important for the subcommittee to understand [*30] that our proposal suggests a 10-year permit only in those cases where, in fact, we know all there is to know about that discharge.

In any other case where it was necessary to meet water quality standards, effluent toxic controls, dual information availability, et cetera, we would, in fact, do that. I believe the only gap in this is a certain amount of, if I may use the term, faith that we would, in fact, do that.

I would like to just tell the subcommittee again that EPA is, in fact, committed to this. I believe the 10-year permit is a good idea when implemented along the lines that we are proposing.

Senator MITCHELL. Would you have any problem with us writing that into the law?

You said you are going to do it anyway. You obviously wouldn't object to putting it into law, would you?

Mr. RAVAN. Senator Mitchell, we are, in fact, suggesting certain language to go along with the 10-year permit.

Senator MITCHELL. I would like to turn to another area of the turnkey project. The State has undertaken a number of treatment construction projects without Federal assistance. The State found that they are able to substantially reduce project costs by allowing a single contract for design and construction of a plant termed, as you know, a turnkey project. In one case, I am advised, preliminary cost assessment for the design and construction of $6 million was reduced to

$21/2 million when bid as a single project. Other States have had similar experience. Yet EPA will not allow single contracts for design and construction in federally assisted projects.

My question is: Does the EPA have substantive objection to turnkey project management, or is its opposition based on a belief that there is a lack of legal authority to authorize such a project?

Mr. RAVAN. Senator, I don't believe this comes from a legal basis, no, sir. I do, in fact, believe that the administration's proposal for the phaseout of our participation, is premised on directing those funds to ongoing present-day projects.

Senator MITCHELL. But, Mr. Ravan, the purpose of the phaseout is to save money. Here is a way, which I gather you do not dispute, which can save money. Yet you are opposing it, which seems to me to be rather contradictory.

Mr. RAVAN. Not necessarily, Senator. Your State's experience in this program actually does differ from all reports that you can get with regard to so-called turnkey projects. We have found, in fact, especially with regard to smaller communities, that having separate design and construction firms, and sometimes even a separate operation and maintenance firm is, indeed, a safeguarded approach to achieving what you really want, which is, cost-effective achievement of permit effluent requirements.

Senator MITCHELL. That is a different argument. Now what you are saying is that there is a factual disagreement, that is, you disagree that savings can be made by having turnkey projects.

Mr. RAVAN. I think each project should be judged on its own merit with regard to turnkey. I do believe that different States and different localities actually have different experiences from the one you described.

Senator MITCHELL. If you believe that, then implicit in your statement is that in some cases, there have been savings, and I

[*31] guess what I am saying is, why not have that option so that at least in the cases in which it appears or can be agreed that there will be savings, the savings will be accomplished? I mean, $3 1/2 million is perhaps a small sum in a multibillion dollar program, but it is still taxpayers' money, and if we could save just $3.5 or $4 million on a project here or there, it is a savings that I think everyone would be interested in.

Mr. RAVAN. Let me categorize that, Senator Mitchell. I don't think we are philosophically against any savings that might be incurred. I believe also that States, especially as they take on not only the responsibility but the burden in accountability for these projects, should have maximum flexibility. If they want to do turnkey projects in a particular State, they ought to have that opportunity.

Senator MITCHELL. If I could say why? You see, what they don't want is a program that works better because then it is harder to phase it out, and since their primary objective is phasing out the program, they really don't want to consider proposals that will make it work better, because the better it works, the harder it is to eliminate it. That is what is troubling about this.

Mr. RAVAN. Again, Senator, I have no philosophical difference with you. In fact, I would like to see the States, as they take on this program, design the flexibility into their program that they deem appropriate.

Senator MITCHELL. Are you familiar with the design/construction provisions of H.R. 8, the House authorization bill?

Mr. RAVAN. No, sir, I am not, but I can look at them.

Senator MITCHELL. Would you take a look at them and then provide us with a response in writing as to whether you think those are acceptable?

Mr. RAVAN. Yes, I will.

Senator MITCHELL. Thank you, Mr. Chairman. I have some more questions. I will wait for my next turn.

Senator CHAFEE. Mr. Ravan, when we put the 10-year amendment on permits, we thought we came up with a good program. Many permits under this would get a 10-year lifespan so that both the permit-writing agency, EPA, and the permit holder would save some resources. That was the objective of it.

On the other hand, permits would have to be reopened and revised if new effluent requirements or water quality requirements came into force. So we wouldn't lock in inadequate controls over 10 years. I think you mentioned that.

Now, some people are telling us that in many cases, permits would not really be reopened, so that we have just given away the story without getting anything in return.

I am confident that this is going to be raised in the next 2 days of these hearings. What do you think about this?

Mr. RAVAN. Mr. Chairman, I believe that the negative side of that argument, that is to say that the 10 years would not be reopened, is simply a question of how EPA and the States --

Senator CHILES. That is the problem. It is the States. Let's set aside EPA for a moment. Let's assume that EPA would reopen them, but the argument is that the States are very unlikely to promptly revise all the permits on a river when the water quality [*32] standards are upgraded. Instead, they will write the new permits one at a time when the old ones expire. That is the argument you are going to get.

Can EPA force the States to reopen the permit?

Mr. RAVAN. Yes, sir, I think if we saw that as a requirement we could. Obviously, the regulations that are going to go along with the 10-year permit, will I believe provide a substantial impetus for good faith actions on the part of the State.

Senator CHAFEE. Beckly, do you have any comments on that?

Ms. HANMER. I would just like to say that we don't regard 5 or 10 years as an either/or proposition. We would see developing the process through regulations to specify appropriate permit terms. We may limit, for example, a full 10-year permit to certain categories of dischargers whose discharges are not likely to change, who represent well-known situations, or situations where, when we get ready to reissue the permit, we are not likely to make many changes. So we would, I think, want the flexibility to choose permit terms of less than 10 years.

We don't want to be under the pressure of just having people come in and say, "You own us 10 years." I think the way we would do it would be through reopenings. I think our preference would be for discretionary rather than mandatory reopenings, which would be defined through regulations, permit terms, and appropriate terms for reopening. Those regulations would apply equally to the States.

Senator CHAFEE. This is obviously going to be a major bone of contention in the next 2 days. Our problem is that the States have such a backlog that the concern is -- and many of those who I think will testify will raise this point -- the States have a large backlog and they are just not going to get to it. Wait until the 10 years is up, and the automatically reissue some kind of a permit.

Ms. HANMER. The staggered term I mentioned is one way to deal with the situation of the cyclical workload. If we set permits we would set different sections, and different types of permits for different permit extension terms. Then we could even up the workload, which would help both us and the States.

Second, the States, I think, went into a period, as we did, in which permit writing wasn't very important. We have been getting some impressive results, though; not perhaps full results, but very impressive results, though; not perhaps full results, but very impressive results once we started to put a priority on this activity. The States have doubled their permit-writing activity from last year to this.

Senator CHAFEE. OK. I suppose you could have different permits, also, for conventional, toxic pollutants, too.

Ms. HANMER. That is how we would do the categorization, basically, by types of discharges.

Senator CHAFEE. All right, Mr. Ravan, what steps are you taking to ensure that new regulations are being implemented? I am particularly referring to the water quality standards, and we had a go-around, as you recall, with the Administrator last year on this and some revisions he did not want us to implement into law. What I am talking about specifically is with respect to the adoption of criteria for toxic pollutants and the mandatory stream-upgrading requirements.

[*33] Mr. RAVAN. Senator, we feel very confident and very strong with regard to this water quality regulation. I think we did, in fact, keep good faith with the Congress and our duties to the American people in the publication of that regulation. We continue to take the actions, I believe, which are necessary to clearly indicate to the States as well as the dischargers that we fully intend to carry out the water quality regulations.

We briefed Congress recently on section 24, where we are, indeed, withholding grants funds because the water quality standards have not been reviewed adequately in a 3-year period as required. We, in fact, didn't necessarily coin

the term, but it nevertheless exists that there is a "watch list" where water quality standards, could, in fact, become of such major concern that you would pull the program.

We believe that in future years, this water quality regulation is going to be strictly and properly enforced. We are going to be taking steps, along with the States, to ensure that good water quality standards are maintained and will included the toxic requirements as they become known to us.

Senator CHAFEE. We understand that some States want to down-grade the designated use of their streams because of lowflow conditions. Could that be permitted under the present regulations, the downgrading of those streams?

Mr. REVAN. Senator Chafee, there are six methods or categories by which a State could and should consider the water quality standards any any necessary, revisions of a water quality standard whether, in fact, it would be upward or downward. One of the those is, indeed, a low-flow condition, which is characteristic of some of our Western States, especially in the upper reaches of very small streams in the summertime conditions.

If, indeed, the scientific evidence was clear, both to the States and to ourselves, that a low-flow condition was, indeed, the problem, many of these streams -- could, in fact, be downgraded. We are working on this particular item with some of the States involved, and we simply want to assure you and them and anyone else that this will be one basis of scientific finding.

Senator CHAFEE. Yes, but the objections, as I understand them, are that to get the downgrading that they seek, I guess it is western states based on the low flow, that they have to go through a public hearing process, and they say this is too long and complicated. They are advocating that we give the States the right to weaken the clean-up controls which you set and do this through the permit process. Isn't this a back door way of downgrading water quality standards?

Mr. RAVAN. Sir, let me address those two points in particular. Let me take permitting first. This, to me, is sort of getting the cart before the horse. The permit is an enforcible instrument; it is a basic tool of the water law itself, and it is not intended as the instrument by which we change water quality standards. It is just the reverse. The permit should be used to achieve the water quality standard that has been previously set.

If one now wants to deal with the water quality standards as set and approved, as set by the State and approved by EPA, let's deal with that. If, in fact, that requires a public process, I think that is [*34] good, and I believe that a good faith action on the part of the State, other permittees involved, and EPA will alleviate the problem.

It is, indeed, difficult to go before a "public" with the pronounced intention of "downgrading" the water quality standards, whereas it may, in fact, be necessary to identify to the public that quite honestly, a mistake maybe has been made, and that on the basis of scientific evidence, in an unbiased form, such as a public hearing, we can arrive at the facts and base our decision on the facts.

Senator CHAFEE. Do I understand you are saying that you think we ought to stick by the public hearing process?

Mr. RAVAN. Yes, sir, absolutely.

Senator CHAFEE. Well, good. Thank you.

My time is up. Senator Lautenberg.

Senator LAUTENBERG. Mr. Chairman, I will try not to take too long. I, too, want to make certain that you are aware of my concern about the extension of permits. It seems that we all share that, because it is a potential for having an adverse effect on water quality. Are you familiar with a National Wildlife Federation study that suggests that 18 States only review water quality standards when they renew permits? Is that familiar to you?

Mr. RAVAN. No, sir; I'm not familiar with that statistic.

Senator LAUTENBERG. I think it would be of interest for you to get it. It shows how little attention there is paid to these things. Do many States have water quality standards for toxics other than heavy metals, do you know?

Mr. RAVAN. Miss Hanmer will address that point for you, Senator.

Ms. HANMER. Very few States. Most of the State standards have limits on certain heavy metals; a few have limits on others, such as a few pesticides. By and large, they do not have a lot of specific chemical limits.

However, all State standards do have a narrative provision that limits toxics in toxic amounts, which allows us, when we are permitting, to make case-by-case decisions if we have a discharger whose discharge causes toxicity in tox-

ic amounts. We can deal with that in the permitting context even if we don't have all the toxic limits and the standards we would like to have. And we are trying to do so.

Mr. RAVAN. Yes, sir; we are.

Senator LAUTENBERG. To a favorite subject of mine, again, Mr. Ravan, EPA has so far promulgated only skeletal criteria governing the management and disposal of sewage sludge from publicly owned treatment works. What is the current status of EPA's sewage sludge guidelines?

Mr. RAVAN. Senator, we are, indeed, finally happy to report that we are on a course and we are making good progress. We have divided, as you know, the sludge regulations into two broad categories; One, the institutional regulations necessary to set up sludge programs. Second the so-called technical regulations describing to the permittees what we might find acceptable practice with regard to the disposal techniques. The first regulation, the so-called institutional regulation, will be proposed this year. I will ask Mr. Whittington to give you the specific month but it will become final in 1986.

[*35] The technical regulations, which is, indeed, the more complicated regulation, will be proposed next year in 1986 and become final some 12 months thereafter.

Bill will now give you the specific month.

Mr. WHITTINGTON. It will be proposed in August, Senator.

Senator LAUTENBERG. Proposed in August?

Mr. RAVAN. And the technical regulation would come in March.

VOICE. June.

Mr. RAVAN. June 1986.

Senator LAUTENBERG. I take it that that is a schedule that you think meets the concerns that we have? Why is it that there is so much by way of sequential study, benchmarks, et cetera, that you have to pass?

Mr. RAVAN. Senator, I believe that, as I have testified before to this subcommittee, your patience has been commended by us on this subject. We have, indeed, been slow with regard to this sludge question. I believe approximately 18 months to 2 years ago, the previous Administrator of the Agency gave clear direction and accountability. He held the office of water accountable for those regulations. We are on a very closely managed schedule for the publications. We are keeping members of the committee well informed on this. I do not now perceive any further delays. It is very important that this Agency be as nearly correct with all the facts as we come forward with the regs.

Senator LAUTENBERG. Right.

Senator CHAFEE. Senator, could I intervene one moment, please? I have to go. Senator Mitchell is good enough to take over and wind up the hearing. Tomorrow we will start at 9:30, and the following day, also, at 9:30, with the objective of finishing up before lunch. I want to thank everybody for coming. Thank you, and thank you, Senator.

Senator LAUTENBERG. Mr. Chairman, I will go on for the brief minute more I promised you and not more than that.

What guidance might these regulations give to those POTW's which currently have no land-based alternatives for disposing of sewage sludge and they are dumping sludge into the ocean? Do you have any feel for where we are going with that?

Mr. RAVAN. Senator, I believe that there are at least five major methods for the local community which would be regarded as acceptable practices. There will always be a continuing debate as to whether or not a local community has any on-land options. With further public discussions, I believe incineration, will become an available option. Obviously, included in that option is the question of cost, and whether cost will, in fact, drive some communities to continue to look toward ocean disposal of sludge.

One thing that is clear to us is that, paraphrasing "The Ancient Mariner," if I may, there may be sludge, sludge everywhere and you won't know what to do with it, unless EPA does, in fact, come forward with this guidance for the cities.

I would hope, and I sincerely believe that the oceans are not going to end up as the path of least resistance. Further, all of the pretreatment study and work that has gone on to date inside the Agency along with the regulated community will help to alleviate [*36] some of the serious problems that we face with disposal of sludges in the past.

Senator LAUTENBERG. Would you agree that the ocean, as a final dumping ground for sludge material, can only survive as a transitional opportunity and that in the long run, we ought not to think of that as an alternative at all?

Mr. RAVAN. I certainly agree, Senator. As I have said many times publicly and testified before this committee and others, I would hope that the environmental ethic that the American people have developed on land is not disposed of as we march off to the oceans.

Senator LAUTENBERG. Yes, a little out of sight.

Mr. RAVAN. Yes.

Senator LAUTENBERG. That is a little out of sight. And, so to speak, out of mind. Last Saturday, as I stood on the New Jersey beaches, I was presented with a gift by a local fisherman of a gallon jug of material taken out of the ocean that was so thick that it almost wouldn't come out of a widemouthed jug, and it was the ugliest material you ever saw. You wouldn't put your toe in that water, much less immerse yourself totally in it. I know that there is a decision coming on the removal of the current 12-mile sludge dump site off the New Jersey coast to a much further area, one that has better dispersal quality, much greater depth, and as a temporary measure, I would like to call it, would serve better for the acceptance in the ocean of this material <WQA87 § 508>.

It was originally an April 1 deadline. Do you know when that is coming, Mr. Ravan.

Mr. RAVAN. Senator, I have committed to you and to others that we are going to meet the April 1 deadline.

Senator LAUTENBERG. Is that so? I thought Lee Thomas, when he was here, said it might slip. But I would take your word anytime that we are on a track to have a decision by April 1 on whether you recommend the closing or not of that 12-mile sludge dump site <WQA87 § 508>.

Mr. RAVAN. I believe I have an exciting 7 days ahead of me.

Senator LAUTENBERG. I think so. But I trust your integrity. You said it once. We are not playing Simon says. You can say it again and we look forward to hearing that word from on high. Thanks very much, Mr. Ravan. Thanks, Mr. Chairman.

Senator MITCHELL [presiding]. He trusts your integrity and takes your word because you agree with him.

Senator LAUTENBERG. He better.

Senator MITCHELL. If you start disagreeing, then your status will change.

Senator LAUTENBERG. We would hate to see that Atlanta region without any funds to operate.

Senator MITCHELL. Mr. Ravan, I have two other areas I would like to address with you. The first is protection of lakes. As you know, there is evidence of serious pollution problems in fresh water lakes. A recent survey by the Association of State and Interstate Water Pollution Control Administrators found that lakes are the only water resource to record significant declines in water quality between 1972 and 1982. Water quality declined in four times as many cases as it improved.

[*37] A survey by the North American Lake Management Association found that reported lake pollution problems have increased about fourfold since the early 1970's. Despite this evidence, EPA has proposed to end funding for the Clean Lakes Program for the past several years, and in every case, of course, as you know, Congress has restored funding for the program. So I have really a two-part question: Are there any changes to the current program you feel might be appropriate to make it work better, and if we were to make those changes, could we not proceed with some type of reasonable program given the problem rather than continuing this impasse in which you request no money and we insist on giving you money which you say you don't want?

Mr. RAVAN. Senator, I am not today and I see no occasion in the future where I will be suggesting changes to the Clean Lakes Program. The fact of the matter is, it is the 50 percent grant that has induced a lot of community spirit. Especially on some of the urban localized primary recreation kinds of lakes, there has been good progress.

I do not differ with you on the characterization of the funding. The difference is primarily one that the Clean Lakes Program was supposed to be a demonstration program. We have, I think now, demonstrated to the tune of some $87 million in the program, and the administration continues to feel that it might be appropriate, along with the other budget reduction efforts, to allow the local communities, where they feel that this is a priority, to go ahead and provide funding to complete the project.

Senator MITCHELL. So if I understand what you are saying, it is that you do not disagree with that.

Mr. RAVAN. I do not disagree with that.

Senator MITCHELL. With what I have stated? You do not disagree that this program has worked to alleviate the problem where it has addressed it?

Mr. RAVAN. That is correct, sir.

Senator MITCHELL. Your desire to terminate the program is based upon two facts. The first, obviously, the dominant fiscal concern?

Mr. RAVAN. Yes, sir.

Senator MITCHELL. And, second, that it was supposed to be a demonstration program and, therefore, should be limited to that, notwithstanding the first two statements that I made. Is that a correct statement of your position?

Mr. RAVAN. Yes, sir; that is correct.

Senator MITCHELL. <FWPCA § 314> <FWPCA § 319> Fine. As you know, many lake pollution problems are attributable to nonpoint source pollution. I would like to have you address for me, and perhaps you might want to do this in writing after giving it some thought, how we might coordinate the clean lakes and a nonpoint pollution program.

<FWPCA § 314> <FWPCA § 319> I recognize that you are not for either one of them in the current status, but what I am asking you to do is to assume that the Congress will be and help us structure a workable program. I think that is a fair request to make. You have stated a position which we understand, and insisted on a program. So now what I am saying to you is if that is the case, notwithstanding your opposition to it, [*38] why don't you give us your thoughts on how we might make it a better program, if we can do so?

Mr. RAVAN. Senator Mitchell, I would like to do that. If I understand what you would like for me to do, I can exclude the question of how that program might be funded.

Senator MITCHELL. That is right.

Mr. RAVAN. And at what levels that might be funded.

Senator MITCHELL. All right.

Mr. RAVAN. I would be happy to supply that for the record.

Senator MITCHELL. That would be very helpful for us. We disagree reasonably, and you have a very agreeable staff and yourself, we may draw different facts and a different policy conclusion, but in all of our interests, and the interests of the American people, if we act contrary to that, contrary to the policy you express, it is that we should do so in the most reasonable, productive, and efficient manner.

Mr. RAVAN. Yes, sir; I will be happy to do that.

Senator MITCHELL. <FWPCA § 309> Finally, I would like to turn to the area of administrative penalty. Proposed to the act are areas which would substantially increase penalties for violations. In addition, the EPA would be given the authority to assess administrative penalties of up to $10,000 a day. I believe that you do need broad and effective enforcement powers to implement the act.

But as a former Federal judge, you will forgive me for having some concern about the assessment of penalties upon American citizens outside the judicial process, especially since $10,000 there is a very substantial penalty. There are many very serious crimes which can be committed which have substantially smaller financial penalties than that. I would like to ask you, with respect to that, and I want to make clear I am not at this point opposed to it, but I think I need some more details and more justification. I will ask you a series of questions which you can either address now or may wish to address later in more detail.

<FWPCA § 309> Those are: Has the Agency formulated any plan about how you will manage an administrative penalty program? Are there activities, are there areas of activity, in which such penalties are particularly necessary or appropriate?

<FWPCA § 309> Finally, how liberally within the Agency would authority to assess such penalties be delegated? What person or persons would have the authority to do this?

Mr. RAVAN. <FWPCA § 309> If I may, let me address those three questions very briefly Senator, and then I will provide detail for the record. Lacking the authority, we have not come forward with any particular formal written-down management process. However, management of similar authorities in other environmental statutes, has given us a clear direction for the future, and one might want to look at those statutes to see how we might well apply such authority under the Clean Water Act.

<FWPCA § 309> On the second point, yes, there are categories where the administrative penalties provision would be particularly appropriate. For example, the admission on the part of the discharger permittee, of an unintentional discharge. We would look at the administrative penalty provision as a quick method to bring that case to conclusion. I think it would be a very fair conclusion, saving both parties, [*39] the taxpayers and the dischargee, money in the process. We have no intention of disregarding our responsibilities to go before a Federal judge, when the case is appropriate and we would be asking for an increased penalty if we did so.

<FWPCA § 309> There is a very strict, and, I think, clear path of authority within EPA for discharge of these duties, and those the Administrator, and the Regional Administrator, and no one of lessor status in the EPA, would be given the authority to carry out the provision.

Senator MITCHELL. I want to emphasize, I am not trying to create another lawyer's WPA here. The lawyers in the audience, and I know there are some here, because every American audience of two or more persons has at least one lawyer. But I do think that this is a very substantial authority.

Mr. RAVAN. Yes, sir; it is.

Senator MITCHELL. <FWPCA § 309> To assess an inquiry penalty of up to $10,000 a day, and I want to be assured that it will be exercised within carefully delineated and circumscribed procedures in a way that achieves desired result without infringing on the rights of our citizens. What you are saying is really, it would be the Administrator and the regional administrators who would possess that authority?

Mr. RAVAN. <FWPCA § 309> Yes, sir; that is correct.

Senator MITCHELL. <FWPCA § 309> And you will give me in writing the areas of activity in which you deem it particularly necessary and appropriate and some guidance based upon, I gather, the operation of a similar authority in other statutes as to how it would operate, some form of management plan?

Mr. RAVAN. <FWPCA § 309> Yes, sir; I will do that.

Senator MITCHELL. Thank you very much, Mr. Ravan. You and your associates have been a very forthright and knowledgeable witness, making a persuasive case even when you don't have a good argument.

Anybody can make a good case when they have got a good argument. It takes real skill to do it with some of the arguments you possess. Thank you very much.

The hearing will be adjourned.

Mr. RAVAN. Thank you very much, sir. I appreciate that.

[Whereupon, at 12:20 p.m., the subcommittee was recessed to reconvene Wednesday, March 27, 1985, at 9:30 a.m.]

[Responses to additional questions and the bills, S. 53 and S. 652 follow:] [*40]

RESPONSES TO ADDITIONAL QUESTIONS

Senator Stafford

Question: <FWPCA § 405> The Administration bill provides for permits to implement and enforce sludge criteria for toxics. S. 53 does not contain such a provision. Please explain why you think this provision is needed.

Answer: <FWPCA § 405> The Administration bill provides authority to implement and enforce sludge criteria through permits because the present legislation provides no permit mechanism to implement the guidelines of section 405(d) of the Clean Water Act. A permit of some type would give EPA and the States a mechanism to more closely control the management of sewage sludge. It would also provide a better way of informing the regulated community of their responsibilities to comply with the Section 405(d) guidelines. Further, a permit program would help define the authorities of EPA and the various State agencies involved and provide for Federal review of State-operated programs to ensure adequate coverage of all Federally-regulated use and disposal practices.

<FWPCA § 405> The Agency currently does not have the legal authority to impose sludge use and disposal criteria issued under section 405(d) of the Clean Water Act through NPDES permits. However, some ten States currently use their own authority to supplement EPA authority and include sludge criteria in NPDES permits they issue under delegated programs. Some of the other States control sludge use and disposal practices through other types of permits or less formal control mechanisms.

<FWPCA § 405> The Administration bill would authorize sludge criteria to be incorportated into NPDES permits, other Federal permits, or State permits issued under a program approved by the Administrator. This provision would provide EPA and the States with flexibility to control sludge through the most appropriate mechanism. [*41]

Senator Chafee

Question: How much have States and municipalities expended between 1972 and 1985 for wastewater treatment facilities?

Answer: The most accurate and revealing response should be in constant dollars to eliminate the inroads inflation has made on purchasing power. Between 1972 and 1983, State and local expenditures totaled roughly $23 billion in constant 1982 dollars.

Senator Chafee

Question: Have any states set-aside or used more than 4% of their allotment for I/A project funding?

Answer: Yes. Four states used more than the mandatory 4% set-aside for fiscal year 1983 apropriations, (DC - 7.5%, TN - 7.0%, CA - 4.7%, and SD 4.2%). Three states increased their set-aside for fiscal year 1984 funds due to be obligated by September 30, 1985, (FL - 7.5%, MN - 4.4% and NM - 4.5%). Seven states increased their set-aside for fiscal year 1985, funds due to be obligated by September 30, 1986, (AK - 7.5%, FL - 7.5%, MN - 4.5%, MT - 7.5%, ND - 5.7%, NV - 7.5% and TN - 7.5%).

[chart] [*42]

Senator Chafee

Question: What additional classes and categories of discharges are candidates for general permits?

Answer: Classes or categories are selected for general permit issuance after consideration of the waste effluent characteristics, the effluent control technology, the requisite monitoring, and the number of individual point sources that would be covered by the general permit. Where a significantly large number of dischargers have similar discharge, technology and monitoring characteristics, then a general permit for that class or category can be developed.

The following classes or categories of discharge are candidates for general permits:

Trout fish hatcheries

o Minor publicly owned treatment works (POTWs)

o Ballast water treatment facilities

o Water supply facilities

o Army water purification mobil units

o Placer mines

o Stripper oil wells

Senator Chafee

Question: What is the status of EPA's issuance of effluent guidelines?

Answer: The current status of our effort to promulgate the effluent guidelines as covered by the modified Consent Decree (October 26, 1982; August 2, 1983; January 6, 1984; July 5, 1984; and January 7, 1985) is as follows: regulations for 23 industrial categories have been promulgated; regulations for 5 other industrial categories have been proposed and remain to be promulgated; and regulations for a segment of three industrial category remain to be both proposed and promulgated. (See attached schedule.) Regulations for 10 other industrial categories covered by the Consent Decree have been excluded from the regulations under provisions in Paragraph 8 of the Consent Decree.

[*43] [chart]

[*44]

Senator Chafee

Question: <FWPCA § 301> When a variance application is filed, how does EPA currently address the applicable statutory deadline? Are there time limits for submittal and processing of a variance application? Are BAT, BCT, and secondary treatment effluent limitations in effect for enforcement purposes while a variance application is pending? If an up-to-date permit has not been issued, has a pending variance application prevented the permit from being issued? For $301(h), 301(q) and FDF variances, provide the average and maximum time (calendar) it has taken to issue a final decision. Provide the average and maximum personnel and contract resource costs associated with the processing of § 301(h), 301(q) and FDF variances.

Answer: <FWPCA § 301> (The following response is for $301(c), 301(q), 301(h) and FDF variances and § 301(k) time extensions.):

<FWPCA § 301> The filing of a variance request does not impact the applicable statutory deadline for compliance with BPT, BAT, and BCT. However, there are at least three reasons for delays in compliance with permit conditions due to pending variance requests: (1) continuation of old permit, or discharge without a permit, during consideration of the variance request: (2) non-enforcement of permit conditions for the variance pollutants, during the pendency of the consideration of the variance request (the discharger would still be subject to citizens suits); (3) stay of permit conditions during the appeal of a decision on the variance request.

<FWPCA § 301> Time limits do exist for submittal of a variance application. In the case of §§ 301(c), 301(g) and 301(h), the time limitations are based upon the statute. The time limitations appear below.

[chart]

[*45] There are no statutory or regulatory time limits for the processing of variance applications.

Generally, the effluent limitations in the current effective or expired NPDES permit are the limitations that are in effect for enforcement purposes while a variance application is pending. For most industrial dischargers, the current permit only contains BPT limitations or was based upon BPJ. Because the variance request may involve levels of treatment required for the most significant (or one of the most significant) outfalls at an industrial facility, it is common practice to delay permit issuance until variance requests are acted upon. However, the States and Regions do have the authority to issue NPDES permits containing the BAT, BCT and/or secondary limitations during the pendency of the variance request. Some States, as a matter of course, issue the permits containing the guidelines limitations, with alternative limitations that will be effective upon approval by EPA of the pending variance request. (In such cases, enforcement of the guidelines limits would not generally be considered appropriate unless and until the variance is finally denied by EPA.) EPA has taken a similar approach in one recent case. In that case, the agency separated the processing of a FDF and 301(g) <FWPCA § 301> variance request from the permit and issued a permit with guidelines limitations during the pendency of the variance review.

<FWPCA § 301> Section 301(j)(2) does provide for a stay of BAT effluent limitations during the pendency of § 301(g) variance applications, so permits could be issued for all other BAT requirements. However, 301(j)(2) establishes a very difficult test, and findings that must be satisfied before a stay of the BAT requirements may be granted.

A pending variance application has often prevented a new permit containing BAT, BCT and/or secondary effluent limitation from being issued. If a new permit were issued when the request was pending, it must contain BAT, BCT and/or secondary limitations including those for which a variance is pending.

[*46] Oftentimes, the issues involved in a variance request are closely connected with other permit issues, including State certification, thereby effectively preventing issuance of a permit until final resolution of all issues relating to the variance request.

In the 1970's, EPA generally issued final decisions on many of the FDFs for direct discharger variance requests within one year after their receipt. Currently, the time to issue final decisions has increased. In FY84, final decisions were issued on two Alaska pulp and paper mills (submitted in 1980) and final resolution of two California power plant variances that had been pending since the late 1970's. Of the 56 FDF variance requests for direct dischargers submitted to Headquarters, there have been four approvals, 14 denials, 17 withdrawn and 23 pending variances (FDF variance requests are forwarded to EPA Headquarters only if NPDES States and EPA Regional Offices do not deny them or recommend approval of them). The date of submission to EPA of the 23 FDF pending variances at Headquarters appears below.

[chart]

In addition, there are currently approximately 40 FDF variance requests from indirect dischargers pending in the EPA Regional Offices. Decisions on many of these requests was delayed until the U.S. Supreme Court issued its decision on the availability of FDF variances for toxic pollutants from pretreatment standards. This decision was issued on February 27, 1985. EPA will shortly ask that these variance applicants indicate whether they wish to pursue their original requests.

<FWPCA § 301> EPA is beginning to receive and process the final applications for 301(q) variance requests. At this time, there are approximately 90 applications (60 at the State level and 30 at the Regional level). It is expected that the average time for EPA to issue final decisions on these 301(q) requests will be approximately 1/2 to one year, with a maximum of 1 1/2 to two years. EPA could, however, receive a very large [*47] number of additional requests upon promulgation of the BAT guideline for the pesticides industry. Processing time could significantly increase in this event.

<FWPCA § 301> EPA has received 207 applications for 301(h) variances. At this time, there have been nine approvals, 39 denials, 31 withdrawn and 128 are pending (including 54 tentative decisions). It is estimated that the average time for EPA to issue a final decisions on a 301(h) request ranges from one to five years, depending on the size and complexity of the application.

<FWPCA § 301> For FDF variances, EPA estimates that it requires an average of 130 workdays (0.50 FTE) for issuance of a final decision; this time is necessary to appropriately evaluate the request due to the fact that all FDF decisions can establish national precedent since interpretations of national guidelines are at issue. Use of contract funds can reduce this figure for an average variance. Some FDFs are very complex and/or controversial and cost much more to process. For example, EPA estimates that over 3.0 FTE workyears were expended for issuance of the final decisions denying the two Alaska pulp mill FDF requests. EPA also expended $228,000 of contract funds on the Alaska pulp mill FDF requests. One of these requests is still in administrative litigation.

<FWPCA § 301> For each 301(g) variance, EPA estimates the following use of personnel resources and contract funds.

[chart]

[*48]

Senator Chafee

Question: List those industrial categories which potentially might warrant preparation of additional effluent guidelines.

Answer: Below are listed the industrial categories that may warrant additional effluent guidelines. The industrial categories are listed in priority order for further study to characterize problems in more detail and to determine the need for national regulations.

Ranking of Industrial Categories:

The following three categories are believed to be major sources of hazardous or toxic pollutants, based on preliminary information. Major studies are needed to fully characterize their waste discharges, to evaluate control technologies, and to develop national regulations as needed.

Hazardous Waste Treatment Facilities

- Waste Oil Reclaimers

Solvent Reclaimers

- Barrel Reclaimers

- Central Waste Treatment Facilities

Transportation Sources

- Washout Facilities (Barge Washing, Truck and Rail Transport)

Pursuant to work on the following categories, EPA believes there to be significant potential problems with toxic pollutants deserving additional study. In some cases, EPA already has information gathering efforts underway to update existing regulations or to assess toxic pollutants in additional segments of previously regulated industries. These industries include:

Ferroalloy Manufacturing

Metal Finishing (Phase II)

- Galvanizing

- Non-plater Metal Processing Plants

- Machine Building and Rebuilding

On Shore "Stripper" Oil and Gas Wells

Coastal Oil/Gas Drilling Platforms (near-shore)

Organic Chemicals Formulators and Packagers

Pesticide, Pharmaceutical, and Organic Chemical Research Facilities [*49]

Senator Humphrey

Question: This Committee has, in the past, encouraged States to assume National Pollutant Discharge Elimination System permitting authority, and a considerable number of States have assumed this authority. It is my understanding, however, that several States have had difficulties in obtaining EPA approval for the delegation of this authority. Could you please explain why States such as New Hampshire have been subjected to frustration and seemingly endless paperwork in acquiring this authority?

Answer: The basic requirements for a State NPDES program are established by sections 402(b) <FWPCA § 402> and 304(i) <FWPCA § 304> of the CWA. The Act authorizes EPA to approve a State's request for authority to administer the NPDES permit program if the Administrator determines the State has adequate authority and resources to administer and enforce a program which meets the minimum criteria in the CWA and EPA regulations developed under the Act. The CWA requires States to submit a number of documents as part of its request for program approval, including a full and complete description of its proposed program and a statement from the State's attorney general certifying that the State has adequate legal authority to carry out the program.

The amount of work required of a State to develop an adequate program naturally will vary, depending upon the number of changes the State must make to existing legal authorities and the adequacy of the State's initial program drafting. To avoid unnecessary effort, EPA generally works closely with a State in the initial stages of program development to ensure that the State's program meets EPA's minimum criteria.

EPA is not aware of any instances where States have had difficulty in obtaining program approval where the State's program submission met all minimum criteria of the CWA. In a few instances, State program approval has been delayed by concerns over inadequate legal authority or other elements of a program submission. However, EPA and these States have worked together successfully to revise the State programs so as to meet the minimum criteria of the CWA.

The State of New Hampshire has not requested program approval as of this date. The State originally expressed interest several years ago in obtaining approval of its NPDES program. At that time, EPA conducted an initial evaluation of the State's legal authorities and provided the State with comments.

[*50] Since that time, EPA and State officials and staff have been discussing the requirements for program approval and EPA has been providing the State Water supply and Pollution Control Commission with models to assist the

development of an adequate program. EPA will continue to work closely with the State to prepare a submission that meets the requirements of the Act.

Senator Humphrey

Question:

To what extent has EPA been encouraging local governments in the course of the permitting process, to anticipate the possibility of legislative changes which would affect the level of federal commitment to the construction grants program?

Answer:

The EPA, during the permit compliance process, has not been encouraging permittees to anticipate the availability of any future construction grants funds. The basis of EPA's January 1984 National Municipal Policy is that, in all cases, the municipality is responsible for compliance with permit limits. Under this policy, all municipal permit holders in violation of permit effluent limits are being required to submit a Municipal Compliance Plan. This Plan must detail how the municipality will achieve compliance with the permit before July 1, 1988, regardless of the availability of Federal grant monies. The municipality has the option of using Federal grant assistance if it will be available to meet this deadline. If not, then the municipality must proceed with facility construction using its own funding sources. In exceptional circumstances, EPA will consent to a compliance date past July 1, 1988, such as when a municipality is financially or physically unable to meet the compliance deadline. Under the Policy, such a schedule would be embodied in a judicial consent decree. However, the absence of federal grant assistance alone does not qualify as an exceptional circumstance for the purposes of extending a compliance schedule past the compliance deadline. Guidance and assistance on financial planning and treatment options is being made available to municipalities. [*51]

Senator Humphrey

Question: <WQA87 § 215> Section 119 of S. 53 permits the Town of Hampton, New Hampshire to continue to use its ad valorem tax user charge system for collecting the cost for the operation and maintenance of its sewer treatment works. In 1977, Congress sought to provide greater flexibility to communities by allowing them to use ad valorem taxes to pay the costs of operation and maintenance. A technicality led to the problem which Hampton is now facing, and it is my understanding that at least one other community in my State may be encountering a similar problem. What administrative action can be taken to eliminate this "catch-22?"

Answer: <WQA87 § 215> In order for the Town of Hampton or any other New Hampshire community in the same circumstances to collect its user charges through an ad valorem tax system, the Clean Water Act must be amended to specifically allow such procedures. When the town of Hampton received its construction grant, P.L. 92-500 did not allow the use of an ad valorem tax system for the collection of user charges. The adoption of P.L. 95-217 allowed the use of ad valorem systems, but it restricted the systems' use to grantees without approved actual use systems. Therefore, the Town of Hampton must comply with the conditions of its P.L. 92-500 grant to implement its approved user charge system for funding the O,M&R costs of wastewater treatment. [*52]

Senator Humphrey

Question: Based on the Agency's experience and analysis, what is your assessment of the ability of local governments to finance wastewater treatment needs so that they will be in compliance with the goals of the Act, particularly in relation to other infrastructure priorities?

Answer: Most communities which carefully select and build the most appropriate, simple technologies with low operation and maintenance costs should be able to meet the requirements of the Clean Water Act even with little or no outside financing assistance. The ability of small communities may be more in question especially if these communities require new collection system. Particularly communities under 3,500 in population can expect to see their present "medium to strong" financial condition affected. This cost pressure can be mitigated by greater emphasis on alternative technologies including cluster systems, lagoons, sand filters, and some types of land treatment.

Where there is a financial capability problem, the Agency suggests two main approaches. The first approach would involve requiring affordable increases in user charge fees now so that an adequate capital base can be generated for construction in the near future. The second approach would be to require a staged construction project where the municipality constructs a useable portion of a treatment system which they can afford now and completes additional components as financing becomes feasible.

Dedicated user fees provide the principal source of revenue for funding local operations, maintenance and capital expenditures. We have not analyzed the affect of these fees on the funding of other local infrastructure requirements. [*53]

Senator Symms:

Question: <WQA87 § 525> What studies has EPA conducted, or would it suggest, on the accelerated eutrophication problem at Lake Pend Oreille, Idaho?

Answer: <WQA87 § 525> The Lake Pend Oreille/Clark Fork drainage system extends into parts of Idaho, Montana, Washington and Canada. The potential for increased eutrophication in this system is a recognized concern in the area. Also the potential for interstate transport of pollutants is a highly visible issue to the local governments in the surrounding areas.

EPA Regions 8 and 10 are represented on a Task Force, which the Governor of Montana has created to conduct studies on the lake using private funding sources. University studies of organism tolerances to various pollutants are being conducted through this Task Force. The States of Idaho and Montana are also conducting limited field water quality studies using $205(j) funds.

<WQA87 § 525> Although the current studies can form the basis for additional work, they will not investigate all aspects of the problem. Additional activities that might be undertaken to investigate and correct pollution problems on this lake include:

- Investigate inputs from point sources

- Quantify inputs of toxic metals and other pollutants of concern

- Identify nonpoint source runoff problems from upstream agriculture and silviculture activities

- Characterize the eutrophic state of the lake

- Establish total maximum daily loads (TMDLs) for pollutants of concern to prevent further eutrophication

- Establish management plans for upstream nonpoint sources.

<WQA87 § 525> Interstate cooperation on a long term approach will be essential to prevent or reverse eutrophication of the Lake Pend Oreille system. [*54]

Senator Bentsen

Question: List those classes and categories of discharges, with the number of sources covered, for which general permits have been proposed or promulgated by EPA?

Answer: General permits have been proposed or promulgated by EPA for the following classes or categories:

[chart]

Senator Mitchell

Question: Please provide an assessment of H.R. 8's turn-key provision.

Answer: Under the proposed legislation on "turn-key" construction in H.R. 8, projects costing $8 million or less could be designed and constructed on a simultaneous basis without prior approval of plans and specifications. Currently, prior approval is required under the Clean Water Act. This "turn-key" contractual arrangement requires a high degree of management and technical capability on the part of the municipality because the checks and balances provided by separate engineering and construction contracts are lost when both services are provided under a "turn key" contract. [*55]

Senator Mitchell

Question: <FWPCA § 319> <FWPCA § 314> What technical advice would EPA have on improving coordination of the Act's clean lakes and nonpoint source pollution control programs?

Answer: <FWPCA § 314> As a starting point, there should be an updated, current ranking of all lakes needing control in a given State to set priorities for implementation in current and future years. Where appropriate, existing lake classification studies could be used, supplemented as needed with new evaluations to assure coverage of all important public lakes in the State.

Next, before implementing a restoration program for any specific lake, there should be a well-designed, State-certified implementation plan which provides control for all contributing point and nonpoint sources at levels adequate to maintain desired water quality, coupled with in-lake restoration, if any, initially needed to achieve that water quality. There must be adequate assurances that point and nonpoint source controls are being implemented and will be maintained before proceeding with in-lake restoration (otherwise, inlake restoration will be short-lived).

Given the nature of NPS, it is also important that other relevant Federal, State and local programs be integrated into the lake restoration and protection program. For example, various USDA program providing technical and cost-share assistance to farmers should be utilized in the lake watershed to assure application of BMP's needed to protect the lake. Mechanisms need to be in place to assure consistency among such Federal, State and local programs in the watershed.

Finally, NPS programs need to address waterbodies other than lakes. Thus, there should not be a separate NPS program for lakes, but rather a clean lakes program which utilizes and complements the States overall nonpoint source control program. [*56]

Senator Mitchell

Question: <FWPCA § 309> How would EPA propose to manage its administrative civil penalty provision, if enacted?

Answer: <FWPCA § 309> EPA would manage its civil penalty provision by integrating that enforcement tool into its overall enforcement program. Selection of administrative enforcement would depend on the type of case involved. The kinds of cases for which administrative penalties might be sought are described in the answer to a later question. EPA has extensive experience with administrative civil penalty litigation under such statutes as the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Administrative penalty proceedings under those acts and others are governed by the Agency's Consolidated Rules of Practice, 40 C.F.R. Part 22. Those Consolidated Rules provide for formal penalty hearings on the record with a right of court appeal.

<FWPCA § 309> In drafting the administrative penalty provision in the Administration bill, however, EPA concluded that formal penalty hearings would be unnecessarily expensive and time consuming for all parties for many of the violations involved. Our proposal, therefore, permits EPA to simplify and streamline penalty procedures while preserving the central rights accorded by the Consolidated Rules. For example, under the bill, an administrative penalty can be assessed only after (1) prior written notice of the proposed penalty, (2) right to a hearing, at which there must be an opportunity to be heard and to present evidence, and (3) completion of the hearing which will form the basis for the order "made on the administrative record." The Agency's penalty assessment may be appealed to an appropriate United States district court where there would be review of the administrative record. The Agency's penalty order would be set aside if there were not substantial evidence to support the finding of a violation or if the penalty assessment constituted an abuse of discretion.

<FWPCA § 309> The administrative penalty system proposed by the bill should provide ample procedural safeguards for litigants, particularly since the kinds of [*57] administrative cases envisioned are not expected to be factually complex. In fact, many of the administrative penalty actions would be based on simple discharge monitoring reports prepared and submitted to the Agency by the permittees themselves.

<FWPCA § 309> The Agency would develop and issue procedural regulations for use of administrative penalty authority. The regulations would be designed to maximize the efficient use of enforcement resources and minimize costs for all concerned, while still ensuring fundamental fairness. National consistency would also be achieved through establishment of a policy for developing administrative penalty amounts, such as the policy which is now under development for civil referrals to address Clean Water Act violations. The Agency believes that the above procedures amply protect the rights of permittees against whom administrative penalties might be proposed. An appropriate mix of judicial enforcement, administrative orders and administrative penalty actions should achieve greater compliance with the Clean Water Act. [*58]

Senator Mitchell

Question: <FWPCA § 309> List any specific types of violations for which administrative assessment of civil penalties might be more appropriate than judicial assessment.

Answer: <FWPCA § 309> A feature of the Clean Water Act is that it requires regular filings of discharge monitoring reports and other reports by permittees with the Agency. It is anticipated that many administrative penalty actions would be based on data prepared by permittees as submitted in self-monitoring reports. Accordingly, the facts in the administrative penalty actions would often be undisputed.

<FWPCA § 309> Situations where injunctive relief with court oversight is not considered necessary to achieve further compliance, would be particularly appropriate for use of administrative penalties. Similarly, use of administrative penalties might be employed to obtain compliance from permittees refusing to comply with Section 308 <FWPCA § 308> data requests or refusing to submit pretreatment plans or other periodic reports required by the Clean Water Act. Failure to comply with new program requirements, such as those involving sludge <FWPCA § 405>, might properly be addressed initially by an administrative penalty action if violations are clearly identifiable and straightforward. Another example of an appropriate administrative penalty proceeding would be a "penalty only" action where compliance has been achieved but the violator has obtained an economic benefit from non-compliance. A major reason for administrative penalties is to deprive a violator of any economic advantage from non-compliance, where such noncompliance is not continuing so as to require court-ordered injunctive relief.

<FWPCA § 309> Administrative penalty actions would be considered when a remedy stronger than an administrative order is deemed necessary to obtain compliance. However, administrative penalty actions would not be instituted when court injunctive relief or specific performance is believed to be necessary to stop ongoing conduct which violates the Clean Water Act.

[*59] Question: <FWPCA § 309> Who in EPA would have the authority to assess administrative civil penalties?

Answer: <FWPCA § 309> We expect that the assessing official would be the Administrator or Regional Administrator, although there would also be a neutral hearing officer who would be involved in hearing evidence, making a recommendation, and making a tentative assessment subject to review by the Administrator or the Regional Administrator. Of course, the assessment by the hearing officer would become final if there were no appeal of the assessment to the Administrator or to the Regional Administrator. The precise framework would be established by regulation once the penalty authority is enacted into law. There would also be a right of further appeal to the U.S. District Court.

Question: (Mr. Baucus)

Please state the agency's policy regarding risk rates and their consideration in the development of Recommended Maximum Contaminant Levels and Maximum Contaminant Levels.

Response:

In general, we set RMCL's to prevent known or anticipated adverse effects with an adequate margin of safety, in accord with the statute. We set MCL's as close to RMCL's as is feasible.

EPA does not have a policy on what an acceptable risk rate should be. Risk management must routinely be done on a case-by-case basis. Each case will have features that are distinct and require individualized attention. For example, the estimated risk of exposure to trihalomethanes (THM's) permitted under drinking water standards is greater than the health risk posed by most of the other substances regulated under interim standards. This is because there is an off-setting risk of disease associated with limiting the use of chlorine disinfectants. It would be possible to reduce THM's further, for example, by limiting use of chlorine, however the risk of microbiological contamination rises with each increment of reduction in disinfectant level. The eventual risk permitted is a function of the competing resultant risks, the ability to reduce risk, the affordability of unit risk reductions and related matters which may ease or limit risk reduction.

[*60] Question: (Mr. Baucus)

In your view do maximum contaminant levels serve as suitable standards for determining cleanup decisions under Superfund and RCRA? In your view is it appropriate to apply them this way?

The Superfund Amendments of 1985, if enacted, would rely on the Safe Drinking Wate Act for its health-based standards. The EPA has, to date issued standards for very few contaminants. What effort are you prepared to make to promulgate more standards so that parties cleaning up Superfund sites will have a more specific drinking water goal to attain?

Response:

The Interim Maximum Contaminant Levels are set to protect public healthto the extent feasible. The Revised Maximum Contaminant Levels will be set as close to the RMCL's as feasible. EPA believes these standards will adequately protect public health from contaminants in drinking water.

RCRA and CERCLA require EPA to establish hazardous waste regulations and take remedial action as necessary to protect public health and the environment. The RCRA regulations require EPA to specify concentration limits in ground water which may be on MCL, an alternate concentration limit, or the background level. (40 CFR $264.94)

When making Superfund decisions, EPA has considered MCL's in determining what level of clean-up is necessary to protect public health and the environment. EPA has also proposed amendments to the National Contingency Plan which would generally require selection of a remedy which attains or exceeds applicable or relevant Federal public health or environmental standards. MCL's are explicitly mentioned as one such standard. (50 FR 5862, February 12, 1985). However, under the proposal, EPA would not be required to meet applicable or relevant federal standards where attainment of the standard is technologically impractical, would cause unacceptable environmental impacts, involves an interim remedy, or where selection of a lesser remedy is dictated by considerations of fund balancing or an enforcement action under CERCLA $106.

A second issue is whether there will be a sufficient number of drinking water standards to ensure adequate protection of public health during CERCLA remediation. The current agenda within EPA consists of four phases of drinking water regulations. [*61] Phase I considers nine frequently found solvents. Phase II will readdress the interim standard for inorganic contaminants, microbiological contaminants and pesticides. Phase II will also consider a number of additional synthetic organic compounds (SOC's), predominantly pesticides and solvents. Phase III will deal with radiological contaminants, again a rare CERCLA problem. Phase IV will reconsider disinfection by-products. Still other contaminants may be considered in yet latter regulatory initiatives (Phase V and beyond).

We therefore believe that there will be drinking water standards to respond to the needs of these programs where they are are applicable and relevant.

Chloroform, the predominant THM, is a substance regulated as a potential carcinogen. Chloroform is produced during chlorination that is essential to protect against waterborne disease, which is a high risk in the absence of adequate treatment. The interim standard of 1979 was 0.10 mg/1. Using one of the more conservative models, a lifetime risk of about 1 in 10,000 was calculated at the time.

The radium interim regulation also involved a nominal incremental lifetime risk calculated at about one in 10,000. In that case it was projected to a risk reduction of about four cases per year in the U.S. The risk calculations were not the basis for either of these interim standards (chloroform and radium).

With regard to RMCL's, none have yet been set. Our Phase I regulatory package is under receive at this time. For those chemicals which pose a known or probable risk of cancer, EPA proposes any RMCL level of zero in the NPRM for Phase

WATER QUALITY ACT OF 1987 (WQA87)

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99 Cong. Senate Report 50; WQA87 Leg. Hist. 31

[*1]

99TH CONGRESS 1st Session
SENATE REPORT 99-50

CLEAN WATER ACT AMENDMENTS OF 1985

MAY 14 (legislative day, APRIL 15), 1985. -- Ordered to be printed

Mr. DOLE (for Mr. CHAFEE), from the Committee on Environmental and Public Works, submitted the following

REPORT

[To accompany S. 1128]

together with ADDITIONAL VIEWS

The Committee on Environment and Public Works reports an original bill (S. 1128), to amend the Clean Water Act, and for other purposes and recommends that the bill do pass.

GENERAL STATEMENT

The last major changes to the Clean Water Act occurred in December of 1981 with the enactment of the Municipal Wastewater Treatment Construction Grant Amendments. Since then Congress has grappled with reauthorizing the non-title II portions of the Act but has been unable to pass legislation. In the 97th Congress and again in the 98th Congress the Subcommittee on Environmental Pollution held numerous hearings on the regulator portions of the law. Although a bill was reported from the Committee on Environment and Public Works in the 98th Congress it was not considered by the Senate.

With the expiration of the title II construction grants program at the end of fiscal year 1985, the Subcommittee on Environmental

[*2] Pollution again set out to develop legislation -- this time to reauthorize both the regulatory and grants provisions of the Act.

S. 53, a bill almost identical to one reported by the Committee last year, and S. 652, which dealt primary with the construction grants program, provided the basis for the Subcommittee's hearings. Three days of hearings were held on the two bills. Witnesses included representatives from the Administration, environmental and industry organizations, State and local governments, financial experts, and other interested persons.

Several major themes evolved during the hearings. First, the Clean Water Act is sound and significant progress is being made by industries and municipalities in removing pollutants from their discharges. Second, several provisions of the law must be tightened to assure compliance with water quality standards and provide for greater control of toxic, conventional, and nonconventional pollutants <FWPCA § 301> <FWPCA § 303> <FWPCA § 307>. Third, programs to control pollution from nonpoint sources are necessary if the goals and objectives of the Clean Water Act are to be achieved <FWPCA § 319>. Finally, the current construction grants program must be continued at its present level of funding through 1991 while providing for a gradual transition that assures State and local sufficiency adequate to meet treatment needs.

THE CLEAN WATER ACT

The Clean Water Act provides a comprehensive approach to cleaning up the Nation's waters. It established a regulatory framework for the phased implementation of control technologies for industrial and municipal discharges of toxic, conventional, and non-conventional pollutants <FWPCA § 301>. The Act provides for administrative, standard setting, enforcement, and funding mechanisms to achieve the goals of the Act.

<FWPCA § 101> The interim goal of achieving a level of water quality that protects a balanced population of both shellfish and wildlife and allows recreation in and on the water by July 1, 1983, was established when the law was enacted in 1972. Although attainment of that goal has not been achieved on a nationwide basis, considerable progress has been made.

According to the Environmental Protection Agency (EPA) substantial reductions have occurred in the discharge of pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants -- suspended solids and biochemical oxygen demand (BOD) -- an increase of 65 percent over 1973 levels. In July of 1977, 37 percent of the secondary plants required by the Clean Water Act had been completed and by June of 1983 that number had risen to 69 percent.

According to EPA, six key industrial pollutants including phosphate, heavy metals, and dissolved solids were reduced by more than half since 1973.

The EPA has reported that a majority of the Nation's waters, last assessed in 1982, meet the interim Clean Water Act goal of fishable, swimmable waters <FWPCA § 101>. Thirty six States have reported specific improvements resulting from the construction of municipal wastewater treatment facilities and 20 States reported improved

[*3] water quality due at least in part to pollutant controls implemented by industry.

These trends are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollutant problems created by sewage treatment plants and unregulated discharges by industry are being solved. But new, more subtle, problems must now be addressed. These are problems of devasting toxic substances and pollution from nonpoint sources, such as runoff from farmlands and urban areas.

Fish and shellfish communities are being reestablished in areas where they have been absent for decades because of the reduction of conventional pollutant loadings. Nonetheless hundreds of tons of toxic substances are being discharged into the Nation's waters each year from direct and indirect dischargers. It is indeed ironic that we must now warn people against consuming fish caught in many areas cleansed of conventional pollutants but still contaminated by toxic pollutants.

Toxic pollutants in water, fish tissue, and bottom sediments can come from a variety of sources including industrial and municipal point sources and nonpoint sources. According to the EPA, in 1982, 32 States cited water quality standards violations or use impairments due to toxic pollutants.

In the 1972 amendments to the Clean Water Act, Congress recognized the pervasiveness of toxics when it set as national policy that toxic discharges in toxic amounts be prohibited <FWPCA § 101>. The legislation reported by the Committee brings us closer to that goal by reaffirming among other things, the commitment to uniform installation of the best available technology economically achievable (BAT) by all dischargers <FWPCA § 301>; a uniform national pretreatment program <FWPCA § 307>; a national nonpoint pollution control program <FWPCA § 319>; and, the establishment of a "beyond-BAT" program which will require direct dischargers to install more stringent cleanup technology if the best available technology requirements set by EPA are not sufficient to meet State water quality standards because of toxic pollutants <FWPCA § 304> <FWPCA § 303>.

Although the EPA continues to move forward with developing guidelines for the installation of cleanup technology for both direct and indirect dischargers, the slow pace in which these regulations are promulgated continues to be frus-

trating. Of the 29 industrial categories established in 1977 for which guidelines were required to be promulgated 5 still remain to be completed. The pretreatment program -- requirements controlling discharges into publicly owned treatment systems -- is also languishing <FWPCA § 307>. Over half of the municipalities required to develop general pretreatment programs are not in compliance and the EPA still has to promulgate regulations for 8 of the 23 industrial pretreatment categories.

<FWPCA § 301> <FWPCA § 303> The technology-based approach to water pollution control was adopted in 1972 because of the historical ineffectiveness of the previous water-quality-based approach. This approach failed because of uncertainities about the relationship between pollutant loadings and water quality and the association between water quality and health and environmental effects. There are still significant gaps in knowledge of these relationships. Consequently the reported bill reaffirms the technologically based approach established in 1972 as

[*4] an immediate and effective method of achieving the goals of the Act.

<FWPCA § 301> Congress has had to adjust compliance deadlines in the past in order to give the EPA the opportunity to develop complicated industrial cleanup standards. The current compliance deadline is July 1, 1984, a date which the EPA and many industries have failed to meet because so many of these cleanup standards have not been promulgated in a timely manner. Although the legislation grants an extension of the compliance date, it is limited to assure that these guidelines and standards will be promptly developed and implemented.

WATER QUALITY

<FWPCA § 301> <FWPCA § 303> Although technology-based BAT controls are the primary driving force behind the Act's cleanup requirements, water quality standards are expected to play a key supplementary role in assuring clean water and, where necessary, in developing additional control requirements. When the Committee was considering the reauthorization of the Clean Water Act in the 98th Congress, it became deeply concerned over an effort by the EPA to significantly weaken water quality standards regulations. Among other things, the Agency's proposal would have biased the program toward less protective use designations, would have undone the Act's anti-degradation policy, and would have failed to assure that toxic pollutants are addressed adequately in the water quality standards set by the States.

The Agency, in an agreement with the Committee and under the leadership of Administrator Ruckelshaus, withdrew these proposed changes and promulgated tough new water quality standards regulations.

<FWPCA § 302> <FWPCA § 303> <FWPCA § 404> Several provisions in the reported bill are designed around these regulations to assure they are implemented and enforced properly by the States and EPA. These provisions, which will be discussed further in the report, include new "beyond-BAT" control requirements which are developed, in part, through the water-quality standards setting process, and the anti-backsliding provision which prohibits discharges from backsliding to weaker controls on the basis of water quality-based waste allocation formulas or less stringent standards promulgated by the Agency.

The water quality standards regulations currently in effect are strongly supported by the Committee. During the hearings, the Administration reaffirmed its commitment to implementing and enforcing these regulations through the Act's longstanding anti-degradation policy and other water quality policies.

<FWPCA § 101> The principal objective of the Act is the restoration and maintenance of the integrity of our Nation's waters. Every requirement of the statute looks toward cleaner water -- never backward toward relinguishing pollution control gains that contribute to meeting that objective. Attainment and maintenance of clean water will not be achieved if it is permitted to be degraded without compelling and overriding reasons. Moreover, if the Act is to accomplish its objectives, the high quality of waters considered to be outstanding national resources must be preserved. Although requirements for des-

[*5] ignation of these waters have never been used, the water quality standards regulations should enhance the likelihood that they will in the future.

It is particularly important within the context of water quality standards that regulations be as comprehensive as possible in protecting high quality waters. In order to implement the Act's objective, section 303(c) <FWPCA § 303> requires that water quality standards must "enhance the quality of water and serve the purpose of this Act."

<FWPCA § 303> Anti-degradation has been a part of the water quality standards scheme for at least 15 years. In 1968, Secretary of the Interior Udall announced a national policy, pursuant to the Water Quality Act of 1965, requiring the States to adopt an anti-degradation provision providing that:

Waters whose existing quality is better than the established standards . . . will be maintained at their existing high quality. These and other waters of the State will not be lowered in quality, unless and until, it has been affirmatively demonstrated . . . that such change is justifiable as a result of necessary economic and social development and will not interfere with or become injurious to any assigned uses made of, or presently possible in, such waters.

This provision was adopted by States and then carried over into the 1972 Act under section 303(a) <FWPCA § 303>. EPA's current regulation is consistent with this long-standing policy to the extent it preserves high quality waters, maintains existing uses, and protects national resource waters. In many respects it remains the cornerstone of the entire Clean Water Act.

<FWPCA § 301> <FWPCA § 303> In part, this is because the States play such a major role. Under sections 301 and 303, the States have primary responsibility to establish the designated uses of their water bodies and the duty to implement standards that protect those uses. These responsibilities and duties must be exercised so as to serve the Act's purposes, and EPA has been assigned the obligation of assuring consistency of State standards with the policies of the Act. Nowhere is that function more important than in reviewing the State's designation of uses under section 303.

<FWPCA § 303> <FWPCA § 101> Section 303(c)(2) provides that state standards must "protect the public health or welfare, enhance the quality of water and serve the purposes of this Act." The upgrading requirement of EPA's regulation is the principal means by which to assure that standards must enhance water quality and serve the purpose of section 101(a)(2) -- to achieve fishable-swimmable water quality. This provision is consistent with the anti-degradation policy, which requires maintenance of high quality water and with the overall purpose of the Act -- to restore and maintain the integrity of our waters.

<FWPCA § 303> <FWPCA § 101> Restrictions on downgrading follow from the goal of section 101(a)(2) -- to achieve fishable-swimmable water quality "wherever attainable" -- and from the requirement of section 303(c)(2) that State standards serve the purposes of the Act. The concept of "attainability" therefore is central to determining which of the various uses, or combinations of uses, listed under section 303(c)(2) shall be designed and protected.

[*6] <FWPCA § 301> <FWPCA § 303> <FWPCA § 304> Attainability means feasibility, not desirability or local preference. It is not a question of whether the Nation wants clean water, but of whether it is possible to achieve clean water without economic or social hardship. EPA should disapprove downgrading of State standards unless it is clearly demonstrated that a use cannot be achieved, or would cause widespread social or economic impacts to do so. Actual, existing uses of waterways must, of course, be protected.

<FWPCA § 303> The water quality standards regulation permits downgrading of "aquatic life protection uses" where "natural features of the water body" preclude attainment, or where low-flow conditions prevent use attainment. This change simply means that downgrading may not occur based on physical conditions such as unattractive surroundings, water velocity, difficulty of access, boat traffic or other impediments affecting the ability of people to use a water body. In other words, the regulation requires that uses be maintained to allow water recreation, even though it might be deemed unlikely that substantial numbers of people actually would make such uses of a particular water body.

<FWPCA § 303> In those rare instances where degradation of high quality waters is permitted in order to accommodate essential economic or social development, the States must assure water quality adequate to protect existing uses fully by providing for an adequate margin of safety in defining water quality criteria.

<FWPCA § 303> Water quality standards are the principal mechanism in the Act for determining how clean -- how safe from damage to human health and aquatic life -- a stream or lake can be. Since standards assure continued progress toward the Act's goal <FWPCA § 101>, it would make little sense to allow deviations, however limited or temporary, from these judgments concerning the health and welfare of people who enjoy and depend on our precious water resources. If economic effects truly are substantial and widespread, then a downgrading of standards may be justified. But this is a considered community wide decision to forego higher beneficial uses of a waterway, and must not be made in the narrow context of a source-specific variance.

In Colorado and some other States, high designated uses established through the water quality standards process have been set for some stream segments. A number of commenters have argued that the EPA water quality regulations restricting the modification of water quality goals make it unnecessarily difficult for States to respond in a reasonable fashion to changing circumstances and unforeseen difficulties.

Municipalities and industrial interests in Colorado have indicated this problem appears to be particularly acute where there are low or intermittent flows in receiving streams. This can be caused by natural variations or limitations in

runoff, or by man-made diversions or impoundments authorized by State laws governing the allocation of water. The natural presence in receiving waters of toxic metals can also pose problems for attaining designated uses. In addition, the reduced availability of Federal funding for advanced waste treatment could increase the economic difficulty faced by affected municipalities in attempting to attain water quality standards.

[*7] It has been suggested that States be given the authority to downgrade the designated uses of these stream segments through the NPDES permit issuance process. The Committee recognizes the existence of this problem, but it is not convinced that a statutory response is necessary. Instead, the Act and EPA regulations provide an appropriate mechanism for downgrading water quality standards where standards are unattainable.

For example, it has been suggested that some water quality standards in Colorado initially were established without regard to their attainability. If so, the State may review these uses and, if they are found to be unattainable, revised standards may be adopted.

EPA regulations set forth procedures for modifying inappropriate standards through an intergovernmental at review process which provides an opportunity for public comment. Thus, for example, standards can be downgraded due to low flow conditions, hydrologic modifications that prevent attainment of the use designated in the standard, natural physical conditions of the stream that preclude attainment of the aquatic life protection use, or if controls needed to meet the standard would result in substantial or widespread economic impact.

None of these criteria lend themselves to a precise, uniform national definition. In reviewing State proposals to downgrade water quality standards pursuant to these criteria, EPA policy should be flexible enough to accommodate regional variations. For example, in States such as Colorado that are rich in mineral resources, some streams may exhibit natural background concentrations of toxic metals that preclude attainment of a sensitive cold water fishery though other environmental parameters, such as temperature and dissolved oxygen, would sustain such a fishery. In such cases, EPA should recognize the unique hydrogeologic character of such streams and allow the State appropriate flexibility in defining the nature of the aquatic life protection use.

<FWPCA § 303> <FWPCA § 301> <FWPCA § 402> Water quality-standards, effluent guidelines and limitations are translated into National Pollution Discharge Elimination System Permits (NPDES) to assure compliance with control requirements. The Committee reconsidered a provision it approved in the 98th Congress to extend the maximum term of NPDES permits to ten years and to require that permits be reopened and revised under certain conditions. This bill does not contain such a provision. The reported bill therefore reaffirms present law regarding permit terms as the most effective way to assure that discharges of toxic and other pollutants are brought under control in the most timely fashion.

NONPOINT SOURCE POLLUTION

<FWPCA § 319> During the course of the Clean Water Act reauthorization process during the 98th Congress, it became clear that nonpoint source pollution could no longer be ignored. This form of water pollution includes runoff from agricultural and mining areas, and construction sites. It includes sediments, pesticides, fertilizers, bacteria, toxic metals and other serious pollutants. As point sources are brought under control, nonpoint source pollution looms as a larger

[*8] and larger problem. The evidence of nonpoint pollution continues to grow. It has been estimated that 50 percent of all water pollution comes from nonpoint sources.

<FWPCA § 319> The legislation takes an important first step in establishing a national nonpoint source program. States are encouraged to implement management programs that will target critical areas, identify the sources of nonpint pollution, identify best management practices, and set timetables for program implementation. Funds would be allotted to States to support their implementation of these programs.

<FWPCA § 319> <FWPCA § 205> The nonpoint source pollution provisions are virtually identical to those reported by the Committee in the last Congress. There are, however, several changes as a result of testimony presented in the Subcommittee's hearings. States may use up to 1 percent of their allotment funds from the construction grants program to supplement funding authorized under the nonpoint program, and nonpoint source programs shall include an assessment of the relationship between nonpoint pollution and groundwater. These provisions are discussed further in the report.

CONSTRUCTION GRANTS

Since enactment of the Clean Water Act in 1972, over $56 billion has been spent on constructing publicly owned treatment works (POTWs). The Federal Government has contributed over $40 billion with State and local governments contributing the remainder. These large expenditures have produced significant water benefits across the Nation. By 1982 there were over 15,000 waste treatment plants in operation and the number of persons receiving secondary or greater treatment increased by 67 percent (from 1972) while population increased only 11 percent.

These benefits were, in part, achieved through a strong Federal role provided in the 1972 amendments. However, while increasing Federal aid ($18 billion in contract authority) and expanding the Federal grant share (75 percent of eligible project costs), Congress also recognized that this initial level of Federal financial assistance was temporary and expected States and municipalities to eventually assume full responsibility for the operation, maintenance and replacement of constructed facilities.

The shift to ultimate State and local responsibility was started in 1977 with amendments that increased the State role in managing the program. The 1981 amendments to the construction grants program brought about major reforms in the program and signaled a gradual transition from a high level of Federal financial involvement to greater State and local responsibility. Changes were made to refocus the program on water quality goals. Funding for combined sewer overflows and "growth" related categories such as collector sewers and future population were eliminated. These Federal share <FWPCA § 202> was reduced from 75 percent to 55 percent and the program's authorization level was reduced from $5 billion to $2.4 billion per year. The reform assured that funds would be appropriated to the full authorized level.

The major issue facing the municipal pollution control program today is how to manage a continued transition to State and local

[*9] responsibility and self-sufficiency, while assuring timely completion and continued compliance of all municipal facilities. The $40 billion investment made by the construction grants program since 1972 should be protected by leaving in place adequate institutional and financial mechanisms at the State and local level. Only through a sound financial mechanism will the needed capital improvements for municipal wastewater treatment be financed and progress in water quality improvements be maintained.

<FWPCA § 601> <FWPCA § 602> <FWPCA § 603> <FWPCA § 604> <FWPCA § 605> <FWPCA § 606> <FWPCA § 607> Title II of the reported bill calls for the creation of State Water Pollution Control Revolving Funds which continue the transition started with the 1981 amendments while assuring that construction of necessary facilities continues to move forward. Under this program, the Federal Government will gradually reduce straight categorical grants for POTWs and, in their place, provide money for States to establish loan funds. Using Federal money for loans, States can make low interest loans available to their communities for construction of treatment facilities.

A successful transition will require a more extended period of time and a shift in the type of Federal assistance provided. To provide for the transition, the reported bill establishes a State Water Pollution Revolving Loan Fund (SRF) under a new title VI of the Act <FWPCA § 601>. These SRF's if properly managed, will provide a capital base for financing municipal wastewater treatment facilities far into the future. Once established and credited with repayments from the initial loans made with the Federal capitalization grant funds, the SRF's will generate a stream of revenues that will enable a State to leverage the initial funds many times over <FWPCA § 603>.

The reported bill would provide for a phase-out of the title II construction grants program over a five-year period, while the new title VI that would authorize assistance for States through the establishment of State-administered revolving loan programs. Taken together, the authorizations for titles II and VI would continue Federal assistance for municipal wastewater treatment over a nine-year period (1986-1994). Although this authorization period is beyond those typically included in previous amendments to the Act, it is needed for States and municipalities to plan effectively for assumption of increased funding responsibilities.

The reported bill extends the current $2.4 billion annual authorization for title II construction grants for three years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. No further authorizations would be made for title II after fiscal year 1990.

During this five-year period, States would be provided with sufficient lead time to begin setting up State revolving loan programs. The bill encourages the creation of these self-sustaining financing entities at the earliest opportunity by providing each State with an option of converting title II construction grants funds into capitalization grants for SRF's.

<FWPCA § 607> Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing SRF's under the new title VI. In fiscal year 1991, the amount would be increased

to $2.4 billion. Thereafter, the SRF authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal

[*10] year 1994. After fiscal year 1994 all authorizations for direct Federal contributions to municipal wastewater treatment of SRF's would be ended. (See chart below:)

[chart]

The total authorizations for title II and VI amount to $18 billion and will assure that the core treatment-related needs identified in the 1981 amendments will be met.

SECTION-BY-SECTION ANALYSIS

TITLE I

AUTHORIZATIONS

<FWPCA § 104> <FWPCA § 106> <FWPCA § 112> <FWPCA § 314> <FWPCA § 517> The reported bill continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1984 through 1987.

<FWPCA § 104> Section 104(u)(1) is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring and coordination.

<FWPCA § 104> Section 104(u) is amended to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works. $1.5 million is authorized annually for the employment needs and forecasting program provided for by section 104(g)(2).

<FWPCA § 106> Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of

[*11] pollution, including enforcement directly through appropriate State enforcement officers or agencies

<FWPCA § 112> Section 112(c) authorizes $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act <FWPCA § 109> <FWPCA § 110> <FWPCA § 111>.

<FWPCA § 314> Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

<FWPCA § 517> Finally, $160 million per year is authorized for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

SMALL FLOWS CLEARINGHOUSE

<FWPCA § 104> This section amends section 104(q) of the Act to use a portion of the funds set aside for innovative and alternative (I&A) technologies, but not obligated within the 2 year deadline, to fund the Small Flows Clearinghouse. This Clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application. The purpose of the Clearinghouse is to assure the better utilization of the I&A set-aside money.

<FWPCA § 104> At the end of the last two obligation periods, several million dollars remained unobligated and had to be reallotted. The amendment dedicates $1 million of that to funding the Clearinghouse. Previously, the Clearinghouse has received funds through the Agency's research budget, which has provided too little funding to carry out assigned tasks. The arrangement has been unsatisfactory to the Office of Research and Development and the Office of Water.

<FWPCA § 104> Recently the Clearinghouse, currently operated under contract with West Virginia University, was consolidated with another data base owned by the Agency at Research Triangle Park. This has put an additional strain on the Clearinghouse's resources. The amendment will help the Clearinghouse provide an accelerated program of information dissemination and technology transfer, so that small communities can meet the Act's requirements at affordable costs by using alternative technologies and alternative financing and managing arrangements. Funds available under this amendment will also assist State and local authorities who are responsible for small communities in developing programs that assure implementation of the most affordable possibilities. The National Clearinghouse will accomplish this through increased access to existing databases, the preparation of new training materials for both technological and administrative alternatives, and delivery of training programs tailored to the needs of individual States. Cooperation of appropriate State agencies in addressing their unique needs at the State and local level should be sought. For example, the State of Alabama has indicated a desire to cooperate with the National

[*12] Clearinghouse to develop and deliver a Statewide program for small communities.

COMPLIANCE DATES

<FWPCA § 301> The reported bill extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, but in no case later than July 1, 1988.

<FWPCA § 301> Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations for nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated but in no case later than July 1, 1988.

<FWPCA § 301> A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations but in no case later than July 1, 1988.

<FWPCA § 301> New section 302[301?](b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1988). These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

<FWPCA § 301> The Clean Water Act currently mandates that industry achieve effluent limitations based on BAT for all toxic pollutants, and BCT for conventional pollutants, no later than July 1, 1984. BAT for nonconventional pollutants must be achieved by three years after promulgation but no later than July 1, 1987.

<FWPCA § 301> These target dates were enacted in the expectation that the Environmental Protection Agency would promulgate in a timely fashion for the 26 major industrial categories to be regulated. The Agency has not met this expectation. Under court order, the Agency is now required to promulgate all remaining standards by March, 1986.

<FWPCA § 301> It was impossible for many of these 26 industries to meet the 1984 compliance deadline. As documented in hearings before the Subcommittee on Environmental Pollution, most industries require three years after promulgation of effluent limitation guidelines to design and construct necessary facilities. This section incorporates this three-year period into law.

[*13] <FWPCA § 301> In extending these compliance deadlines, the Committee emphasizes that dischargers are to comply with technology standards as expeditiously as practicable, regardless of the outside limits prescribed by this legislation.

<FWPCA § 301> Section 301(b)(3)(A) is intended to allow a discharger a reasonable amount of time to alter existing BPT treatment equipment or install new or additional treatment where necessary to meet more stringent BPT discharge requirements. Dischargers who had never previously received a permit would be required to meet the new BPT effluent limitations upon commencement of discharge. For previously permitted dischargers compliance should be required as soon as practicable. In some cases, where the treatment facilities in place are capable of meeting the new limi-

tations, this may require immediate compliance. Additional time to meet new limitations should only be given where the level of control required by the new limitations is substantially greater than that required by the existing permit or where the new limitations are based on new or significantly different control technology.

<FWPCA § 301> New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) <FWPCA § 402> of the Act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) <FWPCA § 304> have not been established or where limitations in addition to the guideline are necessary to control pollutants or wasterstreams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1) <FWPCA § 402>, the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) <FWPCA § 402> limitations. In addition, it is often the case that a wastestream controlled by an effluent limitations guideline is combined with a process wasterstream or a non-process wastestream, such as non-contact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged wastestream is controlled by a combination of both a guidelines based limitation and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

<FWPCA § 301> This section amends section 301(h) of the Act to restrict the availability of modifications of the uniform secondary treatment requirement for discharges to ocean waters. It is identical to the provision reported by the Committee in the 98th Congress.

<FWPCA § 301> When section 301(h) in 1977 was enacted, it was intended that only municipalities with primary treatment capability discharging into deep and unstressed waters be considered for these modifications. It was expected that a number of West Coast and very few East Coast communities could meet the conditions laid out in section 301(h) to obtain a modification. However, Court decisions have blurred the intent of Congress so that both East and West coast

[*14] communities discharging sometimes untreated sewage effluent can expect to receive modifications. This should not be the case.

<FWPCA § 301> This section establishes restrictive conditions on the qualifications of applicants for a section 301(h) modification and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge modification, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to assure the control of toxic pollutants at the time of application.

<FWPCA § 301> Current regulations require communities to develop pretreatment programs. This amendment makes it clear that Congress intends that no final modification should be granted unless the applicant has satisfied this requirement. By the time of approval, the applicant must have an approved pretreatment program with which indirect discharges are in compliance. Failure to meet this requirement will result in denial of modification where non-compliance among indirect dischargers is widespread. However, it is not the intent that EPA deny modification to POTWs which are diligently implementing a pretreatment program merely because an insubstantial percentage of indirect dischargers with a trivial amount of flow are not in compliance with pretreatment requirements. The Administrator should exercise discretion in determining the significance of non-compliance and examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. Emphasis should be placed on overall compliance, as well as focusing on individual indirect dischargers which may not be in compliance.

<FWPCA § 301> The applicant must also be providing a minimum of primary treatment of their municipal effluent, including disinfection where appropriate, at the time the modification becomes effective. Section 301(h) was never intended to authorize the discharge of untreated sewage. This amendment makes clear that operating primary treatment is a minimum to qualify for a modification.

<FWPCA § 301> Flexibility is provided for the Agency to deal with unique problems in Alaskan Villages and the Trust Territories where screening and skimming of waste may constitute primary treatment and be sufficient, provided that all other section 301(h) criteria are otherwise satisfied.

<FWPCA § 301> Marine bays and estuaries represent some of our most productive biological areas and deserve to protected against degradation. Two amendments to section 301(h) have been made for that reason. The first amendment

clarifies that marine waters receiving discharges must exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW. While this amendment deals with "marine waters" it is expected that it will have its greatest impact on marine bays and estuaries. It is intended to be used as another test by the Agency in evaluating discharges into these waters to make certain that sufficient flushing exists so as not to allow entrapment of previously discharged waste. While this provision does not affect any tentative approvals granted to date, it is expected to

[*15] give the Agency an important guideline for future review of applicants' discharges into marine waters.

<FWPCA § 301> The second amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that a section 301(h) modification may not be issued for estuarine waters if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges.

<FWPCA § 301> For the purpose of section 301(h)(8)(B) the term "balanced indigenous population" is defined as the community that can reasonably be expected to occur in a given area absent pollution. Its existence is generally determined by comparing the ecological community in question to that of nearby healthy communities existing under comparable but unpolluted physical and environmental conditions.

<FWPCA § 301> Again, attention is given to saline estuaries receiving discharges which are not achieving the interim water quality goal of the Act. It is intended that applicable water quality standards refers to standards for BOD, SS, DO, and toxic pollutants. The phrase "such other standards" necessary to assure support and protection of such uses refers to marine water quality criteria necessary to support these uses.

<FWPCA § 301> Waivers from secondary treatment for discharges into marine estuaries should be given special reviews from the Agency, when the estuaries are stressed from a combination of sources. Partial treatment of sewage into already polluted estuaries should not be allowed. Previously EPA looked at only the source seeking the modification in making its determination. Under this amendment the Agency cannot grant a modification for a discharge into an estuary whether or not the responsibility for the failure to meet the interim goal of the Act lies with the discharger. Waiving treatment requirements for a point source discharging into an unhealthy body will not result in reasonable further progress toward achieving the goals of the Act.

<FWPCA § 301> Conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

<FWPCA § 301> Section 310[301?](j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) modification, in which to apply for such a modification in its own right. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency (or its successor agency, District 14), to apply for a modification under

[*16] section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for modification by the Orange County Sanitation District and thus the district did not apply during the period allowed by the 1981 amendments.

<FWPCA § 301> The Irvine Ranch Water District has made a legitimate case for special consideration, but the amendment is intended to exclude any other opportunities for application for modification under this provision. The only special consideration provided to the District is the opportunity to apply for the modification. Prior to its discharge into the ocean, either through its own outfall or through Orange County Sanitation District's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmental Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a modification. The dis-

charge to which the modification would apply could be direct to the ocean through an IRWD/District 14 ocean outfall or through the ocean outfall of the party with which that contractual arrangement exists.

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

<FWPCA § 301> The bill amends section 301(g) of the Act to restrict the circumstances under which a modification from best available technology standards (BAT) can be granted for nonconventional pollutants. Nonconventional pollutants are defined as pollutants other than conventional pollutants identified pursuant to section 304(a)(4) <FWPCA § 304> of the Act, toxic pollutants subject to section 307(a) <FWPCA § 307> of the Act, or the thermal component of discharges.

<FWPCA § 301> Current law allows modifications to BAT standards for nonconventional pollutants if, upon a showing by the discharger, such modification will result, at a minimum, in compliance with best practical treatment; will not result in additional requirements on point and nonpoint sources; and will not result in unacceptable risks to human health or the environment or interfere with the attainment of maintenance of water quality standards.

<FWPCA § 301> According to the EPA, scientific data on a great number of non-conventional pollutants are non-existent or very limited. There are very few data on toxicity, and testing methods are often inadequate to determine effects on human health and the environment for a number of these pollutants. Some 55,000 identified compounds could technically qualify for modification of best available technology requirements. The Agency's resources to make decisions on modification applications are inadequate. EPA has estimated that it takes between one-half and two years; between .75 and 3.5 full time employees; and between $20,000 and $50,000 to process a modification.

<FWPCA § 301> In the past, proposals for water quality-based waivers for toxic and conventional pollutants have been rejected by the Congress.

[*17] During the hearings the Subcommittee learned that, in many cases where information exists, nonconventional pollutants can be highly toxic to humans, fish and other aquatic organisms, and wildlife. What distinguishes many of these substances from the 307(a) <FWPCA § 307> toxics is simply that they are not yet on the toxics list. In fact, many nonconventional pollutants are greatly more toxic than toxic pollutants on the 307(a) <FWPCA § 307> list.

<FWPCA § 301> Nonconventional pollutants should be treated no differently from toxic or conventional pollutants, except in a very limited fashion. Thus, the amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants -- ammonia, chlorine, color, iron and total phenols (4AAP). EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they are eligible for inclusion under section 301(g), but any such recommendation must be enacted by Congress to become effective. The Administration, however, is expected to add any nonconventional pollutants to the section 307(a) <FWPCA § 307> toxic pollutant list, if such evaluations warrant.

<FWPCA § 301> The provision also limits to one year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4). The discharger must, in its application, make an affirmative showing that the discharge will meet the conditions in section 301(g)(A), (B) and (C). Simply asserting that there is no evidence that the substances harms human health or the environment is insufficient. For the purposes of this provision, final Agency action means the administrative decision document or final permit issued by EPA, following public notice and comment as appropriate.

<FWPCA § 301> Section 301(g)(5) clarifies that this amendment applied to all modification requests under this subsection which are pending upon the date of enactment of the Clean Water Act Amendments of 1985. Specifically, for such pending requests, this provision is intended to restrict EPA's consideration to requests for modification to only those five nonconventional pollutants listed in section 301(g)(1) as amended. Pending requests for modification for other nonconventional pollutants cannot be granted and therefore will not be acted upon. For completed applications pending at the time of enactment of the Clean Water Act Amendments of 1985, EPA must take final Agency action within one year of the date of submission of the completed application to EPA, or under section 301(g)(4) the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations. Applicants with pending initial applications filed in accordance with section 301(j) may file completed application within a reasonable time after enactment.

<FWPCA § 301> EPA has stated that applications for modification under section 301(g) have effectively stalled, or stayed, new permits from being issued to applicants. These situations prevent the installation of best available technology controls for all pollutants in the discharge, even those that are not subject to the modification request, until a decision on the modification is made by the Agency. As

[*18] stated previously these decisions can take up to two years or more. As a result, toxic and conventional pollutants may continue to be discharged into receiving waters while the application is pending. To address this situation, the bill amends section 301(j) of the Act to forbid the stay of any requirements or limitations for any pollutant other than for the pollutants for which a section 301(g) modification may be sought. Thus, for example, if a discharger applies for a modification for chlorine, such application shall not, under any circumstances, stay the discharger's obligation to comply with the applicable effluent guideline which requires control of toxic, conventional or other nonconventional pollutants to meet the compliance deadline, nor may the Administrator or a State extend the compliance deadline for any applicant.

<FWPCA § 301> If a modification is granted under this subsection, the applicant is expected to make a new demonstration each time the applicable permit expires, for such modification to be granted in the future.

FUNDAMENTALLY DIFFERENT FACTORS

<FWPCA § 301> This section authorizes the Administrator to grant fundamentally different factors (FDF) modification and defines the conditions under which the Administrator may do so.

<FWPCA § 301> A FDF modification is an administrative mechanism to provide an opportunity for relief from the application of national effluent limitations guidelines and standards for categories of existing sources for toxic, conventional and nonconventional pollutants. EPA will write a separate effluent standard for an individual facility if the factors that govern standard setting are found to be fundamentally different at the individual facility from the factors considered in establishing the guideline or standards for the industrial category.

<FWPCA § 301> The Agency has, by regulation, created an opportunity for FDF modifications from national categorical effluent standards for direct discharges for best practicable control technology currently available (BPT) under section 301(b)(1)(A), best available technology economically achievable (BAT) for toxic and nonconventional pollutants under section 301(b)(2), and best conventional pollutant control technology (BCT) for conventional pollutants under section 301(b)(2). For indirect dischargers (those discharging to a publicly owned treatment work rather than directly to a surface waterway), FDF modifications are available for pretreatment standards for existing sources (PSES) under section 307(b) <FWPCA § 307>.

<FWPCA § 301> EPA's authority to grant FDF modifications has been challenged in several different courts. Recently, the Supreme Court held that the Clean Water Act does not prohibit the granting of FDF variances from pretreatment standards for existing sources for toxic pollutants <FWPCA § 307> (Chemical Manufacturers Assn. v. Natural Resources Defense Council, Inc., No. 83-1013 -- U.S. Feb. 27, 1985).

<FWPCA § 301> As a result of this decision, EPA is issuing FDF modification without explicit statutory authority and without statutory definition of the conditions under which such modification may be issued. Current law requires the Administrator to set national effluent limitations guidelines and categorical pretreatment standards for an entire industrial category or subcategory. The amend-

[*19] ment imposes additional restrictions, beyond those in EPA's current rules, on the Administrator's ability to modify national standards for individual facilities seeking an FDF modification.

<FWPCA § 301> Relief, in the form of alternative effluent limitations or standards, may be granted only if the applicant makes satisfactory demonstrations to the Administrator under all provisions of this subsection. Relief may not be granted without the concurrence of the State.

<FWPCA § 301> The Administrator is expected to use this authority only rarely and only to create a separate standard for a facility so unique that it would have required a separate subcategory had EPA given it adequate attention in the national rulemaking. The Administrator should first rely on the national rulemaking process to address the concerns of those who may seek an FDF modification. It is the Committee's intent to carefully oversee and assess the Agency's use of the authority provided in this section. The amendment specifies four criteria that must be demonstrated by the applicant to the satisfaction of the Administrator, before alternative requirements can be established.

<FWPCA § 301> First, to be granted relief under section 301(n), a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g) <FWPCA § 304>, or 307(b) <FWPCA

§ 307> and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted. Cost was excluded as a criterion because case-by-case analysis of the cost of achieving an effluent reduction is inappropriate in a BAT national effluent limitations or preteatment standard designed to bring all facilities up to the level of control of the best discharger in the category.

<FWPCA § 301> The second criteria requires that applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility. This information will assure that effluent limitations guidelines and categorical pretreatment standards are as comprehensive as possible, and thereby diminish the need for applications under this subsection. This requirement also will discourage withholding of information during the rulemaking proceeding for subsequent use in an administrative proceeding seeking variance from the categorical standard.

<FWPCA § 301> Where the record is already closed and an applicant has new information to present bearing on the categorical standard, the applicant continues to be able to petition the Administrator to reopen the rulemaking and record and consider the creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review.

<FWPCA § 301> Third, this provision does not authorize the Administrator to weaken the level of controls intended by Congress, especially for toxic pollutants. For this reason, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the

[*20] statutory factors (other than cost) specified in section 304(b) or (g) of the Act.

<FWPCA § 301> Fourth, if relief is granted, any alternative requirement shall not result in any non-water quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

<FWPCA § 301> The reported bill contains several additional restrictions on EPA's authority to grant modifications in order to avoid the delays in "fundamentally different factors" proceedings. An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

<FWPCA § 301> If EPA amends a guideline or standard, an applicant may submit an FDF variance request within 120 days of publication of the final revision in the Federal Register. In such a case, the revision must specifically affect the discharge limitations or standards applicable to the facility and must be the limitations or standards from which the applicant is seeking relief under this subsection. Such revisions of such applicable guidelines and standards are expected to be rare so that most, if not all, applications will be submitted within 120 days after the publication of the original final guideline or standard.

Section 301(n)(2) requires the Administrator to deny any application that is not complete, without providing for an opportunity for reapplication. The applicant must submit a complete application within the 120 day period. A complete application must contain demonstrations, including all information and supporting data, satisfactory to the Administrator, regarding the applicable statutory provisions. A complete application should include, at a minimum, such items as a specific reference to the factors that are fundamentally different with supporting information; specific references to the administrative record for the rulemaking justifying the claims; a copy of or reference to the previous submission of the information and supporting data during the rulemaking and references to the administrative record for the rulemaking where these comments were considered and a discussion of why the facility is entitled to relief.

<FWPCA § 301> The burden for making the necessary showings is entirely upon the applicant, not EPA. However, EPA may request clarifications of the submitted information in order to allow the Administrator to make a decision on a request, but he may not extend the 120 day period. The Administrator is required to deny any application that is not complete.

<FWPCA § 301> This provision is included because many applicants for FDF modifications have submitted very incomplete applications and have requested a stay of all applicable effluent standards pending disposition of the application.

<FWPCA § 301> In the past, it has taken EPA a very long time and in some instances, years, to issue decisions on FDF modifications. According to EPA it takes an average of four to five years to issue an administrative decision on an FDF modification request. This does not in-

[*21] clude the prohibitive costs of reviewing the application or the time subsequently necessary for administrative appeals and finally, challenge in the Federal courts.

For these reasons, section 301(n)(2)(B) requires that final EPA action be taken within 240 days after submission of an application to a State or to EPA, or the application will be deemed to be denied. For the purposes of this provision, final Agency action means the administrative decision issued by EPA, following public notice and comment, as appropriate. Any administrative appeals that may ensue must be decided by the Agency within the minimum additional period necessary.

This timeframe is necessary to assure that a final decision on FDF application will not jeopardize the applicant's responsibilities to meet compliance deadlines for BAT, BCT, or categorical pretreatment standards, should the application be denied.

Pending applications on the date of enactment shall be deemed to have been submitted to the Administrator 30 days after enactment of this amendment. This provision sets in motion the Administrator's duty to act on the application within 240 days. Applications filed after enactment shall not be deemed complete unless accompanied by the required application fee.

<FWPCA § 301> Section 301(n)(3) provides that an application for alternative requirements under section 301(n) shall not stay the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application. This provision is intended to prevent EPA or the State, in the case of direct dischargers, or EPA, the State or the POTW, in the case of indirect dischargers, from delaying issuance of the NPDES permit or pretreatment implementation mechanism containing the nationally applicable limitations or standards during the pendency of an application. In addition, de facto stays of applicable provisions may not be provided.

<FWPCA § 301> The purpose of the FDF provision is to correct past errors made by EPA in defining categories and subcategories of dischargers under section 304(b) <FWPCA § 304> of the Act. EPA will probably make fewer of such errors in the future, especially since the provisions in section 301(n)(1)(B) remove any incentive a facility owner or operator may have to withhold relevant information during the rulemaking phase.

<FWPCA § 301> The availability of FDF applications is limited to primary industrial categories identified in permit regulations issued under section 402 <FWPCA § 402> of the Act as of the date of enactment of the Clean Water Act Amendments of 1985. A list of primary industry categories is currently contained in the NPDES regulations (40 CFR Part 122, Appendix A). FDF applications, or approvals after the date of these changes, are limited to facilities contained in these primary industry categories. EPA has expanded this list from 34 to 37 categories, with the three new categories being a subset of the listed categories. All of these categories are intended to be included in this requirement.

<FWPCA § 301> Substantial Federal resources are being devoted to processing applications for modifications authorized by the Clean Water. Section 301(o) requires the Administrator to establish a system of fees to recover the cost of processing these applications. It is expected that

[*22] applications will be accompanied by an appropriate fee and will be considered incomplete until the fee is paid.

<FWPCA § 301> Applicants with limited financial resources may be less capable of paying these fees than are larger applicants. It is not the intention to deny access to Clean Water Act modifications to applicants with a limited ability to pay fees. The Administrator may, in appropriate discretion, develop a tiered or sliding scale fee structure so long as the aggregate amount of fees collected reflects the Federal resources actually expended in processing such applications.

<FWPCA § 301> Though the fees collected under this requirement will be deposited in the miscellaneous receipts of the Treasury, the EPA budget should provide resources for processing modification applications that reflect the fees received by the Treasury.

<FWPCA § 301> The Administrator may not use the authority of this section to modify effluent standards or prohibitions issued pursuant to section 307(a)(2) <FWPCA § 307> of this Act, the general prohibited discharge standards in 40 C.F.R. § 403.5 (or other requirements implementing such standards), or effluent limitations guidelines or pre-

treatment standards applicable to facilities other than the primary industrial categories identified in the permit regulations issued under section 402 <FWPCA § 402> of the Act and in effect on the date of enactment of this amendment.

<FWPCA § 301> The FDF provision is intended to be available for modification of requirements for conventional, nonconventional, and toxic pollutants. Consistent with this objective, section 301(1) of the Act, which excludes toxic pollutants from variances or modifications under the Act, is amended to allow FDF modifications for toxic pollutants. This amendment to section 301(1) does not in any way weaken the application of the subsection to modification provisions of the Act other than the FDF provision (section 301(n)).

<FWPCA § 301> The Administrator may not delegate the authority provided by this subsection to any State, though the Administrator should obtain the concurrence of a State with an approved NPDES or pretreatment program before approving any alternative requirement under this subsection.

<FWPCA § 301> The owner or operator of a facility has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this subsection. The Administrator's decision to promulgate or deny an alternative effluent limitation guideline or categorical pretreatment standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) <FWPCA § 509> of the Act.

<FWPCA § 301> All of these provisions are to be self implementing, and effective upon the date of enactment of the Clean Water Act Amendments of 1985. The Administrator is encouraged to amend the appropriate regulatory provisions to make them consistent with these requirements; however, the failure of the Administrator to make such revisions will not affect the implementation of these provisions.

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT

The reported bill modifies sections 302 <FWPCA § 302>, 303 <FWPCA § 303>, 304 <FWPCA § 304>, and 305 of the Act, to provide for the development of water quality based effluent

[*23] limitations after the implementation of best available technology (BAT).

<FWPCA § 304> States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision:

(1) <FWPCA § 304> Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1985, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) <FWPCA § 303> Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) <FWPCA § 304> Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act Amendments of 1985, on methods of establishing criteria with biomonitoring assessment techniques.

(4) <FWPCA § 304> Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

<FWPCA § 302> Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water

body has been identified under new section 305(c)(1)(B) <FWPCA § 305>. For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

[*24] <FWPCA § 302> Ordinarily, State water quality standards established or revised under section 303 <FWPCA § 303> designate the uses specified in section 101(a)(2) <FWPCA § 101> of the Act, and if implemented through adequate criteria, waste load allocations, and effluent limitations in permits, will protect the level of water quality addressed by section 302(a). The Administrator is to use the authority of section 302(a), however, where compliance with best available technology requirements or the State water quality standards process are not attaining this level of water quality, due to point sources.

<FWPCA § 302> Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

<FWPCA § 302> The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pollutants, for single period not to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capability of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 302(a).

<FWPCA § 302> <FWPCA § 303> Section 303 of the Act is the primary mechanism for the development of State water quality standards and effluent limitations based on them. In developing standards under that section. States are authorized to consider the economics of achieving such standards only as allowed under EPA's regulations established pursuant to section 303. Section 302 is not intended to undercut or in any way affect the development of water quality standards under section 303 nor the imposition of section 301(b)(1)(C) <FWPCA § 301> of the Act. Rather, it is a supplemental provision which directs the Administrator, now with the concurrence of the State, to impose effluent limitations which assure the attainment or maintenance of water quality for the protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and recreational activities in and on the water, in situations where the adopted water quality standards do not assure the attainment and maintenance of such uses, including in some instances those waters which are to be listed under new section 305(c) <FWPCA § 305>. The provisions of section 302(b)(2) authorizing the modification of effluent limitations apply only to the effluent limitations established under section 302(a).

<FWPCA § 304> New section 304(1) requires the Administrator to publish within 12 months a plan (1) establishing a schedule for the annual review and revision of effluent guidelines already promulgated; (2) identifying categories of sources of toxic or nonconventional pollutants for which guidelines have not yet been promulgated; and (3) establishing a schedule for promulgation of those guidelines, no later

[*25] than 3 years after identification of the categories. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants. In this use, "significant amounts" does not require the Administrator to make any determination of environmental harm; any non-trivial discharges from sources in a category must lead to effluent guidelines. This requirement does not affect the Agency's obligations to publish effluent guidelines under the toxic pollutant Consent Decree.

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

<FWPCA § 402> In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the Administrator should not require pretreatment of conventional pollutants by indirect discharges <FWPCA § 304> to allow the treatment works to meet the conditions of their permits. The Committee recognizes that in such circumstances the burden of correction of the problem may more appropriately lie with the publicly owned treatment works itself through adjustment of its facilities or operation. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works <FWPCA § 307>. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision <FWPCA § 309>. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

CIVIL AND CRIMINAL PENALTIES

<FWPCA § 309> <FWPCA § 404> This section amends sections 309 and 404 of the Clean Water Act relating to civil and criminal penalties.

Civil penalties

<FWPCA § 309> <FWPCA § 404> Sections 309 and 404 of the Act are amended to increase the civil judicial penalty limit from $10,000 to $25,000 per violation, to clarify that each distinct violation is subject to a separate daily penalty assessment of up to $25,000, and to clarify that violations of pretreatment program requirements are subject to civil penalties.

<FWPCA § 309> <FWPCA § 404> The increase in the maximum daily penalty would make the Clean Water Act consistent with penalty limits under other environmental statutes and reflects the serious nature of these violations. The amendment would also expressly require the courts to consider a number of factors, including, in particular, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic advantage vis-a-vis their competitors due to their noncompliance with environmental laws. The determination of economic benefit or other factors will not require an elaborate or burdensome evidentiary showing. Reasonable approximations of economic benefit will suffice. Other objective factors customarily taken into account in assessing penalties, such as the history of violations, good faith efforts to comply and economic

[*26] impact on the violator, also may be taken into account in arriving at an appropriate penalty.

Administrative civil penalties

<FWPCA § 309> The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

<FWPCA § 309> These amendments give the Administrator a third option: to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. Thus, a discharger who violated three daily maximum permit limits on a day could be subject to a maximum penalty of $30,000 for that day's violations. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action.

<FWPCA § 309> This authority to issue administrative penalty orders is intended to complement and not to replace a vigorous civil judicial enforcement program. Civil judicial enforcement is a keystone of successful enforcement of the Act and necessary for cases involving novel issues of law or contested penalty assessments, cases requiring injunctive relief, serious violations of the Act, or large penalty actions, and cases where remedies are sought requiring significant construction or capital investment. The addition of this enforcement tool is based in part on the Agency's assurance that it does not intend to retreat from vigorous judicial enforcement of Clean Water Act violations.

<FWPCA § 309> The addition of administrative civil penalties should, therefore, increase the total number of enforcement actions without any corresponding decline in the number of judicial enforcement actions taken by the Administrator. The Administrator is not expected to use this new authority for cases that would otherwise have been tried in court. Three provisions, in particular, reflect the Committee's intent on this score. First, this new authority is designed to address past, rather than continuing, violations of the Act. Continuing violations are more appropriately addressed by abatement orders or injunctive actions and, if EPA seeks both civil penalties and injunctive relief, one judicial action should be filed. Second, this new authority includes a cap on penalty amounts and a lower daily limit than judicial penalties. These limitations are intended to assure that violations of greater magnitude are handled judicially and pursued in a judicial forum. Third, this new authority to administratively assess civil penalties sunsets after five years. This will provide ample time to review the experience with administrative civil penalties before further administrative penalties are assessed. Such review will be designed to assure that administrative civil penalties have not become a substitute for judicial action, that such penalties are no less stringent than those which would be assessed in court for the same violations, and that such penalties are both promptly assessed and promptly paid.

<FWPCA § 309> Administrative penalties could provide greater deterrent value than an administrative order for a violation that does not warrant the more resource intensive aspects of judicial enforcement. Many

[*27] Clean Water Act violations are straightforward, self-reported and likely uncontested by the violator. The administrative penalty authority is expected to be exercised where violations are clearly documented and easily corrected and will likely be uncontested by the violator.

<FWPCA § 309> To serve its intended function, this administrative enforcement tool should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, consistent with due process considerations while providing for effective input by citizens who may be affected by the violations. Administrative cases should be resolved promptly.

<FWPCA § 309> The procedures adopted in the reported bill strike the appropriate balance between streamlined procedures and basic fairness. Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing. Such a hearing includes the right to a reasonable opportunity to be heard and to present evidence. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures Act are not required. EPA therefore has the flexibility to streamline its decisionmaking process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection.

<FWPCA § 309> There are several safeguards in this provision to prevent abuse of the administrative penalty authority, such as significant violators escaping with nominal penalties. The Administrator is required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. Public notice of such proceedings must be given in a manner that will apprise interested citizens of the proceeding. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper. The Administrator shall construe this provision liberally so as not to place a heavy burden on citizens seeking a hearing.

<FWPCA § 309> An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a post-assessment request for a hearing, 30 days following the final action by the Administrator. While the Committee bill allows for judicial review without the necessity of holding a hearing in every case, it is expected that some parties will request hearings. If no hearing is requested by a private party, or held by the Agency sua sponte, the record for review will include the proposed assessment, supporting factual documentation and comments filed during the comment period. If a hearing is held, however, it is expected that evidence to dispute the

[*28] proposed assessment will be introduced at the hearing and will become part of the administrative record.

<FWPCA § 309> The potential for overlap between citizen enforcement suits and administrative civil penalties is specifically addressed. Citizen suits are a proven enforcement tool. They operate as Congress intended -- to both spur and supplement to government enforcement actions. They have deterred violators and achieved significant compliance gains. In the past two years, the number of citizen suits to enforce NPDES permits has surged so that such suits now constitute a substantial portion of all enforcement actions filed in Federal court under this Act.

<FWPCA § 309> This amendment therefore strikes a balance between two competing concerns: The need to avoid placing obstacles in the path of such citizen suits and the desire to avoid subjecting violators of the law to dual enforcement actions or penalties for the same violation. It states that no one may bring an action to recover civil penalties under sections 309(b) and (d), 311(b) <FWPCA § 311>, or 505 <FWPCA § 505> of this Act for any violation with respect to which the Administrator has commenced and is diligently prosecuting an administrative civil penalty action, or for which the Administrator has issued a final order not subject to further judicial review (and for which the violator has paid the penalty). This limitation applies only to an action for civil penalties for the same violations which are the subject of the administrative civil penalties proceeding. It would not apply to an action for civil penalties for a violation of the same requirement of the Act that is not being addressed administratively or for a past violation of another pollutant parameter (even one resulting from the same discharge which is the subject of the administrative civil penalty proceeding). In addition, this limitation would not apply to: 1) an action seeking relief other than civil penalties (e.g., an injunction or declaratory judgment); 2) an action under section 505(a)(1) <FWPCA § 505> of this Act filed prior to commencement of an administrative civil penalty proceeding for the same violation; or 3) a violation which has been the subject of a notice of violation under section 505(b)(1) <FWPCA § 505> of this Act prior to initiation of the administra-

tive penalty process, provided that, in the latter case, an action under section 505(a)(1) <FWPCA § 505> of this Act is filed within 120 days of the notice of violation.

<FWPCA § 309> The Agency can prevent duplicate proceedings by intervening in the ongoing citizen enforcement suit or by bringing its own judicial action before a citizen suit is filed. This amendment does not preclude administrative or judicial enforcement actions by the Administrator for any violations not specifically penalized by the initial enforcement action.

<FWPCA § 309> Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Providing citizens with a right to appeal will serve as an added safeguard to assure that the Agency assesses appropriate penalties for violations of the Act that take into account the seriousness of the violation, as well as other factors enumerated in the bill, and serve to deter noncompliance. Judicial review is not to be de novo review, but will be based upon whether the Agency's findings of a violation is supported by substantial evidence in the administrative record and whether the assessment of the penalty is an abuse of discretion

[*29] Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise its authority to remand. District courts are free to remand cases in appropriate circumstances.

<FWPCA § 309> The penalty collection proceeding will not be an opportunity to contest the penalty assessment. The discretion to compromise, mitigate or abandon such claims continues to reside with the Attorney General.

Criminal penalties

<FWPCA § 309> Knowing violations of the Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Clean Water Act to deter these violations.

<FWPCA § 309> These amendments would elevate penalties for knowing sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substances which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State and local requirements and permits and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 <FWPCA § 402> of the Act.

<FWPCA § 309> The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day violation and imprisonment for up to three years) are more closely comparable to the levels provided by the 1984 amendments to the Solid Waste Disposal Act RCRA and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act. Currently, a knowing discharge onto the ground of hazardous wastes could subject discharger to felony sanctions under RCRA. However, the same discharge into a sewer system or a POTW might subject the discharger to the lesser misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems or POTWs. The addition of these criminal sanctions will aid in protecting these sewer systems and POTWs. Substantial Federal monies are invested in many of these POTWs. Existing misdemeanor penalties are retained to address those negligent violations which merit lesser punishment.

<FWPCA § 309> This section also adds to section 309(c) enhanced felony penalties for certain life-threatening conduct. The concept of a knowing endangerment crime is found, as well, in section 3008(e) of RCRA. This new offense under the Clean Water Act is based upon violation of certain predicates in the Act. In the event of such knowing violation, the amendment subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction (up to 15 years imprisonment plus fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations) are equivalent to the RCRA knowing endangerment provision, as recently amended.

[*30] <FWPCA § 309> The reason for this addition is that the mishandling of dangerous materials in ways within the purview of this Act can pose substantial danger to public health and safety, just as in situations regulated by RCRA. Therefore, knowing endangerments through water related violations of Federal law should be discouraged as strongly as possible and should be subject to extraordinary sanctions when they occur.

<FWPCA § 309> The differences between the knowing endangerment concept here and its earlier formulation in RCRA reflect intervening prosecutorial experience. For example, this provision does not have the unique state of mind definition found in the "Special Rule" in section 3008(f)(1) of RCRA, because the unusual nature of that subsection has discouraged prosecutions under section 3008(e). It is more appropriate that the "knowing" element of a violation be measured against the standard established by prevailing case law, as it is for any other Federal crime sharing the same state of mind element. Also, there is no subsection corresponding to the "Special Rule" in RCRA section 3008(f)(4) regarding defenses. That provision is an unnecessary restatement of existing criminal law and only raises a potential for misunderstanding and invites unnecessary litigation.

<FWPCA § 309> The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the Act, is increased from six months (a petty offense) to two years (a felony). The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same paragraph of the Act is extended to this provision as well as to the knowing endangerment provision.

<FWPCA § 309> This amendment also extends and consolidates criminal sanctions involving violations of the provisions of section 405 <FWPCA § 405> governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8) <FWPCA § 402>, violations of section 318 permits, and violations of section 404 <FWPCA § 404> permits issued by the Secretary of the Army or by a State.

<FWPCA § 309> Strong public support exists for aggressive enforcement action in cases of environmental misconduct. The addition and strengthening of criminal sanctions in the Act for knowing violations of the law will reflect this public concern and should dispel any perceptions that a knowing violation of the Act is not a serious offense.

PARTIAL NPDES PROGRAM APPROVAL

<FWPCA § 402> This section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Eliminating System program to a State under conditions.

<FWPCA § 402> A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing five years, or the plan must provide for administration of a permit program for all of one

[*31] or more discharge categories. Under this section option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

<FWPCA § 402> In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a state-operated program, the entire program must be returned to the Federal Government.

<FWPCA § 402> Current law with respect to the assumption of NPDES program authority by States has been interpreted to require the immediate assumption of the entire NPDES program as it is administered by EPA. Consequently, States with permitting responsibilities divided among more than one agency or with resource difficulties, either of which limits the State from assuming the entire program, have been precluded from assuming the NPDES program.

For example, the State of Texas divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. While the Texas Department of Water Resources, which does the vast majority of permitting, has sought NPDES assumption, the Texas Railroad Commission, which is responsible for oil and gas exploration and production permitting, has only recently begun seeking assumption. Current law has thus prevented the Texas Department of Water Resources from obtaining assumption of its portion of the program.

<FWPCA § 402> States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. The bill includes modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

JUDICIAL REVIEW AND AWARD OF FEES

<FWPCA § 505> <FWPCA § 509> This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

<FWPCA § 509> The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

<FWPCA § 509> Section 110[111?](a)(1) provides that [for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

<FWPCA § 509> Currently section 509(b)(1) provides for venue in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant "resides or transacts such business". This phrase is inherently ambiguous because the word "such" has no antecedent. The legislative history of this phase is also ambiguous and is not consistent with the plausible interpretation, urged

[*32] by the Department of Justice, that the words "such business" refer to business which is directly affected by the action which is the subject of the application for review. The two courts of appeals which sought to construe this phrase, the Fifth Circuit in *Tenneco Oil Co. v. EPA, 592 F. 2d 897 (1979),* and the Eighth Circuit in *Peabody Coal Co. v. EPA, 522 F. 2d 1152 (1975),* ultimately avoided ruling on its meaning and proper venue for section 509(b) cases remains unsettled. In order to eliminate, or at least reduce, the potential for threshold litigation over proper venue, the Committee amendment changes the venue provision so that the language conforms to the reading of current law which has been suggested by the Department of Justice, The intention of the Committee is to allow the filing of an application for review in the circuit in which the applicant resides, i.e., has his principal place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

<FWPCA § 509> Section 110(a)(2) changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

<FWPCA § 509> The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period. The Committee has previously considered this issue in a different but similar context (Senate Report No. 97-666 at pp. 94-5) and has concluded that one hundred and twenty days is a reasonable period within which to require the filing of an application for review.

<FWPCA § 509> Section 10(b) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

<FWPCA § 505> Section 10[110?](c) limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

<FWPCA § 509> The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. The Committee wishes to emphasize that this proc-

[*33] ess is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

<FWPCA § 509> Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intention of the Committee that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

<FWPCA § 509> <FWPCA § 505> The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. In *Sierra Club v. Gorsuch, 672 F. 2d 33 (D.C. Cir 1983),* rev'd sub nom., *Ruckelshaus v. Sierra Club, 51 U.S. L.W. 5132* (July 1, 1983), the court of appeals held that it was "appropriate" to award attorney's fees under the Clean Air Act to the petitioner even though the government prevailed on all issues. The Committee does not believe that it is reasonable or appropriate to compel either the government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues. Accordingly, these amendments would limit the awarding of costs under the Clean Water Act to prevailing or substantially prevailing parties.

<FWPCA § 509> <FWPCA § 505> These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor does the Committee intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

<FWPCA § 509> <FWPCA § 505> In addition, the Committee recognizes that a party may "prevail" by achieving a successful settlement.

NONPOINT SOURCE POLLUTION

<FWPCA § 319> This section establishes a new section 319 in the Clean Water Act to require development of implementation programs to control nonpoint source pollution. Except for two elements, this section is identical to the legislation reported by the Committee in the 98th Congress.

<FWPCA § 319> First, it requires a State, in identifying the best management practices which will be undertaken to reduce nonpoint source pollution, to take into account the impact of the proposed practice on groundwater quality. Second, it allows funds reserved under section 319(d)(2)(B) to be used for assessment of the relationship between nonpoint source pollution and groundwater contamination. These provisions reflect the Committee's recognition of the importance of groundwater resources.

<FWPCA § 319> Section 319(a)(1) requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. Such a program must:

[*34] (A) identify waters which are not expected to attain applicable water quality standards or Clean Water Act goals without control of nonpoint sources;

(B) designate categories, subcategories, or particular nonpoint sources that contribute significant nonpoint pollution to those waters;

(C) identify best management practices (BMPs) which will be undertaken to reduce pollution in each category or subcategory taking into account the impact of the proposed practice on groundwater quality.

(D) identify programs to be used to achieve implementation of identified BMPs, by the designated nonpoint sources, including nonregulatory or regulatory programs for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects;

(E) include a schedule containing annual milestones for utilization of the programs identified in (D) and implementation of the BMPs identified in (C) at the earliest practicable date;

(F) assure that existing State laws are adequate to carry out the proposed program, or contain a stated intent to seek additional needed authority together with a proposed schedule; and

(G) identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

<FWPCA § 319> The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loadings in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the waterbody by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the

downstream State may not be adequately addressed, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts in section 319(d)(2)(B). A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, e.g., an estuary lying in two or more States or a lake or river that forms the boundary between two States.

<FWPCA § 319> Subsection (a)(1)(A) requires each State to identify those particular waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained

[*35] under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such waters under subsection 319(a)(1)(A). In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

<FWPCA § 319> The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the Act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading or water quality standards.

<FWPCA § 319> In section (a)(1)(B), the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified in subparagraph (A). The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that make sense in terms of the types of nonpoint source pollution problems and the type program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

<FWPCA § 319> "Particular nonpoint sources" could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

<FWPCA § 319> The term "best management practices" in subsection (a)(1)(C) is left undefined in the bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices (BMP's) already are being implemented. The term encompasses a broad array of management practices that can be undertaken, alone or in combination, to reduce nonpoint sources of pollution. For example, in soil conservation programs over forty BMP's have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants, thereby resulting in cost savings to the farmer.

<FWPCA § 319> Best management practices have also been identified for reducing runoff from urban areas (e.g., storm water containment structures), construction areas (e.g., erosion barriers such as straw bales and dikes), silviculture areas (e.g., careful road placement, culvert-

[*36] ing, grassing of abandoned roads and skid trails), and grazing lands (e.g., herd and vegetation management).

<FWPCA § 319> States are required to consider the impact of management practices on groundwater quality. Because of the intimate hydrologic relationship that often exists between surface and groundwater, it is possible that measures taken to reduce runoff of surface water containing contaminants may increase transport of these contaminants to groundwater. The State should be aware of this possibility, when defining best management practices, especially in aquifer recharge areas.

<FWPCA § 319> Subsection (a)(1)(D) allows a State for flexibility to construct a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose: to achieve implementation of BMP's by the identified sources. The State is expected to show how its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the sources identified in subsection (a)(1)(B). Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by sources. This is a requirement that the State take responsibility for the effectiveness of its program in terms of getting BMP's implemented by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants pursuant to subsection (d), must consider the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

<FWPCA § 319> Milestones for both program implementation and BMP implementation by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutants and differing degrees of difficulty in achieving pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State program.

<FWPCA § 319> In subsection (a)(1)(F), the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as quickly as they can.

<FWPCA § 319> The bill also vests authority with the States in subsection (a)(1)(G) to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effects on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

[*37] <FWPCA § 319> This subsection is based on the current provisions in Executive Order 12372. This Executive Order, issued by President Reagan, establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive Order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive Order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's review to include any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This subsection, in conjunction with subsection (f)(1), builds upon established procedures for State review of Federal Activities. These subsections provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

<FWPCA § 319> Subsection (a)(2) gives the States authority to use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) <FWPCA § 208> waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. Subsection (a)(3) gives the States authority to make use of local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) <FWPCA § 205> and soil conservation districts.

<FWPCA § 319> <FWPCA § 208> In many cases, information and institutional relationships developed under section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States used the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. In such cases, the State is encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208

plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

<FWPCA § 319> Subsection (b) describes the responsibilities of the Administrator of the Environmental Protection Agency subsequent to the submission of a State's proposed management program. The Administrator is given a maximum of six months after receipt of a State program in which to determine its compliance with the requirement of subsection (a)(1). If he determines that it does not comply, he must

[*38] notify the State of any modifications necessary to obtain approval. The State is then given three additional months to submit a revised program, to be approved or disapproved by the Administrator within three months of receipt.

<FWPCA § 319> If the Administrator determines that a State management program meets the requirements in subsection (a)(1), he must approve the program. If he fails either to approve or request modification of a submitted State program within six months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within three months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

<FWPCA § 319> In determining whether the proposed program meets the requirements and objectives of subsection (a)(1), the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The bill does not provide precise criteria for program approval because it is expected that programs may vary from State to State. However, the Administrator's review should involve considerably more than a checklist of required program elements. The Administrator must review submitted programs in light of the objective of the bill, which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, he should be persuaded that the program is capable of meeting this objective.

<FWPCA § 319> Subsection (c) pertains to States which fail to submit a nonpoint source management program consistent with subsection 319(a)(1). After the Administrator notifies such State, he must carry out the requirements of section 319(a)(1) (A) and (B) on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

<FWPCA § 319> The purpose of this provision is to make Congress aware of the extent of nonpoint source pollution problems that are not being addressed because of failure to comply with the requirement of this section that States implement a nonpoint source pollution management program. Thus, there will be available to Congress, in a timely fashion, information on the causes and problems of nonpoint source pollution on a nationwide scale for noncomplying States, as well as complying States. Such information will be needed for future decisions on nonpoint source pollution control.

<FWPCA § 319> Subsection (d) authorizes Federal grants to States to assist them in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this new section. The Federal grants are not to exceed 75 per centum of the costs of implementing the State management program. Non-Federal funds must be equal to at least 25 per centum of the costs being paid for by the Federal grant. This

[*39] requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

Two-thirds of the Federal funds for grants are to be allotted to the several States (as defined in the Clean Water Act) based on the table included in the bill. These funds can then be awarded to States with approved management programs to the extent they contribute the required 25 per centum matching funds. The table in subsection (d)(2)(A) presents a percentage allotment for the fifty States, the District of Columbia, and Puerto Rico, computed on factors of population and acreage in production. No State is allotted less than one-half of one per centum of the total two-thirds grant allotment.

The allotment table also provides that one-tenth of one per centum of the allotted funds shall be available for grants to each of the following: American Samoa, Guam, Northern Marianas, Pacific Trust Territories, and the Virgin Islands.

The amount of one-tenth of one per centum was selected because of the small populations and acreages in production in each of these areas.

<FWPCA § 319> Subsection (d)(2)(B) authorizes the Administrator to award discretionary grants to States (as defined in the Clean Water Act) from the one-third portion of the funds appropriated for grants that he holds in reserve. This provision is intended to give the Administrator authority to provide additional financial assistance in addition to that provided under the allocation formula to States that are seeking to control particularly difficult or serious nonpoint source pollution problems, to implement innovative control methods, or to control interstate nonpoint pollution problems. These grants are to be awarded at 75 per centum of the cost with non-Federal funds paying 25 per centum of the costs.

<FWPCA § 319> This provision is intended to provide an additional financial incentive to States to implement the three types of program initiatives described above. These discretionary funds may be used, for example, to address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to one problem. Also, it may be the case that the allotment foumula imperfectly distributes Federal funds to the States with the most extensive problems. In such cases, the Administrator is expected to use the discretionary funds to achieve more effectively the objectives and requirements of this bill. Additional funding to States with particularly difficult problems will result in more expeditious implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

<FWPCA § 319> The Administrator also is expected to support States' efforts to develop innovative nonpoint source pollution control practices. Again, the States may perceive little incentive to devote program grant resources to innovation and may properly be reluctant to stake program schedules and commitments on the success of innovative practices. In such cases, the Administrator may support the State's innovative efforts from the discretionary funds.

<FWPCA § 319> As discussed above, interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to one State while the environmental

[*40] benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

<FWPCA § 319> In addition, these funds may be used to assess the relationship between nonpoint source pollution and groundwater quality.

<FWPCA § 319> Through these funds are discretionary, the Administrator is expected to use all available funds to support the activities for which they are intended, as described above, in response to applications from the States that meet the requirements and objectives of this bill.

<FWPCA § 518> Subparagraph (d)(2)(B) also authorizes the Administrator to make funds available directly to Indian tribes to implement nonpoint source pollution management programs consistent with subsection (a)(1). Such grants will be for 75 per centum of the costs of implementation with the tribes providing 25 per centum of the costs.

<FWPCA § 319> Subsection (d)(3) provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted in the States according to the table in paragraph (d)(2)(A) in the following fiscal year. This applies to funds not obligated by the Administration under both subparagraphs (A) and (B) of subsection (d)(2).

<FWPCA § 319> Subsection (d)(4) provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

<FWPCA § 319> The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

<FWPCA § 319> Initial program grants are required to be awarded to States whose programs meet the requirements of subsection (a)(1). Subsection (d)(5) requires the Administrator to determine, before awarding a subsequent grant to a State, that such State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. The determination under this subsection is important to assure that States are effectively

implementing their programs and that Federal funds obligated under this section are being used effectively to achieve the objectives of this bill.

<FWPCA § 319> Subsection (d)(6) authorizes the Administrator to request such information, data, and reports as he may deem necessary to determine future eligibility for grants under this section. Under the authority of this subsection, the Administrator may request information about the management of Federal funds obligated to the States in order to assure that the funds are being used in a manner consistent with the requirements and objectives of this bill and with applicable regulations. If a State refuses to submit information, data, and reports requested by the Administrator, the Admin

[*41] istrator should withhold a State grant authorized under this section.

<FWPCA § 319> Subsection (d)(7) authorizes $70 million for fiscal year 1985; $100 million for fiscal year 1986; and $130 million for fiscal year 1987. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this subsection and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer that Agency's obligations under this new section.

<FWPCA § 319> Subsection (e) requires each State to submit an annual report to the Administrator on its progress in meeting the schedule submitted pursuant to subsection (a)(1)(e) of this section and, to the extent possible, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

<FWPCA § 319> Subsection (f)(1) requires the Administrator to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of subsection (a)(1)(G) of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372 (as in effect on September 17, 1983), concerns the State may express about consistency of projects or activities with the State's nonpoint source pollution management program.

<FWPCA § 319> The intent of this provision was explained partially in the discussion of subsection (a)(1)(G) earlier in this report. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

<FWPCA § 319> The purpose of the State review is to assure consistency of these Federal activities with the State's nonpoint source management program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference to the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

<FWPCA § 319> Subsection (f)(2) requires the Administrator to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote in-

[*42] formation sharing among the States and to provide the basis for technical assistance to State programs.

<FWPCA § 319> Subsection (f)(3) requires the Administrator, within three years of enactment, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experiences in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

<FWPCA § 319> The purpose of this report as well as any reports made to Congress under subsection (c), is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This

report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

<FWPCA § 304> The bill amends existing section 304(k)(1) of the Clean Water Act to incorporate a reference to this new section 319. Existing section 304(k)(1) requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 <FWPCA § 208> of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to this section.

<FWPCA § 205> A new paragraph (5) is added to section 205(j) requiring that the Administrator reserve a portion of a State construction grant allocation to support the implementation of the State nonpoint pollution control program pursuant to section 319 <FWPCA § 319> of the Act.

<FWPCA § 205> The Administrator is directed to reserve 1% of a State allocation under section 205(c) or $100,000, whichever is greater. The State may request the use of any amount of the amount reserved by the Administrator. If the State identifies an amount less than the full reserved amount but greater than $100,000, the State may use remaining reserved funds for other purposes under title II of the Act. For example, the State would be able to use the funds for direct grants to municipalities for construction of treatment works. If the State requests use of an amount of the reserve less than $100,000, the difference between the requested amount and $100,000 shall remain available to the Administrator and shall be reallocated to States able to apply funds to implementation of programs under section 319 <FWPCA § 319> and any amount of the reserve greater than $100,000 shall be available to the State for other purposes under this title.

<FWPCA § 205> <FWPCA § 319> Funds available under this section are to be used to make grants to States for the implementation of the management programs to control nonpoint source pollution development under section 319 of this Act. Funds may be used in conjunction with grants established under section 319(d). The Administrator may establish such administrative and procedural requirements as necessary to assure that funds available to States under this section and section 319(d) are

[*43] properly coordinated. Further, the Administrator may require a single application for grants under this section and section 319(d).

<FWPCA § 205> Grants under section 205(j)(5) shall meet the Federal/nonFederal cost sharing requirement set forth under section 319 <FWPCA § 319>. In management of funds under this subsection, however, the Administrator shall not withhold any portion of funds to support special programs.

<FWPCA § 205> <FWPCA § 319> These funds are intended to be a supplement to the funds authorized by section 319, not to replace them. It is essential that adequate section 319 funds be appropriated in order to assure the development of a strong foundation of nonpoint management plans. In the event section 319 funds are not appropriated, the funds reserved under this subsection will permit modest nonpoint programs to be developed. However, the funds made available by this provision alone are too meager to support the level of program development that is needed to manage nonpoint source pollution.

NATIONAL ESTUARY PROGRAM

<FWPCA § 320> The reported bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determine that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

<FWPCA § 320> Estuaries are sensitive and diverse ecosystems. Their varied fish and wildlife resources and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of citizens. Over the last decade, environmental and other resource values of many estuaries, including Narragansett Bay, Chesapeake Bay, Puget Sound, Long Island Sound, and Hudson River/Rasitan Bay, Buzzards Bay, have experienced serious water quality degradation. Because they receive wastes from upstream areas, which are often trapped by estuarine counter currents, estuaries have been described as "sinks or septic tanks" for heavily populated areas.

<FWPCA § 320> The management conferences would be convened for up to five years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution. These conferences shall include representatives of international, interstate, and regional agencies;

state and local governments and entities; interested Federal agencies; affected industries, public and private educational institutions and the general public in the estuarine zone. It is important to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this section shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other dischargers.

<FWPCA § 320> The Administrator shall approve the plan if it satisfies the purposes of section 320, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropri-

[*44] ated under the title II construction grants program, the title VI water pollution control revolving loan program and the section 319 nonpoint source pollution program may be used in accordance with the applicable requirements of the Act, to assist states in implementing programs. This provision does not in any way preclude the use of funds for any eligible project under title II, title VI or section 319 <FWPCA § 319> of the Act.

<FWPCA § 320> The provision authorizes $12 million annually for the management conferences. Expenses related to the administration of management conferences are not to exceed 10% of amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to states, interstate or regional water pollution control agencies to conduct research, monitoring, modeling and other technical work necessary to develop conservation and management plan. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

<FWPCA § 320> EPA has established an Office of Marine and Estuarine Protection through which these provisions are to be implemented. The Office has initiated studies in Narragansett Bay, Buzzards Bay, Long Island Sound, and Puget Sound as authorized by Congress in the EPA's fiscal year 1985 appropriations bill. The Committee expects the Office to continue its involvement and support for these estuaries through this new provision as well as other estuaries as determined by the Administrator.

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

<FWPCA § 402> This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from oil or gas exploration, production, processing, or treatment operations are covered by this provision. This refers generally to field operations, and not to refinery operations which are unlikely to meet the requirement that runoff be uncontaminated. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of conveyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, toxic pollutants, hazardous substances, or oil and grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection. Examples of contamination include heavy metals or suspended or dissolved solids from process wastes or disturbed soils, or salts, surfactants, or solvents used or produced in the oil and gas operations. Background levels of toxic pollutants which are naturally occurring (this is, do not result from disturbed soil or other human activity) would not be considered contamination. Runoff exempted under this subsection from effluent limitations may still be subject to stormwater management practice requirements or other nonpoint source controls.

Reference to mining operations was removed from this section of the subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

[*45] Reference to mining operations was removed from the Subcommittee bill during full Committee markup because EPA is currently developing stormwater runoff regulations to address the situation.

ANTI-BACKSLIDING

<FWPCA § 303> <FWPCA § 402> The bill adds new subsections to section 303 and 402 which clarify the Clean Water Act's prohibition of backsliding on effluent limitations. This prohibition is inherent in the Act's policy of requiring reasonable further progress toward the national goal of the elimination of the discharge of pollutants into waters of the United States <FWPCA § 101>. The intent of the policy is to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards or conditions than those already contained in a permit except in certain narrow circumstances.

<FWPCA § 402> The amendment to section 402 makes explicit that where a permit limitation is based on section 402(a)(1)(B), that limitation may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit. This prohibition recognizes that since these "Best Professional Judgment", or (BPJ), permits are issued on a case-by-case

basis, they can more accurately consider and reflect the circumstances of an individual facility than is possible in a generic national guideline.

<FWPCA § 402> The proposed amendment states that BPJ permits may not be made less stringent "solely" on the basis of a subsequent guideline. This provision is intended to exclude any consideration of a subsequent guideline as a basis for reducing permit limitations. The use of the term "solely" will not allow permittees to use the subsequent guideline as a reason for obtaining less stringent limitations. However, adoption of different limitations could possibly occur based on other very limited, legally permissible circumstances specified in the permit modification regulations.

<FWPCA § 402> Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

<FWPCA § 402> The amendment to section 402 also addresses the antibacksliding issue in the context of permits developed on the basis of water quality based effluent limitations under section 301(b)(1)(c) <FWPCA § 301> or section 303(d) or (e) <FWPCA § 303>. These permits may be renewed, reissued or modified on the basis of subsequently revised waste load allocation formulas (WLAs) but only if those WLAs are in compliance with a new section 303(d)(5) <FWPCA § 303>.

<FWPCA § 303> Under paragraph (5)(A) of the new subsection, where the applicable water quality standard has not been attained, the total maximum daily load of pollutants or other WLA may be revised only under two circumstances. First, the cumulative effect of the revised effluent limitations based on the total maximum daily loads or

[*46] WLA must assure attainment of water quality standards. Backsliding is prohibited for any particular point source except where the effluent limitations in the permits of other point sources discharging into the same receiving waters are contemporaneously revised to be more stringent, so that the cumulative effect of all of the contemporaneous revisions would achieve attainment of water quality standards in the receiving waters. Also, in considering the "cumulative effect" of these permit revisions, EPA or an approved NPDES State agency must consider the impacts on water quality standards and designated uses in waters downstream of the receiving waters. Backsliding cannot be allowed if the cumulative effect of the revised permit effluent limitations interferes with the attainment or maintenance of water quality standards or the protection of designated uses of downstream waters.

<FWPCA § 303> Second, the daily maximum load of pollutants or the WLA may only be revised if the designated use of the receiving waters which is not being attained is changed in accordance with the water quality standards regulations established under section 303.

<FWPCA § 303> Under paragraph (5)(B) of the new subsection, where water quality in the receiving waters exceeds or equals water quality standards or the levels needed to protect the actual or designated uses of the receiving waters, backsliding from water quality-based effluent limitations is prohibited except to the extent EPA or an approved NPDES state agency proceeds according to the procedures and applying the decision standard of the antidegradation policy established by section 303 of the Act and implemented by 40 C.F.R. sec. 131.12(1984), and the proposed backsliding is found to be consistent with this antidegradation policy. Therefore, where such water quality exists, even because of the withdrawal of any existing discharge from stream, increases in pollutants from other sources above permit limits can be allowed only where the intergovernmental coordination and public participation provisions of the State's continuing planning process are followed, and the State finds that lower water quality is necessary to accommodate important economic or social development in the area.

SEWAGE SLUDGE

<FWPCA § 405> Section 405 of the Clean Water Act is amended to establish a timetable for promulgation of toxic contaminant criteria for sewage sludge use and disposal, to establish a public health and environmental protection basis for these criteria, and to provide authority to implement and enforce criteria for toxic and other pollutants.

<FWPCA § 405> A new section 405(d)(2) requires the Administrator to identify by April 1, 1986, toxic pollutants which may be present in sewage sludge in concentrations which may affect public health or the environment. These toxic pollutants are those about which the Administrator currently has available information on the toxicity, persistence, concentration, mobility or potential for exposure on which to base use and disposal criteria. The criteria are to be promulgated by March 1, 1987. Toxic sludge contaminants not included on this list are to be identified by February 1, 1987, and criteria promulgated by December 15, 1987.

[*47] <FWPCA § 405> This phased approach reflects the fact that the Agency already has sufficient information to establish criteria for some contaminants and some sludge uses, while information may be lacking for other contaminants or uses. The amendment requires the Agency to proceed with regulation where it has the basis to do so. A longer time frame is provided for pollutants where information is not now available. The deadlines represent a substantial extension of the original 1978 deadline in section 405(d) and are based on the Agency's present timetable for establishing the required criteria.

<FWPCA § 405> In some cases, the Administrator may not find it feasible to establish numerical criteria for certain contaminants and disposal methods. In such cases, the Administrator may establish a design, equipment, management practice or operational standard in lieu of numerical criteria. This alternative approach must be adequate to protect public health and the environment from any reasonably anticipated adverse effects. This provision is intended to give the Administrator a measure of flexibility, but he is expected to justify any deviation from the presumptive requirement for numerical limits.

<FWPCA § 405> New section 405(d)(2)(C) requires compliance with these criteria within twelve months of their promulgation. If new pollution control technology must be constructed, the compliance deadline is extended to two years. In recognition of the fact that some compliance deadlines for toxic contaminants in the second phase of regulation may extend to late 1989, new section 405(d)(2)(E) requires the Administrator to impose permit conditions or to take other steps he deems necessary to protect against adverse effects from contaminated sludge prior to the promulgation of the required regulations.

<FWPCA § 405> **Section 405(e) is amended to expand the applicability of the 405(d) sludge use and disposal regulations to "any person" and to broaden the scope of the section beyond publicly owned treatment works to include any treatment works treating primarily domestic sewage. The purpose of the first change is to impose the regulations on those that actually dispose of the sludge, which may not be the treatment works' owner or operator. The second change is intended to better reflect Congress' intent that section 405(d) requirements apply to septage treatment and disposal systems and privately and Federally owned treatment works which treat primarily domestic wastes.** It is not intended to extend section 405 requirements to treatment works owned by industries which receive a portion of their flow from industrial manufacturing and processing.

<FWPCA § 405> The current language of section 405 does not specifically define compliance mechanisms. A new subsection (f) is designed to provide for this by allowing the 405(d) guidelines to be imposed through the NPDES permit program under section 402 <FWPCA § 402> of the Clean Water Act, a comparable Federal permit program, or an approved State permit program. To be approved, a State's permit program must have substantive standards at least as stringent as those contained in the 405(d) guidelines. These alternative programs may be used when the Administrator determines that they will assure compliance with applicable requirements of section 405. **New subsection (f)(2) authorizes EPA to issue a separate permit solely to impose section 405(d) requirements if the treatment works, such as a land**

[*48] treatment system, does not require a discharge permit under one of the authorities listed in subsection (f)(1) and is not covered by an appropriate State permit.

<FWPCA § 405> Section 405(d) guidelines that are incorporated into a Federal or State permit would be enforceable in the same manner as other permit provisions under the applicable statutory permit-issuance authority. For example, noncompliance with a sludge disposal requirement contained in a hazardous waste disposal permit issued under Subtitle C of the Resource Conservation and Recovery Conservation and Recovery Act would be subject to enforcement under section 3008 of RCRA. Similarly, a sludge disposal requirement in an ocean dumping permit issued under the Marine Protection, Research and Sanctuaries Act would be subject to enforcement under section 107 of MPRSA. **Notwithstanding the issuance of a permit that implements a section 405(d) guidelines, the guideline itself would remain directly enforceable under sections 309 <FWPCA § 309> and 405(e) of the Act**.

INTERSTATE DISPUTE RESOLUTION

The bill as reported amends section 402 of the Clean Water Act to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will cause or contribute to a substantial violation of water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to

the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

New Section 402(d)(2)(B) requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any substantial violation of a water quality requirement (including any standard) or adverse effect on public health of the downstream State would result from the issuance of the permit. If so, the Administrator must object to the issuance of the permit or provide specific modifications to the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b). Thus a State dissatisfied with the Administrator's decision could seek review in the U.S. Court of Appeals for the appropriate circuit.

In addition to the procedure under section 402(d)(2)(B) for resolving disputes over proposed permits, under new section 402(b)(1)(E) a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) or adversely affecting the public health of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations under section 402(b)(5) and if they are not accepted, section 402(d)(2)(B) governs.

[*49] A new section 511(e) is added by the reported bill, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism of section 402(d)(2)(B). Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedures Act, whether such pollution is causing a substantial violation of a water quality requirement (including any standard) of the downstream State or adversely affecting the public health of such State.

If the Administrator so determines, the Administrator must issue an order within 90 days restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable. This broad authority is comparable to that under section 303 of the Clean Air Act or section 7003 of the Solid Waste Disposal Act, although those are limited to situations involving imminent and substantial endangerment. The Administrator, in fashioning remedies under this authority, should exercise prudence to assure that the relief granted is comparable in scope and magnitude to the violation and the injury. In addition to the adjudicatory hearing called for in section 511(e), the Administrator may wish to convene a more informal management conference involving the affected States and municipalities to frame the issues and facilitate a resolution. Such conferences could be similar to the enforcement conferences under the Federal Water Pollution Control Act prior to the 1972 amendments. The determination and any administrative order issued under section 511(e), however, would be the responsibility of the Administrator.

In no case shall orders or other relief based solely on new section 511(e) supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This new subsection does not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

These dispute resolution mechanisms are used only where the violation of the water quality requirement is found by the Administrator to be substantial. In determining whether a water quality requirement violation is "substantial," the Administrator may consider factors such as, but not limited to, the following: the volume of the discharge, the frequency and duration of the violation, as well as consequences of the violation (in some cases, for example, a violation which is not "substantial" in volume, could be "substantial" in terms of consequences). This assures that these provisions are not used by downstream States in an attempt to alter the water quality standards of upstream States in the absence of a significant pollution problem emanating from upstream States.

[*50] Economic or other competition between States is an inappropriate motive and impermissible grounds for the use of either section 402(d)(2)(B) or section 511(e). In weighing the equities under either section, the Administrator should not allow the imposition of controls in the upstream State, at the instance of a downstream State, which the downstream State is not willing to impose on similar sources within its boundaries affecting the same water body.

PRESERVATION OF OTHER RIGHTS

The reported bill amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal statutes. In addition, new subsection (e)(3) provides that States or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which the cause of action arose. This will provide access to a neutral forum, the Federal courts, for resolution of interstate disputes, for States and municipalities which are not now covered by *28 U.S.C. 1332,* the statute granting jurisdiction of Federal courts based on diversity of citizenship of the parties.

The purpose of this section is to preserve legal rights which exist by virtue of State statute or common law or other Federal statutes. This amendment does not create new rights or expand those which previously existed. New subsection (e)(3) places a State or municipality in the same position as one of its citizens for the purpose of gaining access to Federal court under the diversity of citizenship jurisdiction. It is not intended to create any new substantive rights or affect the application of choice of law rules by the Federal courts.

HAMPTON, N.H. AD VALOREM TAX AMENDMENT

<WQA87 § 215> This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977. The Committee finds that Hampton's ad valorem tax system was in place and in operation as of this date, and therefore is deemed to have been dedicated as of this date. The Committee also finds that Hampton developed a user fee tax system only under duress, and such system was never implemented. It is the Committee's understanding that Hampton's ad valorem tax meets all the remaining requirements of section 204(b)(1) <FWPCA § 204> and other related regulations, and the Agency is to review the system for compliance.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

<WQA87 § 511> The reported bill contain provisions which limit the volume of raw sewage discharged by the city of New York. The limitations

[*51] apply to the drainage areas of two sewage treatment plants currently under construction, North River in Manhattan and Red Hook in Brooklyn.

<WQA87 § 511> Raw discharges from the North River drainage area will be limited after August 1, 1986, if the North River plant has not achieved advanced preliminary treatment by that deadline, as required by a consent decree signed on December 29, 1982 by the United States, the State of New York, and the City of New York. The raw discharge in any 30 day period may not exceed 30 times the average daily raw discharge during a specific one year base period. The base period is the year ending on March 15, 1986, or on the date the plant becomes operational, whichever is earlier.

<WQA87 § 511> Raw discharges from the Red Hook drainage area will be similarly limited, except that the deadline and the base period are one year later than for the North River drainage area.

<WQA87 § 511> The Administrator shall waive these limitations if an increased discharge constituting a violation is caused by certain events, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the event. These events include an interruption in plant operation due to circumstances beyond the control of New York City, and precipitation. In addition, a waiver shall be granted in the event that a violation is due to a random or seasonal variation in flow, and that any sewer hookup occurring or permit granted after July 31, 1986, for North River and July 31, 1987, for Red Hook is not responsible for such violation.

<WQA87 § 511> The Administrator is also required to extend either deadline if necessary to account for circumstances beyond the control of New York City. A deadline may not be extended on the basis of a lack of Federal funding under section 201 <FWPCA § 201> of the Federal Water Pollution Control Act, a lack of New York State or New York City funding, or a policy decision by New York State or New York City to delay the achievement of advanced preliminary treatment.

<WQA87 § 511> For enforcement purposes, violations of the discharge limitations are to be treated as violations of section 301 <FWPCA § 301> of the Federal water Pollution Control Act. If the Administrator makes a determination that a violation has occurred and that there is no basis for a waiver or deadline extension, the Administrator must start an enforcement action under section 301 <FWPCA § 301> within another 30 days.

<WQA87 § 511> This section states that it is the sense of the Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

<WQA87 § 511> Under a "sunset" provision, any limitations remain in effect in a drainage area until the treatment plant for that area has achieved advanced preliminary treatment for six consecutive months.

<WQA87 § 511> The Administrator is responsible for performing all flow monitoring needed to determine the discharge limitations. The Administrator must, by July 31, 1986, for North River and July 31, 1987, for Red Hook, establish the methodologies and collect any information necessary for making determinations whether a waiver or deadline extension will be required. If the Administrator detects a violation, the Administrator must determine within 30 days whether a waiver or deadline extension is required. New York City is respon-

[*52] sible for providing any additional information requested by the Administrator in order to make this determination.

CHESAPEAKE BAY

<FWPCA § 117> The Administrator is required to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment deposition on the Bay, c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

<FWPCA § 117> The Administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biennally thereafter.

<FWPCA § 117> Management of the Chesapeake Bay Program has been assisted by a State/Federal committee, including water quality officials from the major States in the Chesapeake Bay Basin. Implementation of the results of this Chesapeake Bay Study will require a partnership between the Federal Government and the individual States. Because of the involvement of water quality managers in guiding the policy and program decisions of the Chesapeake Bay Program, the recommendations are likely to be more realistic and the managers are likely to be more committed to implementation of the results.

<FWPCA § 117> The findings of the Chesapeake Bay Program underscore the fact that the Chesapeake Bay is an ecosystem which ignores State boundaries. In addition to individual State commitments to implementation of the Chesapeake Bay Program recommendations. The States and the Federal Government must make the commitment collectively to continue interstate communication, cooperation, and coordination on the Chesapeake Bay.

<FWPCA § 117> In an unusual, and perhaps unprecedented way, the U.S. Environmental Protection Agency relied on the State/Federal Management Committee to set program directions and make policy decisions. The Chesapeake Bay Program Management Committee is an excellent model for Federal/State cooperation in environmental research/management studies.

<FWPCA § 117> The Chesapeake Bay Program was initially structured as a research program with little or no emphasis on management implications. Preliminary results of the research showed that the orientation of the research scientists had been to describe the current conditions of the Bay in objective, quantitative terms rather than to point out problems, explore causes, and suggest solutions. The

[*53] Chesapeake Bay Program Management Committee members, particularly the State water quality managers, insisted that the scientific researchers had a responsibility to tell them what needed to be done to reverse the declining resource trends which they had identified in the Bay.

<FWPCA § 117> Several products of the Chesapeake Bay Program resulted from this pressure by the Management Committee which were not initially conceived when the Chesapeake Bay Program began.

1. The synthesis of the findings of 45 individual scientific research reports into a single report which "pushes" the science to suggest management implications.

2. A comprehensive report characterizing the overall environmental health of the Bay through a statistical analysis of trends and the current condition of many water quality and fisheries productivity parameters.

3. A final Management Report recommending actions to maintain and improve the health of the Bay.

<FWPCA § 117> The success of the Chesapeake Bay Program so far, in maintaining the support of Congress and the States, can be, in large part, attributed to the Management Committee. The future likelihood that the Chesapeake Bay Program recommendations will be implemented is probably due almost exclusively to the Management Committee. By their intensive participation during the Chesapeake Bay study, the State and Federal managers have shaped a product that reflects their needs, and is something they can readily take action on.

GREAT LAKES

<FWPCA § 118> A new section 118 establishes by law the Great Lakes National Program Office within the EPA. Such an office has already been established administratively and is located in Chicago. This section more clearly defines its duties, enhances its accountability to Congress, and authorizes funding.

<FWPCA § 118> In 1982 the General Accounting Office published a report on U.S. compliance with the Great Lakes Water Quality Agreement of 1978, an agreement with Canada that specifies detailed water pollution control goals. The report concludes that the U.S. is failing to meet its commitments, especially with respect to toxic chemicals and nonpoint source pollution. This is due in part to the absence of a comprehensive approach to Great Lakes Water Quality.

<FWPCA § 319> The Program Office is given three basic duties: developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978, establishing a water quality surveillance network, and serving as the liaison to the Canadian members of the International Joint Commission and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for control of nutrients, including phosphate, and toxic chemicals. The nutrient program will incorporate any actions taken in the Great Lakes basin under the nonpoint source pollution program established in section 319 of the Clean Water Act and will include nutrient monitoring. The toxic chemicals program will emphasize the removal of pollutants from bottom sediments.

[*54] <FWPCA § 118> The EPA's annual budget submission to Congress is to include a funding request for the Program Office as a separate line item.

<FWPCA § 118> This section requires the Administrator to submit an annual Great Lakes report to Congress. The report will describe recent progress toward implementing the Great Lakes Water Quality Agreement of 1978 and the system of water quality surveillance, prospects for improving water quality, and planned efforts to implement the agreement.

<FWPCA § 118> To enhance cooperation among agencies, the head of each Federal agency involved in programs related to the Great Lakes is required to submit an annual report to the Administrator. The reports will describe the agencies' activities affecting compliance with the agreement.

This section authorizes $10,000,000 per year for fiscal years 1986 through 1990 for the Great Lakes National Program Office to carry out its duties under the section.

CLEAN LAKES

<FWPCA § 314> Section 314 of the Act is amended to provide for effective reporting of lake quality by State agencies on a regular basis. Reports are to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

<FWPCA § 314> The Committee reaffirms its belief that lakes are a vital national resource. Fifty percent of the nation's water supply comes from lakes and lakes offer outstanding recreational opportunities. There is evidence, however, of declines in lake quality. A recent survey by the North American Lakes Management Society found that 4,200 lakes in 38 States suffer impaired uses.

<FWPCA § 314> Despite this evidence there is currently no comprehensive and complete picture of the quality of lakes nationally. In addition, there is no clear description of trends in lake quality. Section 314 of the Act originally provided for single lake report from States. These reports were completed and submitted a number of years ago and the

material in the reports is dated. The amendment to section 314 will provide for regular and complete reporting on lake quality and will be a basis for future assessment of the condition of lakes and the need for protection programs.

<FWPCA § 314> To avoid unnecessary reporting burden, the lake quality reports will be included in the State water quality report prepared every two years under section 305(b) <FWPCA § 305> of the Act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the Act.

<FWPCA § 314> Finally, section 314 is amended to include saline lakes under the Clean Lakes Program.

LAKE PEND OREILLE STUDY C

<WQA87 § 525> A comprehensive water quality investigation of the Clarks Fork/ Lake Pend Oreille system in Idaho and Montana is needed to identify sources of pollution and the remedial measures necessary to protect and enhance the water quality of this important resource. The Clarks Fork/Pend Oreille system is a primary feature of the environment of northern Idaho, western Montana and eastern Washington. The river drains an area of more than 22,000 square

[*55] miles. The lake, with a surface area of 125 square miles is Idaho's largest. The principal inflow from the lake is the Clarks Fork River.

<WQA87 § 525> Perceived deterioration of water quality in the lake and known pollution sources in the Clarks Fork drainage (including three "Superfund" sites) led to the initiation, in 1984, of water quality studies by both the states of Idaho and Montana. These studies are still in progress but it is clear that the states do not have the resources to do the total job. An adequate study must include (1) a thorough evaluation of the source and rate of nutrients, sediments and toxic materials entering the Clarks Fork River and their downstream movement and (3) the development of a comprehensive, coordinated water quality management plan to assure protection in the future.

<WQA87 § 525> The studies authorized in this section should supplement the ongoing State efforts and help assure protection of this immensely valuable regional resource.

TITLE II

CONSTRUCTION GRANT AUTHORIZATION C

<FWPCA § 207> The bill amends section 207 of the Clean Water Act to authorize $2.4 billion annually for the Title II construction grants program for fiscal years 1986 through 1988, and not to exceed $1.2 billion annually for fiscal years 1989 and 1990. It is the intent of the Committee that funding for the Title II construction grants program be concluded as of 1990. Therefore, even though other section of this bill authorize Federal funds for capitalizing State Revolving Funds through 1994, no further Title II construction grants program authorizations are provided after fiscal year 1990.

<FWPCA § 207> The bill provides States and municipalities with the clear intent that the transition to State/local funding initiated in the 1981 amendments will be completed during the period of this authorization. By signaling the end of the Title II construction grants program, States and municipalities will be able to plan effectively for assumption of increased funding responsibilities. In conjunction with provisions for State Revolving Funds <FWPCA § 601>, the bill encourages States and municipalities to take all actions needed to assure the adequate and timely planning, design, financing, construction, operation, maintenance, expansion, and replacement of needed wastewater treatment facilities.

<FWPCA § 207> The bill amends section 205(e) of the Clean Water Act by extending authorization dates through 1994.

ALLOCATION

The reported bill amends section 205(c) <FWPCA § 205> of the Act to establish an allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization. The allotment formula in the reported bill states as a 6-place decimal fraction the share of the total appropriation each State will receive in each of the fiscal years for which it is applicable. The following table contains the allotment share for each State, plus the amount in dollars each State

[*56] will receive if the authorized level of $2.4 billion per year is appropriated.

[chart]

[*57] The allotment formula in the reported bill is based on each State's needs for sewage treatment facilities, as expressed in the 1984 Needs Survey. This survey, conducted by the Environmental Protection Agency with the cooper-

ation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the Act.

The formula is based on each State's aggregate needs for facilities providing secondary treatment (Category I of the Needs Survey), advanced waste treatment required by water quality standards (Category II), and correction of infiltration or inflow problems (Category IIIA), and for interceptor sewers (Category (IVB)). These are the only categories of treatment works fully eligible for funding under title II. In restricting eligibility to these categories of facilities in the 1981 amendments to the Clean Water Act, the Congress made a judgment that on a national basis these are the facilities most related to attainment of the water quality goals of the construction grant program. Also, these are the core treatment facilities which must be completed in the next few years to meet the Municipal Compliance Strategy and the 1988 secondary treatment deadline for municipalities.

Table 2 illustrates the State-by-State distribution of needs in these four eligible categories, according to the 1984 Needs Survey. In order to reach the allotment formula contained in the reported bill, several additional steps were performed on the raw needs shares reflected in this table. First, those States with very small remaining needs were identified. These are the States which need somewhat more than an allotment strictly on their share of needs, in order to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities. Also, especially for those among these States whose share would be dropping substantially because of changes in needs and allotment formulas, a larger share is needed to assure program momentum and avoid disruption.

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of one percent. This is somewhat arbitrary, and diverts a larger share of the total to these smaller States than would result from their raw needs. Because the number of such States is growing, as the construction grant program nears its objectives, a mechanism was sought for assuring adequate program size for smaller States. This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

The allotment formula in the reported bill accords this treatment to two groups of States with small shares of eligible needs. The 13 States whose individual needs are less than one-half of one percent of the total receive an aggregate allotment of 8.5 percent. This compares to the 6.5 percent these States would receive in the aggregate if the historic minimum allotment approach were followed, although the actual needs for these States constitute only 3.7 percent of the total. The eight States whose individual needs are less than one percent of the total but greater than one half of one percent, receive an aggregate allotment of 9 percent. The actual needs of these States constitute 6 percent of the total.

[*58] The actual needs of the States in the group with the lowest needs vary by 850 percent. Actual needs of the highest State in the second group are nearly twice those of the lowest State. A method was sought to reduce the variation among States in these groups, in the allotment of the increased share assigned to the groups, without resorting to an arbitrary minimum share. A standard statistical approach to reducing such variation is to consider the relationship of the logarithms of the numbers, rather than the relationship of the numbers themselves. Therefore, the allotment of funds among States with an actual individual share of total eligible needs of less than one-half of one percent is based on the logarithm of those actual needs as a fraction of the sum of the logarithms of actual needs for all the States in that group. This is illustrated in Table 3.

Because the States with an actual individual share of total eligible needs of one-half of one percent to one percent exhibit less variation, and have program levels closer to those of States with larger needs, a method was employed to reduce that variation, but to a lesser degree than the use of logarithms. The allotment among States in this group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of actual needs for all the States in that group. This is illustrated in Table 4. The cube of the logarithm was selected because it reduced the variation from that among actual needs, but not as much as the simple use of logarithms would have produced.

The remaining States, with individual actual needs in excess of one percent of total eligible needs, are allotted 82.5 percent of appropriated funds. So that no State in this group receives an allotment less than that of a State with smaller actual needs, as a result of the overconcentration of funds in the groups of States with smaller needs, the allotment formula in the reported bill provides a minimum 1.25 percent for five States (Alabama, Arizona, Connecticut, Mississippi, and New Hampshire).

Because of changed eligibilities and greatly decreased needs since the 1980 and 1976 Needs Surveys on which the previous allotment formula was based, a number of States would suffer dramatic losses compared to that formula if an allotment based solely on eligible needs were adopted. To minimize the program disruption which would result from

such reductions, the allotment formula in the reported bill contains a "hold harmless" provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula. Eleven States benefit from this "80 percent hold harmless" provision: California, Illinois, Indiana, Maryland, Michigan, Minnessota, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The money to bring these States up to the hold harmless level, of course, is derived by reducing the shares of other States with individual needs in excess of one percent of total eligible needs.

The 1981 amendments directed the preparation of a needs survey in which the allotment of sewage treatment construction funds could be related to water quality improvements, rather than merely to the estimated dollar costs of proposed treatment facilities. The 1981 Needs Survey does contain a water quality assessment, but information was not available in sufficient detail on

[*59] which to base State-by-State allotment. Available information is uneven, and most useful aggregated at the national or hydrologic regional level. Future needs surveys will refine information on the water quality improvements associated with different facility investments. In the meantime, currently available information must continue to rely on the costs of facilities needed to meet the secondary treatment requirement and more advanced treatment levels needed to meet water quality standards as a surrogate for water quality impact.

One matter of concern to the Committee is the effect of future investments in wastewater treatment facilities on water quality of the Great Lakes, a valued national resource. In addition, the United States has obligations to protect and enhance water quality in the Great Lakes under the 1978 Canada-United States Great Lakes Water Quality Agreement. That Agreement commits the United States to provide financial assistance to construct publicly owned waste treatment works in the Great Lakes Region.

According to the 1984 Needs Survey, year 2000 total needs for the Great Lakes hydrologic region are $7.850 billion. This represents 9.16 percent of the year 2000 total needs for the United States (although the population served by these facilities is 8.1 percent of the U.S. total population served by needed facilities). Under the allotment formula in the reported bill, the seven States bordering the Great Lakes receive over 26 percent of annual appropriations, although the selection of specific projects within each State is a matter of State priority. According to EPA, since 1972, $15.3 billion in Federal construction grants have been obligated in the Great Lakes States, of which $5.6 billion has been in subbasins tributary to the Great Lakes. Since 1978, an estimated $3.5 billion in grants has been awarded in subbasins tributary to the Great Lakes. Historically one-half to two-thirds of that was for categories of facilities currently fully eligible.

There is great variation among the Great Lakes States in the proportion of State needs which are in basins tributary to the lakes themselves, and in the absolute size of those needs. Subbasins tributary to the Great Lakes in Minnesota report $5 million in year 2000 total needs, while those in New York may exceed $2.5 billion.

[*60] [chart]

[*61] [chart]

[*62] [chart]

[*63]

ELIGIBILITIES AFTER 1990

The bill amends three sections of the Act to provide consistency between programmatic aspects of title II and the funding phaseout. The bill amends section 202(a)(1) <FWPCA § 202> of the Act to prohibit grandfathering of the 75 percent Federal share for grants for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 204(c) of the Act is amended to prohibit grandfathering of reserve capacity for phased or segmented projects that receive a grant award on or after October 1, 1990. Section 205(g)(1) <FWPCA § 205> of the Act is amended to extend the Administrator's authority to reserve four percent of the State's allotment through fiscal year 1994 for the purpose of making grants to States for the management of the delegated construction grant program. This is to assure that management funds will be available for any project constructed within the legal obligation period after 1990.

<FWPCA § 202> <FWPCA § 205> These amendments will affect the eligible costs of projects that receive a grant out of the 1990 allotment in 1991 or deobligated funds. The scope of the potential projects affected by these prohibitions are phased or segmented projects that receive their first Federal grant before October 1, 1984. These changes will focus the limited Federal spending authority on backlogged core treatment needs (secondary treatment, advanced treatment, inflow-infiltration correction, and new interceptors) and enable the limited Federal dollar to reach more projects in more communities.

DESIGN-BUILD PROJECTS

<FWPCA § 203> Section 203 of the Act is amended to provide that communities applying for construction grant assistance may enter into an agreement with the Administrator to erect treatment works under alternate "design-build" grant management procedures. This alternate management procedure allows applicants to contract for both the design and construction of treatment works, thereby avoiding several costly review and bidding requirements.

<FWPCA § 203> The agreement between the applicant and Administrator provides for a specified Federal contribution, start and end dates for construction, effective project management procedures, and a bond to assure performance.

<FWPCA § 203> The design-build approach to project management has several advantages. By bringing together the designer and the builder at the start of a project, they can work as a team to tailor construction plans and designs to the specific project and the contractor's construction methods and schedule. This results in efficiencies and savings which are not achieved in separate design and construction. In addition, by better coordination of design and construction, projects can be constructed more quickly and, therefore, at a lower cost.

Design-build project management procedures are limited to those projects which have a total cost of less than $8 million and are specified, simple treatment systems (e.g., aerated lagoons) <FWPCA § 203>. In addition, not more than 25 percent of a State grant allocation may be used under this alternate management procedure. [*64]

INNOVATIVE AND ALTERNATIVE PROJECTS

<FWPCA § 205> The bill amends section 205(i) of the Act to extend through fiscal year 1990 the requirement that a percentage of allotted funds be reserved to be used to increase the Federal share for innovative and alternative projects.

<FWPCA § 205> The purpose of maintaining the reserve is to encourage the utilization of innovative and alternative technologies.

MARINE CSO'S AND ESTUARIES

<FWPCA § 205> The reported bill amends section 205 of the Act by adding a new subsection. Subsection (1) provides that the Administrator shall reserve, prior to allotment, one and a half percent of the sums authorized to be appropriated under section 207 <FWPCA § 207> of the Act for marine combined sewer overflow problems and estuaries. Two-thirds of the reserve, or one percent of the construction grants appropriation, shall be available for marine CSO correction where lower levels of water quality exist in marine bays and estuaries as a result of discharges by marine CSO's. The remaining one third of the reserve, or one half of one percent of the construction grants appropriation, shall be made available to supplement the funding of the newly established National Estuary Program pursuant to section 320 <FWPCA § 320> of the Act. Section 320 <FWPCA § 320> provides for the establishment of an estuarine management conference to address water quality problems in estuaries by developing and implementing comprehensive conservation and management plans. The total reserve authorized by section 205(1) is subject to the two year period of availability for obligation as provided for in section 205(d).

<FWPCA § 205> The estuaries of the U.S. are vital in the ecosystems which have been detrimentally affected by the municipal pollution problems of the ever increasing urban populations residing on their shores and other pollution problems such as industrial point source pollution and agricultural runoff nonpoint source pollution. Two-thirds of the reserve is focused on municipally generated pollution due to marine CSO discharges. One-third of the reserve may supplement the funds available for the National Estuarine Program <FWPCA § 320>.

INDIAN TRIBES

<FWPCA § 518> The bill amends title II of the Clean Water Act to accord Indian tribes assistance in the development and implementation of wastewater treatment facilities, including a one-year study of sewage treatment needs of Indian lands. Beginning in fiscal 1987, the section authorizes the use of up to one-half of one percent of the construction grants program for grants to Indian tribes to address unmet needs identified by the Administrator's report. This section also adds a definition of Indian tribes to the definitions contained in section 502 <FWPCA § 502> of the Act.

<FWPCA § 518> Title II of the Act is amended to direct the Administrator of the Environmental Protection Agency to conduct a study, in coordination with the Director of Indian Health Services, Department of Health and Human Services, to assess sewage treatment needs to serve Indian tribes. Additionally, this study will identify the degree to which such needs will be met through funds allotted to States

[*65] under the construction grants program, and identify any obstacles which may prevent these needs from being met. Within one year of the date of enactment of the Clean Water Act amendments of 1985, the Administrator is

directed to submit such report to Congress. However, if timely, the report may be submitted as part of the 1986 Needs Survey.

<FWPCA § 518> The Act is further amended to make tribes eligible, beginning in fiscal 1987, for direct EPA construction grants to address unmet needs identified in the Administrator's report to Congress. The Administrator is authorized to treat Indian tribes as States to the degree necessary to allot funds for sewage treatment needs, and is authorized to waive, where necessary, the non-Federal cost-sharing requirement, consistent with the trust responsibility and relationship which exists between tribal governments and the Federal Government.

<FWPCA § 518> Finally, this section adds to the Act a definition of Indian tribes specifying that, for the purposes of the Clean Water Act, the Indian tribes to be covered by the provisions of this section include any Indian tribe, band, nation, or other organized group or community, including an Alaska Native village, which is recognized as eligible for the special programs and services provided by the United States. The definition does not include Alaska Native regional or village corporations, which are organized for other purposes.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

<FWPCA § 601> The bill adds a new title VI to the Clean Water Act to provide for the establishment of State-administered Water Pollution Control Revolving Funds (SRFs). The creation of SRFs through a program of capitalization grants to States will provide a feasible transition to State and local financing of municipal wastewater treatment facilities. The intent of title VI is to set up viable funding alternatives to the current grant mechanism. To that end, the provisions of title VI have been designed to assure the formation of financially-sound, environmentally-oriented revolving loan programs. The following major provisions and principles must be understood in examining the intent of title VI.

<FWPCA § 602> To complete the remaining core municipal wastewater treatment needs, funds must be dedicated as quickly as possible. This policy is implemented through sections 602(b)(4) and 602(b)(5) which require that binding loan agreements for the use of Federal funds be completed within one year of receipt of such funds, and that the projects financed with such loans comply with the eligibility and other requirements that are applicable to grant-funded projects under title II. In addition to meeting title II eligibility requirements, a State must also commit to first using its revolving fund resources in financing the construction of municipal treatment works needed to meet the 1988 municipal compliance deadline. Title VI provisions also help achieve the objective of timely compliance by allowing a municipality to proceed with its own funds to begin construction immediately and still benefit at a later date from an attractive refinancing package the SRF might offer. Thus, the shift to a loan program need not constitute impediments to compliance with the goals of the Act. On the contrary, the refi-

[*66] nancing feature of the revolving loan program would eliminate the disincentive that now exists with the grants program.

<FWPCA § 603> The Federal contribution of funds is premised, in part, on the creation of SRFs which will make new loans from the repayment of an initial set of loans. In addition to targeting funds to new municipal wastewater treatment projects as expeditiously as possible, the State must commit the funds in a form that will generate needed cash flows for making future loans. Section 603(b)(4)[603(b)?] and 603(c)[(4)?] of title VI are intended for States to make sound loans on reasonable terms that will generate repayments. It is not the intent of the bill that States leave significant amounts of funds idle in investment accounts, nor is it the intent that the States assume any local loan through default or develop extensive nonrevenue generation agreements with municipalities. To assure sound loans and limits on future State liability, all transactions must be backed by approved local agreements as contracts with SRFs. SRFs should have authority to require adequate local user charges to address local nonperformance or default.

It is important that State managers develop adequate revenue streams from the projects initially funded by the revolving fund <FWPCA § 603>. Once maintenance of progress on the completion of all projects needed to meet the enforceable requirements of Act is assured States may finance other municipal wastewater needs or capital components of nonpoint source control and estuaries programs under section 319 <FWPCA § 319> and 320 <FWPCA § 320> of the Act <FWPCA § 602>.

AUTHORIZATION, ALLOTMENT, AWARD AND PAYMENT

<FWPCA § 604> Section 601 authorizes $8.4 billion in the period beginning fiscal year 1989 and ending fiscal year 1994 <FWPCA § 607> and provides that appropriations from the authorized amounts be allotted among the States in accordance with the same allocation formula that is used to allot title II construction grant funds. Funds allotted under a grant award in a given fiscal year must be made by the end of that fiscal year. Funds allotted to a State that have not

been awarded by the end of the fiscal year that such funds became available will be reallotted among the States that have already established acceptable State Revolving Funds.

<FWPCA § 602> The Administrator is authorized to award a capitalization grant to a State if an agreement that meets the terms of section 602 has been reached. Payments will be made based on a schedule that a State negotiates with the Administrator and shall not be more frequent than quarterly <FWPCA § 601>. In developing a schedule of payments, the Administrator shall take into account the loan commitments that a State Revolving Fund has made or is expected to make, the factors affecting the pace of construction within a State, the amount of funds already available but not expended by the SRF, and the timing and amount of various borrowing needs of municipalities, States and the Federal government.

<FWPCA § 605> Subsection (f) of section 601 details the procedures for withholding payments to a State Water Pollution Control Revolving Fund in the case of non-compliance with the provisions of title VI or the capitalization grant agreement. The Administrator would be required to notify the State of the non-compliance and describe the

[*67] necessary corrective action. If corrective action is not taken within a 60-day period following the notice, the Administrator would be authorized to withhold scheduled payments of funds to State Water Pollution Control Revolving Fund. In cases of continued non-compliance where the State had not taken corrective action within twelve months of the notice under subsection (f), then the withheld funds would be reallocated among the other States.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

<FWPCA § 602> Under Section 602 States are required to enter into agreements with the Administrator prior to receiving the award of a capitalization grant.

<FWPCA § 602> A State must establish (through statute or other legal mechanism creating a legal entity of the State with the powers and limitations prescribed in this bill) a revolving fund dedicated solely to such purposes. The State must also negotiate a schedule of payments as described in section 601(e) above. Prior to receiving payments, a State must make a 15 percent matching contribution to the revolving funds. This section also enables a State to meet the 15 percent matching requirement by depositing State monies in the dedicated revolving fund during fiscal years prior to the fiscal year that Federal grant funds are received.

<FWPCA § 602> All funds available to the revolving fund must be committee in an expeditious and timely manner; funds provided by capitalization grants (or an amount equal to such funds), however, must be made available to loan recipients in binding loan agreements within one year of receipt of the Federal funds by the State Revolving Fund. Binding loan commitments entered into within 12 months of receipt of a Federal grant payment may also be greater than 100 percent of the amount of the Federal grant payment. Any treatment project that is financed with funds directly made available by capitalization grants, prior to fiscal year 1985, will have to meet the same requirements that the project would have had to have met if it had received a grant under Title II. The applicable requirements of Title II are those that refer to projects, and do not include programmatic features of the Title II construction grants program such as Federal grant shares, allotments and set-asides, and authorizations. The requirements of the Clean Water Act applicable to grant-funding projects include provisions of sections 201 <FWPCA § 201>, 203(a) <FWPCA § 203>, 204 <FWPCA § 204>, 211 <FWPCA § 211>, 212, 215, 217, 218, 219, and 511(c) and 513 of the Clean Water Act. As such, the eligibility restrictions set forth in the 1981 Amendments would apply to treatment projects financed through funds directly made available by Federal capitalization grants. A State must further agree to first use funds available in the State Revolving Fund to assure maintenance of progress in completing municipal treatment works needed to comply with enforceable requirements of the Act, including the 1988 municipal compliance deadline.

<FWPCA § 602> <FWPCA § 606> Finally, the State must agree to establish loan requirements, regulations, fiscal controls and procedures, accounting and auditing methods that will comply with applicable State law, and generally accepted government accounting standards. On an annual basis,

[*68] the State will make a report of its intended use of the funds and its actual use of funds for the previous year.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

<FWPCA § 603> Section 603 provides that a State must establish a Water Pollution Control Revolving Fund, which must be administered by an instrumentality of the State, to be eligible for an award of a capitalization grant. The State must provide the SRF with powers and impose limitations on the Revolving Fund; some of the powers and limitations are specified in the remaining subsections of section 603.

<FWPCA § 603> Section 603 also provides that SRFs be maintained and credited with repayments so that the fund balance shall be available in perpetuity. The Revolving Fund is dedicated for only two purposes: one, to provide financial assistance for the construction of publicly owned treatment works as defined in Section 212(2) of the Act; and two, to provide financial assistance (except from funds made directly available to the SRF in the capitalization grant) for the implementation of projects and programs established under sections 319 <FWPCA § 319> (Nonpoint Source Pollution Control Program) and 320 <FWPCA § 320> (National Estuarine Program). In both cases, the financial assistance must be for capital projects that are capable of enabling the State to establish a revenue stream to support repayment of the financial assistance. Subsection (c)(3) requires that a loan recipient establish a dedicated source of revenue to repay the loan. In providing for the direct implementation of nonprofit pollution control and estuaries protection programs, States may make funds available to responsible parties including municipalities, intermunicipal organizations, interstate organizations, State agencies, and private organizations and individuals. In providing financial assistance to any such parties, the State shall comply with all limitations specified in the Act.

<FWPCA § 603> The SRF must be maintained through repayments in perpetuity. As provided in Section 603(b), loan repayments may be credited to debt service accounts within the Water Pollution Control Revolving Fund. The dedicated purpose of the SRF and the receipt of loan repayments must maintain the financial integrity of the Fund so that the Fund balance will be available in perpetuity.

<FWPCA § 603> Subsection (c) of section 603 provides the Revolving Fund with the authority to make loans, however certain conditions are placed on the Revolving Fund's loan making authority. These conditions are intended to maintain the financial integrity of the SRF without hampering the State's flexibility to use the Fund to address the varied needs of its communities. The interest rate cannot exceed market rate, though it may be zero and the terms shall not exceed 20 years; annual principal payments must be fully amortized not later than 20 years after project completion; the loan recipient must establish a dedicated source of revenue for repayment of the loan; and SRFs must be credited with all repayments of principal and interest on all loans.

<FWPCA § 603> The State Revolving Fund may buy or refinance debt obligations of local communities which were incurred for construction of publicly owned treatment works after March 7, 1985. The purpose of this provision is to encourage municipalities to proceed with con-

[*69] struction with their own means of interim financing in advance of availability of a loan from the revolving fund, by offering municipalities the prospect of project refinancing at reasonably better financial terms at a later date. Thus, progress towards meeting the 1988 municipal compliance deadline will be aided.

<FWPCA § 603> Subsection (d)(2) of section 603 would allow a State Revolving Fund to guarantee, or purchase insurance for, local debt obligations. A similar provision in subsection (d)(4) would establish loan guarantees for a loan pool operated by a large intermunicipal agency. Under these provisions, a State Revolving Fund could reduce costs of borrowing for a community, but the State Revolving Fund would also assume certain risks of default on the guaranteed loans or debt obligations. In keeping with the principle that the revolving funds should generate positive future cash flows, the use of these mechanisms should be limited to a small portion of the revolving fund's current assets.

<FWPCA § 603> Subsection (d)(3) of section 603 would allow a State to use the State Revolving Fund and its chief assets (future revenues from loan repayments) as a basis for issuing bonds for further revolving fund activity. Under such an arrangement, a State would be able to leverage outstanding loans made from an initial set of capitalization grants, and thus make available significant amounts of money much sooner than would otherwise have been possible. Bonds may be issued by an instrumentality of the State, the State agency responsible for administering the Water Pollution Control Revolving Fund, or an interstate agency to which two or more States have given such responsibility.

<FWPCA § 603> Subsections (d)(5) and (d)(6) of section 603 would allow the State Revolving Fund to earn interest on fund accounts and use up to 4 percent of amounts available for administrative purposes. However, where appropriate the Administrator should take actions needed to assure that the use of this mechanism does not undermine the fiscal integrity of the SRFs.

AUDITS, REPORTS, AND FISCAL CONTROLS

<FWPCA § 606> Section 604 requires fiscal controls and accounting procedures be established for SRFs. The State is required to establish fiscal controls and procedures to assure proper accounting for payment periods, disbursements, and fund balances. All funds must be accounted for, including capitalization grants, State matching grant, and loan repayments.

<FWPCA § 606> The Administrator shall conduct, or the State shall have an entity independent of the State conduct, an audit, not less than annually, of the operations of each SRF. The audit, must be conducted in accordance with the Comptroller General's standards. The Administrator shall determine the time for completion and the manner of the audit. The requirement that the State have the audit conducted by an entity independent of the State would be satisfied if a State agency has been certified to carry out the audit by the Comptroller General or the State demonstrates to the satisfaction of the Administrator that it is fiscally unable to make a contract with an independent entity.

[*70] <FWPCA § 606> Subsection (c) of section 604 requires each State to prepare a plan for the intended uses of amounts available in the Revolving Fund. The intended use plan may be adopted from the priority systems and lists developed under section 216 of the Act for construction grant projects. The State may also consider other information on the extent and nature of water pollution problems. The State must provide an opportunity for public comment on the use of the funds. The intended use plan must include: the long and short term goals and objectives of the Revolving Fund; description of project categories that will receive financial assistance; discharge requirements under Title III and IV that will be met by funded projects; the terms of financial assistance granted; and the communities that will receive financial assistance; assurances for meeting the requirements that the Fund make loan commitments consistent with section 602(b)(4) and (5) <FWPCA § 602>; and a description of the criteria and method established for the distribution of funds. The report will help assist States' fiscal and environmental planning in order to achieve the goals of the Act.

<FWPCA § 604> Subsection (d) of section 604 requires the State to prepare a report to the Administrator describing how the State implemented its intended use plan prepared pursuant to subsection (c). This report is to be prepared annually and the first report must be provided in the first fiscal year after receipt of payments. The report shall include identification of loan recipients, amounts, and terms.

<FWPCA § 604> Subsection (e) of Section 604 requires the Administrator to conduct an annual review of the intended use plan and the annual report to determine whether the State is complying with the requirements of this Title. Subsection (e) also requires that a State or loan recipient make records available to the Administrator, after reasonable notice, to help in making a determination.

STATE OPTION TO USE TITLE II FUNDS

<FWPCA § 205> The bill amends the Clean Water Act by adding a new subsection (m) to Section 205. This section would provide States with the option of using all or a portion of their funds available for obligation under Title II for capitalization grants for State Revolving Funds under Title VI. This provision is designed to encourage those States that have appropriate funding entitles in place to proceed with capitalization of their State Revolving Funds as soon as possible, provided the SRF is established in compliance with the requirements of title VI.

<FWPCA § 205> Funds available for obligation to a State under title II include a State's allotted share of a current year's appropriations, any unobligated carryover funds from the previous year's allotment, and funds made available through grant decreases or deobligations. The Governor of a State would be required to provide a notice of intent to use all or part of these funds in a timely fashion to the Administrator. The first notice would have to be provided within thirty days of enactment of the Clean Water Act Amendments of 1985. All subsequent notices would have to filed with the Administrator at least 90 days prior to the beginning of the fiscal year. Since the State has an option, at its discretion, to use any portion of the funds available for obligation within that State, the State may

[*71] choose to use any unobligated funds, including unobligated setaside funds, as a basis for early or additional capitalization of State Revolving Funds under title VI.

<FWPCA § 205> A State is not required to completely convert its program to a loan program under this option. It could, for example, reserve a portion of its funds for grants to cities which need funds to meet the 1988 deadline while shifting the remainder to the SRF. Each State may choose to address these circumstances differently.

REPORT TO CONGRESS

<FWPCA § 516> The bill amends section 516 of the Act to provide that the Administrator submit a report to Congress on the financial status and operations of the Water Pollution Control Revolving Funds. The purpose of this report is to assess the effectiveness of SRFs by reviewing the financial viability of the Funds and the use of loans in accomplishing the pollution control goals of the Act, and comparing the impacts of loans to the impacts of grants.

HEARINGS

The Subcommittee on Environmental Pollution held three days of hearings (March 26, 27, and 28, 1985) at which time testimony was taken from representatives of the administration, environmental and industry groups, State and local officials, financial experts, and other interested parties.

ROLLCALL VOTERS

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

There were two rollcall votes taken during consideration of this bill. Each of those votes was publicly announced during the open meetings of the Committee for marking up this legislation. The tabulation of those votes is available in the Committee's files.

A third rollcall vote resulted in a 13-2 vote to report the bill. Voting in favor of reporting the bill were Senators Abdnor, Baucus, Bentsen, Burdick, Chafee, Domenici, Hart, Humphrey, Lautenberg, Mitchell, Simpson, Symms, and Stafford. Voting in the negative were Senators Durenberger and Moynihan.

EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires effluent limitations to be established to protect the nation's waters from additional degradation due to toxic pollutants. This is not new authority in the Clean Water Act but simply augments authority that has existed since 1972. The reported bill also requires State develop nonpoint source pollution management programs to be reviewed and approved by the Administrator of EPA. This provision is consistent with existing provisions under the Clean Water Act to control pollution of the Na-

[*72] tion's waters. The reported bill also authorizes grants to States for the establishment of water pollution control revolving loan funds for the construction of publicly owned treatment works. To qualify for funds, States must enter into agreements with the Administrator of EPA. It is not expected that there will be any new regulatory burdens created by the reported bill, beyond that currently authorized by the Act.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires each bill to contain a statement of the cost of such bill prepared by the Congressional Budget Office. That report follows:

U.S. CONGRESS,

CONGRESSIONAL BUDGET OFFICE,

Washington, DC, May 14, 1985.

Hon ROBERT T. STAFFORD,

Chairman, Committee on Environment and Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for the Clean Water Act Amendments of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

JAMES BLUM

(For Rudolph G. Penner).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 14,1985

1. Bill number: Not yet assigned.

2. Bill title: Clean Water Act Amendments of 1985.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, May 1, 1985.

4. Bill purpose: This bill would reauthorize water quality programs administered by the Environmental Protection Agency (EPA). The construction grants program would be reauthorized at a level of $2.4 billion a year through fiscal year 1988, and $1.2 billion annually for fiscal years 1989 and 1990.

<FWPCA § 607> Authorizations for grants aiding states in capitalizing revolving funds would begin at a level of $1.2 billion a year in 1989 and 1990 with the authorization level dropping to $600 million for 1994.

<FWPCA § 301> Finally, this bill would require the EPA to charge fees to reflect the agency's cost of processing alternative requirement applications for national effluent limitation guidelines or pretreatment standards. Sums collected would be deposited in the Treasury as miscellaneous receipts.

5. Estimated cost to the Federal Government:

[*73] [chart]

The costs of this bill fall within budget function 300.

Additional outlays of about $5 billion would occur after fiscal year 1990 for the construction grants program.

Basis of estimate: For the purposes of this estimate, it is assumed that this bill will be enacted during fiscal year 1985 and that the full sums authorized will be appropriated prior to the beginning of each fiscal year. Outlays have been estimated on the basis of historical spending patterns. Revenues arising from the deposit of application fees into the general fund have been estimated on the basis of information obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments. This estimate will be transmitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deborah Reis.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

[*74]

ADDITIONAL VIEWS OF MR. MOYNIHAN AND MR. DURENBERGER

The Committee approved a change in the allocation of sewage treatment construction grants that is both unwise and unfair. Under the new formula, grants to eighteen States would be reduced. Most of these losing States are populous, urban States in the East and Midwest. Every State bordering on the Great Lakes would experience at least a 19 percent reduction in funding.

This is especially unfortunate when one considers that many of the same States have historically been neglected by Federal water programs generally. For example, between 1956 and 1980, only 1.2 percent of the total water resources spending by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and Soil Conservation Service went to New York. The Environmental Protection Agency's construction grants program has been more equitable, but equity would be threatened by the new formula.

The new formula is designed to transfer grant resources from populous States to small States and from the East and Great Lakes regions to growing areas in the South and West. Although ostensibly based on needs, it has numerous flaws.

The formula uses so-called "eligible needs" as a basis for allocating funds. No weight is given to combined sewer overflows, a major cause of water quality degradation in older urban areas. In 1981 Congress narrowed the list of project categories eligible for Federal funding but wisely gave governors the discretion to use up to 20 percent of a state's allotment for the correction of combined sewer overflows. It makes no sense to use Federal funds for this vital type of work but to ignore the need in the allocation of the funds.

Equally objectionable is the arbitrary classification of states into three groups. Funding would be distributed to each group in a manner designed to favor small states with relatively low levels of need. One group, for example, consists of the 13 states with the lowest estimated needs. This group collectively accounts for 3.7 percent of the eligible needs but would receive 8.5 percent of the grant funding.

The arbitrary nature of the formula is further revealed by the distribution of funds within each group of States. A different mathematical algorithm is used for each group. For some States, the share of funding is determined by the cube of the logarithm of the eligible needs. Why not the square or the fourth power of the logarithm? It would make every bit as much sense -- which is to say, none.

This radical change in the allocation of grant funds would have disproportionate effects on major bodies of water. Most importantly, the change would significantly hinder our efforts to improve water quality in the Great Lakes. In the Great Lakes Water Qual-

[*75] ity Agreement of 1978, the United States joined Canada in a commitment to control major sources of water pollution. The agreement includes specific goals for a wide range of pollutants and sources. For example, the concentration of phosphorous in sewage treatment plant effluent must not exceed one milligram per liter. Equally important, the agreement requires each nation to provide adequate funding to meet the water quality goals.

A General Accounting Office study in 1982 found that the United States is far from meeting its commitments under the 1978 agreement. According to the GAO, the U.S. has lagged considerably behind schedule in providing adequate municipal wastewater treatment in the Great Lakes basin. Furthermore, little progress has been made toward controlling combined sewer overflows. As a result, eutrophication and toxic chemical pollution continue to plaque the lakes. Progress would only be further slowed by the proposed new allocation formula, which reduces grants to the Great Lakes states by $175 million annually.

Similarly, virtually the entire drainage area of Chesapeake Bay lies in states that would lose funding. The Committee recognized the unique character of the Great Lakes and Chesapeake Bay by authorizing in this bill modest programs to improve the management of those resources. The damage done by the new formula would more than offset the benefits of these programs.

A radical change in the allocation of construction grants is unwarranted. If a change must be made, large states and particular regions should not be unfairly penalized.

DAVE DURENBERGER.

DANIEL PATRICK MOYNIHAN.

[*76] CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

TITLE I -- RESEARCH AND RELATED PROGRAMS

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

Sec. 104.(a) * * *

* * * * * * *

(q)(1) * * *

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(4) <FWPCA § 104> Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).

* * * * * * *

(u) <FWPCA § 104> There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, and not to exceed $22,770,000 per fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed

[*77] $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982, and not to exceed $3,000,000 per fiscal year for the fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981, [and] $1,500,000 for fiscal year 1982, and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989, for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106 <FWPCA § 106>. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section --

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980 $75,000,000 per fiscal year for the fiscal years 1981, [and] 1982, 1986, 1987, 1988, and 1989

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) <FWPCA § 112> There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and] $7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30,

[*78] 1987, September 30, 1988, and September 30, 1989, to carry out sections 109 through 112 of this Act.

* * * * * * *

CHESAPEAKE BAY

SEC. 117 <FWPCA § 117>. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to --

(1) collect and make available, through the publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter "the Bay");

(2) coordinate all Federal research projects pertaining to the Bay;

(3) conduct research to determine the impact or sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter "the plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be

[*79] made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

(1)$3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).

GREAT LAKES

SEC. 118 <FWPCA § 118>. (a) DEFINITIONS. -- For the purposes of this section, the term --

(1) "Agency" means the Environmental Protection Agency;

(2) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

(3) "Great Lakes System" means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes:

(4) "Program Office" means the Great Lakes National Program Office established by this section.

(b) GREAT LAKES NATIONAL PROGRAM OFFICE --

The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

(c) GREAT LAKES MANAGEMENT --

The Program Office shall --

(A) in cooperation with appropriation Federal, State, tribal, and international agencies, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lake Water Quality Agreement of 1978;

(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

[*80] (C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which --

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes, with particular reference to toxic pollutants;

(C) describes the long-term prospects for improving the condition of the Great Lakes; and

(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

(d) INTERAGENCY COOPERATION --

The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

(e) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES.--

Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any

[*81] department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

(f) AUTHORIZATION OF APPROPRIATIONS. --

There are authorized to be appropriated for the Great Lakes National Program Office for the purposes of carrying out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989, and 1990. Of such amounts --

(1) $700,000 in each fiscal year shall be used for the program of nutrient monitoring; and

(2) $5,000,000 in each fiscal year shall be used for demonstration projects of the feasibility of controlling and removing toxic pollutants.

TITLE II -- GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

* * * * * * *

FEDERAL SHARE

SEC. 202. (a)(1) <FWPCA § 202> The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971 and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator) unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors and project for infiltration-in-flow correction shall be eligible for grants at 75 per centum of the cost of construction thereof[.], for any such grants made before October 1, 1990. [*82]

PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a) * * *

* * * * * *

(f) <FWPCA § 203> (1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan.

(A) treatment works that have an estimated total cost of $8,000,000 or less; and

(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

(3) An agreement entered into under this subsection shall --

(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

[*83] (6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(l).

(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.

LIMITATIONS AND CONDITIONS

SEC. 204. (a) * * *

* * * * * * *

(c) The next to the last sentence of paragraph (5) of subsection (a) of this section shall not apply in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors has received a grant for erection, building, acquisition, alteration, remodeling, improvement, or extension before October 1, 1984, and all segments and phases of such facility and interceptors awarded a grant before October 1, 1990, shall be funded based on a 20-year reserve capacity in the case of such facility and a 20-year reserve capacity in the case of such interceptors, except that, if a grant for such interceptors has been approved prior to the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal year 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	0.012500
Alaska	.007563

Arizona	.012500
Arkansas	.011714
California	.058321
Colorado	.010503
Connecticut	.012500
Delaware	.005801
District of Columbia	.009172
Florida	.045181
[*84]	
Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036881
Indiana	.019653
Iowa	.012672
Kansas	.012337
Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400
Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640
Pacific Trust Territories	.001409

Virgin Islands .000464.

* * * * * * *

(e) <FWPCA § 205> For the fiscal years 1978 [, 1979, 1980, 1981, 1982, 1983, 1984, and 1985,] through 1994, no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories not more than thirty-three one-hundredths of 1 per centum in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978 [, 1979, 1980, 1981, 1982, 1983, 1984, and 1985.] through 1984. If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had

[*85] been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * * * *

(g)(1) <FWPCA § 205> The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 207 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before [October 1, 1985.] October 1, 1994, in which case the percentage authorized to be reserved shall not exceed 4 per centum, or $400,000, whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * * * *

[(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 71/2 per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.]

(i) <FWPCA § 205> Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979 through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the ex-

[*86] penditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7 1/2 per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) * * *

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(5) <FWPCA § 205> In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.

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(1) <FWPCA § 205> The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1 1/2 per centum of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two-thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.

(m) <FWPCA § 205> (1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year

[*87] as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.

AUTHORIZATION

SEC. 207 <FWPCA § 207>. There is authorized to be appropriated to carry out this time, other than section 206(e), 208 and 209, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed $5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed $2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year [.]; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.

* * * * * * *

INDIAN TRIBES

SEC. 220 <FWPCA § 518>. (a) 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 in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

(b) Beginning with fiscal year 1987, the Administrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such special provision may include the direct provision of funds reserved under subsection (b) to the govern-

[*88] ing 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 is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.

TITLE III -- STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) * * *

(b)(1) * * *

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(2)(A) * * *

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(C) <FWPCA § 301> [not later than July 1, 1984,] with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988;

* * * * * * *

(E) [not later than July 1, 1984,] as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph [not] as expeditiously as possible but in no case later than 3 years after the date such limitations are established [or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.] and in no case later than July 1, 1988.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the

[*89] basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.

* * * * * * *

(g)(1) <FWPCA § 301> [The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a)(4) of this Act, toxic pollutants subject to section 307(a) of this Act, and the thermal component of discharges) from any point source.] The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act) upon a showing by the owner or operator of such point source satisfactory to the Administrator that --

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

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

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

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

(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

(5) <FWPCA § 301> The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean

[*90] Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that --

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

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

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

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

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

(5) <FWPCA § 301> sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);

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

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

(8) <FWPCA § 301> the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not

[*91] support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

* * * * * * *

(j) <FWPCA § 301> (1) Any application filed under this section for a modification of the provisions of --

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not late than the 356th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981 except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985;

(B) subsection (b)(2)(A) as it applies to pollutants identified in subsection (b)(2)(F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not late than 270 days after the date of enactment of the Clean Water Act of 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities, and that there is a substantial likeli

[*92] hood that the applicant will succeed on the merits of such application. An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

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(l) <FWPCA § 301> [The] Other than as provided in subsection (n) of this subsection, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act.

* * * * * * *

(n)(1) <FWPCA § 301> The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that --

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304 (b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

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

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

(2)(A) <FWPCA § 301> an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not compete, without providing an opportunity for reapplication.

[*93] (B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factor which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

(3) <FWPCA § 301> an application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(4) <FWPCA § 301> The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

(o) <FWPCA § 301> The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301 (c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.

WATER QUALITY RELATED EFFLUENT LIMITATIONS

SEC. 302. (a) <FWPCA § 302> Whenever, in the judgment of the Administrator, or as identified under section 305(c), discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

[(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

[(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship

[*94] between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.]

(b)(1) <FWPCA § 302> Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

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

(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a)(1) * * *

* * * * * * *

(c)(1) * * *

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

(B) <FWPCA § 303> Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria

[*95] shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

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(d)(1) * * *

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(4) <FWPCA § 304> Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into ac-

count any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.

(5) <FWPCA § 303> (A) For waters identified in paragraph (1)(A) where the applicable water quality standard has not yet been attained, any effluent limitation based on a total maximum daily load or other waste load allocation established under this section may be revised only if (i) the cumulative effect of all such revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of such water quality standard, or (ii) the designated use which is not being attained is removed in accordance with regulations established under this section.

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

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SEC. 304. (a)(1) * * *

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(7) <FWPCA § 304> The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

[*96] (8) <FWPCA § 304> The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act and nonpoint source pollution management programs approved under section 319 of this Act.

* * * * * * *

(l) <FWPCA § 304> Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

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

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

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

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

WATER QUALITY INVENTORY

SEC. 305. (a) * * *

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(c) <FWPCA § 304> Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1985, and revise biennially thereafter, an identification of --

(1) those waters within or adjacent to such State which after the application of effluent limitation required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section

[*97] 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1)

* * * * * * *

INSPECTIONS, MONITORING, AND ENTRY

SEC. 308. (a) <FWPCA § 308> Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out section 305; 311, 402, 404 (relating to State permit programs), 405 and 504 of this Act --

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

(B) the Administrator or his authorized representative, upon presentation of his credentials --

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located in or which any records required to be maintained under clause (A) of this subsection are located, and

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

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FEDERAL ENFORCEMENT

SEC. 309. (a)(1) * * *

* * * * * * *

[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State shall be published by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c) <FWPCA § 309> (1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such

[*99] person knew or reasonably should have known could cause personal injury or property damage, or, other then in compliance with all applicable Federal, State, or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

(3)(A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

(B) for the purpose of subparagraph (A) of this paragraph --

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

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

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

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

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

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

(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

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

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

[*100] (4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(5) If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(6) For the purpose of paragraphs (1), (2), (3), and (4) the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(7) For the purpose of paragraphs (1) and (2), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) <FWPCA § 309> Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(13) and (b)(8) of this Act, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty, not to exceed [$10,000 per day of such violation.] $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.

* * * * * * *

(g)(1) <FWPCA § 309> ADMINISTRATIVE PENALTIES. --

In addition to any other relief provided, whenever on the basis of any information available the Administrator finds that any person has violated sections 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or as violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State or the Secretary of

[*101] the Army, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000.

(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

(3) <FWPCA § 309> PROCEDURE.

A civil penalty assessed by the Administrator under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to be assessed a civil penalty written notice of the Administrator's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal it taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

(4) <FWPCA § 309> CONTENT OF ORDER. --

In determining the amount of a civil penalty, the Administrator shall take into account 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.

(5) <FWPCA § 309> EFFECT OF ORDER. --

(A) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act; Provided further, That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under

[*102] this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

(B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

(C) No action by the Administrator pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

(6) <FWPCA § 309> JUDICIAL REVIEW.

Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Administrator shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

(7) <FWPCA § 309> COLLECTION. --

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

(A) after an order is final under paragraph (3), or

(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator, the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order

or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) <FWPCA § 309> SUBPOENA. --

The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

* * * * * * *

CLEAN LAKES

SEC. 314. [(a) Each State shall prepare or establish, and submit to the Administrator for his approval --

[*103] [(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

[(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

[(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.]

(a) <FWPCA § 314> (1) Each State shall prepare a report on a biennial basis which shall include --

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.

* * * * * * *

(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) <FWPCA § 314> There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and] $30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989 for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

* * * * * * *

NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 319. (a) <FWPCA § 319> (1) Each State, by itself or in combination with adjacent States, shall after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed nonpoint source pollution management program which shall --

(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applica

[*104] ble water quality standards, or (ii) the goals and requirements of the Act;

(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

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

(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

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

(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and

[*105] other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

(b) <FWPCA § 319> (1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit is revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

(c) <FWPCA § 319> If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State,

and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

(d)(1) <FWPCA § 319> The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

[*106]

State	Percentage allotment
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.66
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56
Maine	.55
Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97

Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
Samoa	.10
Virgin Islands	.10
Total	100.00

(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in --

[*107] (i) <FWPCA § 319> controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

(ii) <FWPCA § 319> implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

(iii) <FWPCA § 319> controlling interstate nonpoint source pollution problems;

(iv) <FWPCA § 319> assessing the relationship between nonpoint source pollution and ground water contamination; or

(v) <FWPCA § 518> providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

(3) <FWPCA § 319> The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be realloted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

(4) <FWPCA § 319> States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

(5) <FWPCA § 319> No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

(6) <FWPCA § 319> No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such state next preceding the date of enactment of the Clean Water Act Amendments of 1985.

(7) <FWPCA § 319> The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

(8) <FWPCA § 319> For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

(e) <FWPCA § 319> Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

(f) <FWPCA § 319> The Administrator shall

[*108] (1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

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

(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendment of 1985, a report which on the basis of information submitted by the States pursuant to the subsections (a) and (e) of this section, and other information as appropriate:

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

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

(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirement of the Act.

NATIONAL ESTUARY PROGRAM

SEC. 320 <FWPCA § 320>. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to --

[*109] (A) assess trends in water quality, natural resources, and uses of the estuary;

(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous

population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(F) monitor the effectiveness of actions taken pursuant to the plan; and

(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of --

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been de

[*110] veloped by or made available to Federal, interstate, international, State, or local agencies.

(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: Provided, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator.

(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

(g) For the purposes of this section, the terms "estuary" and "estuarine zone" shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term "estuarine zone" shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

TITLE IV -- PERMIT AND LICENSES

* * * * * * *

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (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

[*111] all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

* * * * * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program or part of a permit program in accordance with paragraph (10) of this subsection, for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which --

(A) * * *

(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;

* * * * * * *

(10) <FWPCA § 402> In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that --

(A)(i) the plan provides for administration of permit program components which represents a significant and identifiable part of the State program authorized by this section; and

(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specific future date not to exceed five years from submission of the State's initial plan; or

(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represents a significant and identifiable part of the permit program in the State; and

(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence "a complete permit program." means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.

[*112] (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 navigable waters as to those activities and discharges subject to such program unless he determines that the State permits program does not meet the requirements of section (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 requirement or guidelines.

* * * * * * *

(4) <FWPCA § 402> In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.

(a)(i) * * *

(2)(A) No permit shall issue [A](i) 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](ii) if the Administrator within ninety days of the date of transmittal of the proposed 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.

(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance of denial of a permit under section 402.

* * * * * * *

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

(2) <FWPCA § 402> The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or

[*113] impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants above background levels, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.

(m) <FWPCA § 402> In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affected 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 preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) <FWPCA § 402> 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 solely 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. If the source 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, the limitations in the renewed, 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).". 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 be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations

which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).

PERMITS FOR DREDGED OR FILL MATERIAL

SEC. 404. (a) * * *

* * * * * * *

(s)(1) * * *

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[(4)(A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than $2,500 nor more

[*114] than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

[(5)] (4) <FWPCA § 404> 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 [$10,000 per day of such violation.] $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.

DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (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.

(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.

(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.

(d)(1) 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 --

[(1)] (A) identify uses for sludge, including disposal;

[(2)] (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);

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

[*115] The Administrator is authorized to revise any regulation issued under this subsection.

(2) <FWPCA § 405> (A)(i) Not later than April 1, 1986, the Administrator shall identify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment, and propose regulations specifying acceptable management practices for sewage sludge containing each such toxic pollutant and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A).

(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

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

(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, 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.

(D) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), 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.

(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.

[(e) The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to dis-

[*116] pose of sludge from such works for any use for which guidelines have been established pursuant to subsection (d) of this section, except in accordance with such guidelines.]

(e) <FWPCA § 405> 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 primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.

(f) <FWPCA § 405> (1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) 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, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) 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.

* * * * * * *

GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

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(20) <FWPCA § 518> the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is rec-

[*117] ognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

CITIZEN SUITS

SEC. 505. (a) * * *

* * * * * * *

(e)(1) 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).

(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28, United States Code.

(f) <FWPCA § 505> 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 or performance under section 306 of this Act; (3) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; [or] (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.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

* * * * * * *

(b)(1) <FWPCA § 509> 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 promulgating any effluent limitation or other limitation under section 301, 302, [or 306,] 306, or 405, and (F) in issuing or denying any permit under section 402, 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 such business] transacts business which is directly affected by such action upon application by such person. Any such application shall be made within ninety days from the date of such determination,

[*118] approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

* * * * * * *

(3) <FWPCA § 509> (A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States,

and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.

(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

(4) <FWPCA § 509> 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.

OTHER AFFECTED AUTHORITY

SEC. 511. (a) * * *

* * * * * * *

[*119] (e) Any State or municipality the water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to *5 U.S.C. 554,* 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402(b)(1)(F) is available, nor to any pollution which is subject to the Colorado River Salinity Control Act of 1974, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.

REPORTS TO CONGRESS

SEC. 516. (a) * * *

* * * * * * *

(f) <FWPCA § 516> The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

(1) an inventory of the facilities that are in significant non-compliance with the enforceable requirements of this Act;

(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act. [*120]

GENERAL AUTHORIZATION

SEC. 517 <FWPCA § 517>. 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, [and] $160,000,000 for the fiscal year ending September 30, 1982, and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

TITLE VI -- GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

SEC. 601. (a) <FWPCA § 607> There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

(1) $1,200,000,000 per fiscal year for the fiscal years 1989 and 1990;

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

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

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

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

(b) <FWPCA § 604> Sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

(c) <FWPCA § 604> Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year 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 next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

(d) <FWPCA § 602> If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

(e) <FWPCA § 602> From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

(f) <FWPCA § 605> If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the

[*121] Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

(g) <FWPCA § 605> If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

CAPITALIZATION GRANT AGREEMENTS WITH STATES

SEC. 602 <FWPCA § 602>. (a) To receive a capitalization grant under this title, 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.

(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that --

(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures con

[*122] forming to generally accepted government accounting standards;

(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 603 <FWPCA § 603>. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that --

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

(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

(4) the fund shall be credited with all repayment of principal and interest on all loans.

(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used --

(1) 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;

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

(3) 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 are deposited in the Water Pollution Control Revolving Fund;

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

(5) to earn interest on fund accounts; and

[*123] (6) for the reasonable costs of administering the fund and conducting activities under this title provided that such amounts shall not exceed 4 per centum of all grant awards to such fund under section 601(d).

AUDITS, REPORTS, AND FISCAL CONTROLS

SEC. 604 <FWPCA § 606>. (a) Each State electing to establish a Water Pollution Control Revolving Fund under this title shall establish fiscal controls and accounting procedures sufficient assure proper accounting during appropriate accounting periods for --

(1) payments received by the fund;

(2) disbursements made by the fund; and

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

(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include --

(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

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

(C) assurances and specific proposals for meeting the requirements of section 602(b)(4) and (5) of this title; and

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

(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of this title, the State shall provide an annual report to the Administrator describing how the State has met the goals and objectives of the previous fiscal year as identified in the plan prepared for the previous fiscal year pursuant to subsection (c) of this section, including identification of loan recipients, loan amounts, and loan terms.

(e) The Administrator shall conduct an annual review of each State plan and report prepared under subsections (c) and (d) of this section, 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 a Water Pollution Control Revolving Fund, the State or

[*124] loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title

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CIS LEGISLATIVE HISTORIES SOURCEFILE -- ENVIRONMENTAL LAWS

WATER QUALITY ACT OF 1987 (WQA87)

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99TH CONGRESS -- FLOOR ACTIVITY: Senate Consideration of S. 1128, June 12, 1985

99 Cong. Senate Debates 1985; WQA87 Leg. Hist. 19

CONGRESSIONAL RECORD
Vol. 131 -- Senate -- June 12, 1985

[*15301] CLEAN WATER ACT AMENDMENTS OF 1985

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of S. 1128, the clean water bill.

The PRESIDING OFFICER. Is there objection?

Mr. MOYNIHAN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. STAFFORD. Mr. President, I move that the Senate proceed to the consideration of S. 1128, the clean water bill. <FWPCA § 301>

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, may I ask our distinguished, wholly admired chairman how he would like to proceed? As he knows, there are a number of Senators who would otherwise be very much in support of this measure -- I guess the Senator from Rhode Island may be one of them -- under other circumstances would be wholly in support of the measure, but who are not because of the change in the allocation formula for sewage treatment facilities which came unexpectedly and without the kind of notice and comity which the Committee on Environment and Public Works has. I think, prided itself in. We have been a committee that rarely is divided excepting where there are issues of fact where we cannot resolve them among ourselves. We have characteristically brought measures to the floor unanimously.

We have not done that in this case. We want to hear about it. We do not want to prolong this matter, or anything like that. The distinguished chairman knows our disappointment. In 8 1/2 years in this body. I have never found myself in opposition, that I am aware of, with matters of the committee. I would, however, like to ask the subcommittee chairman how he would like to proceed.

Mr. CHAFEE. I would like to proceed. I would like to take up the bill. If we have some problems, we can have votes on them after we discuss them. There are some amendments the distinguished ranking member and I have been working together on and our staffs have. I would like to get to this.

As the Senator from New York has pointed out, it is important to the Nation. We have not just the clean water amendments dealing with the quality of the water, but there are certain grants involved, $2.4 billion.

I know the Senator from New York was disappointed. He indicated that when we had the markup in the committee. I understand that he and the Senator from Minnesota have an amendment. Let us get to it when the time comes to take it up.

Mr. MOYNIHAN. If the distinguished chairman will allow me, I have a statement which I would like to make. I take no pleasure in this at all. I feel disappointed, and I feel that a practice in the Committee on Environment and Public Works, which has been valuable, which is worth preserving, has been needlessly damaged. These matters could have been resolved in an open manner, but they were dealt with in a way that was less than open. The outcome was a division among friends, friends not just at the level of traditional relationships but persons who joined this committee to advance the purposes of environmental protection and public works, and who have done so with some considerable success since the early 1970's.

Mr. President, if not for one provision of the Clean Water Act Amendments of 1985, I could enthusiastically support this bill. The Clean Water Act is a cornerstone of our national environmental programs establishing as it did an effective strategy for improving [*15302] the quality of the Nation's surface waters. With this strategy, we have used our vast technological capabilities to reduce pollution from domestic and industrial waste waters.

The quality of our streams and lakes has improved significantly in the years since passage of the Federal Water Pollution Control Act of 1972. Federal, State, and local agencies spent $56 billion for sewage treatment between 1972 and 1982, and this mammoth investment proved worthwhile. The commissioner of the New York Department of Environmental Conservation reported to me that pollution from municipal sewage in New York fell by nearly two-fifths in a decade. Many rivers and lakes once pronounced "dead" now thrive. The chief water pollution problems of the past -- waterborne disease and oxygen depletion -- are largely under control, and the work will continue.

This bill would expand the efforts and address additional pollution problems. In addition to authorizing funding to the Environmental Protection Agency for ongoing programs, the bill would strengthen existing law in several important ways. One of the most important sections of S. 1128 would require pollution control efforts beyond the mandated "best available technology," if such extraordinary efforts are necessary to meet water quality standards and control the release of toxic pollutants. <FWPCA § 304> I also support a major provision directing the States to implement controls on nonpoint source pollution, or runoff from farms, urban streets, and other diffuse sources. <FWPCA § 319>

Unfortunately, the bill is at this time unacceptable to me, because the committee changed the allocation formula for sewage treatment construction grants in ways that are both unwise and unfair. The new formula would reduce grants to 18 States, most of them the populous, urban States of the East and Midwest. Every State bordering on the Great Lakes would face at least a 19-percent reduction in funding.

This is especially unwise and unfair, as many of these same States have long been neglected by Federal water programs generally. Between 1956 and 1980, only 1.2 percent of water resources expenditures by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and Soil Conservation Service went to New York. The Environmental Protection Agency's Construction Grants Program has been more equitable. The new formula threatens this equity.

The new formula was drafted to transfer grant resources from populous to small States, and from the East and Great Lakes regions to the South and West. The formula relies on so-called eligible needs criteria to allocate the funds. No weight is given to combined sewer overflows, a major cause of water quality degradation in older urban areas. In 1981 Congress narrowed the list of project categories eligible for Federal funding but wisely provided Governors the discretion to use up to 20 percent of a State's allotment to correct combined sewer overflows. It makes no sense to use Federal funds for this vital type of work, while ignoring the same need in the allocation of the funds.

Equally improper is the classification of the 50 States into 3 arbitrary groups. Funding would be distributed to each group in a manner designed to favor small States with relatively low levels of need. One group, for example, consists of the 13 States with the lowest estimated needs. According to the 1984 EPA needs survey, this group collectively accounts for 3.7 percent of the eligible needs; but it would receive 8.5 percent of the grant funding.

The arbitrary character of the formula is further illustrated by the distribution of funds within each group. A different mathematical algorithm was used for each group. For some States, the share of funding is determined not by eligible needs, but by the cube of the logarithm of eligible needs. Why not the square, or the fourth power of the logarithm? It would make every bit as much sense which is to say, none at all.

This radical change in the allocation of grant funds would seriously affect many major bodies of water. Perhaps most important, the change would significantly hinder efforts to improve water quality in the Great Lakes. In the Great Lakes Water Quality Agreement of 1978, the United States joined Canada in a commitment to control major sources of water pollution. This agreement set out specific goals for a wide range of pollutants and sources. For examples, the concentration of phosphorous in sewage treatment plant effluent must not exceed 1 milligram per liter. Equally important, the agreement requires each national to provide adequate funding to meet the water quality goals.

A General Accounting Office study in 1982 found that the United States is far from meeting its commitments under the 1978 agreement. According to the GAO, the United States is considerably behind schedule in providing adequate municipal waste water treatment in the Great Lakes basin. Further, little progress has been made toward controlling combined sewer overflows. As a result, eutrophication and toxic chemical pollution continue to plague the lakes. Progress would only be slowed further by the proposed new allocation formula, which would reduce grants to the Great Lakes States by $175 million annually.

Not long ago, Lake Erie was widely considered dead. Continued discharge of municipal and industrial sewage had caused a textbook example of a phenomenon called eutrophication. Nutrients in the sewage stimulated the growth of algae; as the algae died, settled to the bottom and decomposed, the lake was robbed of its oxygen. Only a few hardy species of fish could survive. Recently, however, the populations of such valuable species as trout, walleye, and whitefish have been increasing in Lake Erie, as sewage treatment and other measures have reduced discharges of nutrients.

Yet, major problems remain. Toxic substances are found in the water, sediments, and fish of all the Great Lakes. This problem is especially severe in Lake Erie, Lake Ontario, and the Niagara River, and is therefore a major concern in New York State. Efforts to further improve water quality are underway, and I would especially like to commend the recent efforts of the binational Niagara River Toxics Committee, with representatives from New York, Ontario, and the American and Canadian Governments. This committee published a report in October 1984 recommending an aggressive program to monitor and reduce pollution from sewage discharges, hazardous waste disposal sites, and other sources. It would be foolish to inhibit further progress on the lakes with grant reductions.

As with the Great Lakes, virtually the entire drainage area of Chesapeake Bay lies in States that would lose funding: Maryland, Virginia, West Virginia, Pennsylvania, and New York. The Environment and Public Works Committee recognized the unique character of the Great Lakes and Chesapeake Bay by authorizing in this bill modest programs to improve the management of those resources. <FWPCA § 117> But the damage done by the new formula would more than offset these benefits.

Our alternative formula would simply correct the major flaw of the formula approved by the Environment and Public Works Committee; the disproportionate share given to small States with low levels of needs. The group of 13 smallest States, which account for 3.7 percent of the Nation's fully eligible needs -- according to the 1984 EPA needs survey -- would receive 3.7 percent of the funds under our alternative, compared to 8.5 percent under the committee formula. The next seven smallest States have 6.1 percent of the needs, and we would give them 6.1 percent of the funds; the committee formula would give them 9 percent. Similarly, the 30 remaining States would receive the same share of the funds as their share of the needs, 90.3 percent.

Many of the 30 relatively large States, including my own State of New York, would lose up to 10 percent of their funding in comparison to current law. We would prefer to retain the formula specified by current law, but this [*15303] alternative formula is clearly an equitable compromise.

If it were not for one provision of the Clean Water Act Amendments of 1985, I would enthusiastically support the bill. The Clean Water Act is the cornerstone of our national environmental program, established as an effective strategy for improving the quality of the Nation's surface waters.

It was no accident that the Clean Water Act came first, as the great source of environmental disease, not just of the 19th and 20th centuries, but through the history of reasonably densely populated societies has been waterborne. It took a long time for men to learn this. It was well into the mid-19th century before the water-borne quality of so much disease was understood. It was a dispute late into the 19th century, when there began to be the understanding that drinking water could be contaminated, that sewage systems could contaminate drinking water.

Mr. President, could we have order?

The PRESIDING OFFICER (Mr. STAFFORD). The Senator's point is well taken. The Senate will please be in order. Senators will please take their conversations to the cloakroom. The Senator is making an important statement and is entitled to be heard.

Mr. MOYNIHAN. Mr. President, the discovery of waterborne disease and the transfer of disease-causing organisms from sewage systems to drinking water supplies and the creation of sewage systems were the great events, as a matter of fact, in public health in the 19th century. It was with these advances that cholera and such diseases and gastrointestinal diseases were first understood and began to be suppressed and the life of man changed.

One only has to live in a society where water is not clean to understand the dimension of the issue involved. So it is altogether appropriate that one of the first major measures which the Congress enacted following the environmental concern that so flourished in the late sixties and early seventies was for clean water, both as a traditional measure of managing waste of various kinds, and, also, looking to the newer questions that were beginning to emerge as we discovered the consequences of runoffs of chemicals that come from agricultural uses and industrial uses.

As we found the great changes that were taking place in bodies of water so large as to have precluded such possibilities in ordinary circumstances, there was in the 1960's a great degree of concern over the prospect that Lake Erie might die. The proposition that a lake might die in the process of eutrophication became better understood. And, of course, in the long run, all lakes do eventually eutrophy over many millions of years, which is a very different time horizon than we found we had when we looked up and found the discharge of chemicals we had in one of the Great Lakes would likely kill life in that lake in a short time.

I recall, that 95 percent of the freshwater of the United States is stored in the Great Lakes. When we talk about a change in an allocation formula that directly affects the Great Lakes States of the United States, remember, we are talking about the single largest source of freshwater that was expected to be clean water in our country.

The great Chesapeake Bay is another such region. There are some 18 States in all that are adversely affected by this change, which we do not feel is made in an open way.

The quality of our streams and lakes has improved significantly in the years since passage of the Federal Water Pollution Control Act of 1972, which we call the Clean Water Act. Federal, State, and local agencies spent $56 million for sewage treatment between 1972 and 1982, and it shows. In my State, the commissioner of the department of environmental conservation reports that pollution from municipal sewage in New York has fallen by nearly two-fifths in a decade and that many lakes, once thought dead or dying, are now thriving.

The chief water pollution problems of the past, which were, on the one hand, waterborne disease, of which I spoke earlier and, on the other hand, oxygen depletion, which takes place through the growth of vegetable organisms and the decomposition of sewage and other organic matter, are largely under control. But the work has to continue.

This bill would expand the efforts to address the additional pollution problems. In addition to authorizing further funding for the Environmental Protection Agency for ongoing programs, the bill would strengthen existing law in several important ways. One of the most important sections of S. 1128, which is what we have before us, would require pollution control efforts beyond the presently mandated "best available technology." <FWPCA § 304> If such extraordinary efforts are necessary to meet water quality standards and control the release of toxic effluents which are a different order of water contamination as against the disease contamination of previous efforts, I would certainly be for that. I cannot imagine a Member of this body who would not.

<FWPCA § 319> I would also support a major provision directing the States to implement controls on non-point-source pollution or runoff from farms, urban streets, and other diffuse sources.

Unfortunately, the bill is at this time unacceptable to many of us because the committee changed the allocation formula for sewage treatment construction grants in ways which we feel to be unwise and unfair and with little precedent in the procedures of our committee. I am especially disappointed in that as I value the procedures so. The new formula would reduce grants to 18 States, most of them the populous urban States of the East and Midwest. Every State bordering on the Great Lakes would face at least a 19-percent reduction in funding. Nineteen percent from the same sums of money, suddenly and with no notice, with no real hearing -- we were presented at a committee hearing with the findings of a committee which has long been known for representation of the less populous States -- to have this happen all of a sudden is a disappointment. It comes at a time when this Senator has been trying for 8 years to speak to this body, with no great success, asking, why have the water projects of the U.S. Government come to a halt?

Why is it that since 1970, there has not been, with small exceptions in 1974 and 1976, a water project bill. This Senator from New York was once chairman of the Committee on Water Resources. An Eastern Senator has rarely had that privilege, I believe -- an Eastern Democrat. I got deeply involved in the obvious needs of this country in the West and the South and the Mississippi and the Ohio for water projects that have come to a halt. We cannot pass them any longer. The whole of the Carter administration came and went without one. The first term of President Reagan came and went without one.

One of the reasons -- there are about three -- is that many of the best prospects for water development projects, have already been used, and you begin to reach marginal opportunities as you keep going on, and those marginal opportunities have produced responses that are very negative in the form of environmental concern.

But, most importantly, there is no sharing. It is all hogging, and the hogging has become offensive and the result is a stalemate. If the West dries up, and if the South sinks, and if the Mississippi changes its course, and the Tenn-Tom does not turn out to have worked, there is not going to be as much concern elsewhere as there ought to be, thanks to events like this.

The Bureau of Reclamation in 18 States in the West has its acre-foot of water selling for one-tenth what the market would bring. Between 1956 and 1980, 1.2 percent of water resources expenditures by the Corps of Engineers, Bureau of Reclamation, Tennessee Valley Authority, and the Soil Conservation Service went to my State. The only area in which there was a relatively larger allocation was in the Environmental Protection Agency's construction grants for a uniquely urban form of activity -- to wit, a new municipal sewer system and sewage treatment plant. It is not a [*15304] very elegant subject and it changed the health of the industrial world when we first understood it.

And so now we come to this present impasse. I just wish to say, if you want to continue, so be it. This is not the end of the argument. This is just argument for stalemate protracted, and it will continue.

There are others on the floor who would like to speak, and I do not want to keep them from doing so. I will have more later.

Mr. CHAFEE. Mr. President, what is the parliamentary situation now?

The PRESIDING OFFICER (Mr. KASTEN). The pending question is the motion to proceed to the consideration of S. 1128.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I should like to make a fairly brief statement and then ask my friends from Rhode Island and Maine if they could give me some information. I am honestly seeking information on this bill. I have read the report and I have read the formulas. I have studied them, and I am troubled. I am troubled by some aspects of the change in the formula where many of our States are benefiting arbitrarily at the expense of others.

Now, I happen to know the Senator from Rhode Island and the Senator from Maine very well, and I do not know of two Senators that I hold in higher esteem than these two. I consider both literally to be my friends as well as my colleagues. I know they have two instincts, as we all do in this body, or at least I think all of us do, and one instinct is to represent our States to the best extent we can, and, two, an instinct for fairness. Sometimes they clash and we try to meld them the best we can. But when I look at this bill it just simply does not meet the test of fairness as I can determine it.

I want to ask my friends some questions because I believe they are instinctively, inherently, fair people who want to do the right thing. They also want to represent their States, and I understand that. But I also, again, genuinely believe they want to do the right thing.

<FWPCA § 205> I look at this bill, and basically what we start with is the following: We have the EPA determining each State's share of a national need. It is a given. The EPA tells us what the need is for each State, and they ascertain that need according to some objective criteria. I do not think anybody here is disagreeing with the EPA criteria or the committee's determination, because they accept that. The committee, as a matter of fact, described the survey of the EPA on page 57 of the report. They say:

This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the need for publicly-owned treatment works which can be assisted under titles II and VI of the act.

So the committee majority has put its imprimatur on the EPA survey as far as I can tell from this report, and I accept that survey. Although I might have had differences, I accept that survey as the basis of discussion.

Each State is assigned a share by the EPA. It is as objective an assessment as I think we can have. I do not have a better one. The committee does not have a better one. And so we all are given an EPA appraisal. Each State is given a share.

Let me give a couple of examples. Idaho. Idaho is given a share of the national need of 0.004. Massachusetts is given a share of 0.04, 10 times the need of Idaho.

To the best I can determine it, according to this objective assessment, Massachusetts has 0.05 -- 10 times the need, probably more than 10 times the population. I do not have the population figures. But that is not the issue. The issue is that EPA has said Massachusetts has 0.04 percent of the national need, and Idaho has 0.04 of the national need, or one-tenth the need of Massachusetts. I do not think the committee is disagreeing with that fact. I am not. That is the basis of the discussion.

So how much money, then, does the committee recommend be provided under this formula to Idaho and Massachusetts? It provides $17 million to Idaho and $85 million to Massachusetts. Massachusetts gets five times the money, although, by our objective criteria, it has 10 times the need.

Another example -- Maine and Florida: Maine, according to the EPA, has 0.005 share of the overall national need. Florida has 0.05 -- 10 times the need of Maine. The State share of Florida is exactly -- or as close as I can come to getting one that fits -- 10 times the need of Maine. It seems to me that, by a test of fairness, they should get 10 times the money if the EPA has determined that their share and their need is 10 times.

The committee has done something here for small States, something more than has ever been done, so far as I can determine. They have decided that they will take the smallest States and give them a larger share than they are entitled to under the EPA formula, and then create another tier of the next smallest group of States and give them more than they are entitled to under the EPA formula, and the rest of us basically are paying for it, with some wrinkles which I will get into in a few moments.

Again I emphasize: This is not a question of what is the share that each State has. The EPA has given us that. It is given for the committee, which puts its imprimatur on it, and I do not dispute it. I accept those shares for the purpose of this discussion. But then the committee says:

We are going to create a tier 3, 13 States having less than half of 1 percent of the national need, and we are going to give those States about two times what they are entitled to according to that national-need formula.

When you add up their EPA shares, they come out to 3.7 percent of the national need, but the committee allocates 8.5 percent of the money to them. That is twice what their shares are. Thirteen States do awfully well. They do very well under current law, as well.

There is a flaw in current law, and I understand that. You are guaranteed at least one-half of 1 percent, and the committee has changed that. Instead of doing it that way, the committee has said:

We are going to give these 13 States 8.5 percent of the money, although they only have 3.7 percent of the certified EPA need. Their EPA-certified allocated share is 3.7 percent, but we are going to give them 8.5 percent.

Under the present bill, by the way, they get 6.5 percent. That goes up to 8.5 percent.

Then the committee does something else. They create another tier, the next smallest States. There is nothing comparable to this in present law. They take the next seven States, which have between one-half of 1 percent and 1 percent of the national need, and guarantee them more than their share, according to the EPA allocation. Those seven States represent 6.1 percent of the national need. The committee gives them 9 percent of the money -- about 50 percent more than they seemingly would be entitled to.

I know there are arguments to the effect that you have to have enough money in a State so that it can run a program. But I do not know of anything in the RECORD or anything in the committee report, with any testimony relative to that.

I accept that, by the way. I have no problem with making sure that a State gets enough so that it can run a project feasibly. But we are giving additional amounts of money to different States. We are raising the amount of money from the current level for the 13 smallest States.

There is nothing I can find in the RECORD which would justify these particular amounts of money for these States. There is no testimony that says Maine has to have a minimum of this amount of money so that it can run a project. It is done in an arbitrary way.

Twenty States benefit from those two particular tiers, and essentially the rest of us pay for it. There are some exceptions to that, because the [*15305] committee has grandfathered 11 States to make sure we all get 80 percent of the current law. So there is a little benefit in there for 11 States.

The committee has done something else for five States. It has made sure that they get 1.25 percent of their total share, so that they do not get less than any of the States in tier 2.

However, the point is that we are deviating from the EPA allocated share. We are deviating from it more so than under current law. We are adding another tier of small States, and the rest of us are paying for it. The small States are not the weakest States. They are not the poorest States.

I would not have any problem, I say to my friend from Rhode Island, if part of this formula was to help the poorest among us, to help the ones with the smallest per capita income. That has all been worked into this EPA share. It has all been figured out, what the needs are of these communities. If the committee wants to add on that a per capita income one, let the cards fall where they may. We can debate that. But that is not the issue here.

We have an extraordinary situation, so far as I can tell, because here we have an allocated share by the agency in charge of administering this program, and the committee has said -- and I am again going to quote the committee -- that the survey is the most current, complete, and accurate determination available of the needs.

If we are going to deviate from that survey, we should have some demonstrable, legitimate reason for doing so. If it is shown here, or if there is testimony in a hearing record before the committee, that a certain number of millions of dollars are required in order for a project to be funded in a State and if we give it less, only one-tenth of a project will be funded -- that reason is pretty compelling. But that is not what happened.

What happened is that the 8.5 percent of this pie was allocated to these 13 States, and then that was divided in a very complicated way, by mathematical formulas, among those 13 States. The same with the seven States. Nine percent of the pie was given to States with 6.1 percent of the need, and then the 9 percent was allocated among those States by an extremely complicated formula, to the best of my knowledge, without testimony as to what it would take to have a minimum project in Maine or Idaho.

I am not arguing here for a continuation of current law. Others will do that. What I am saying is that we have a fairness indicator. We are changing current law. Current law expires, and we are changing it. Current law is going to run out, as I understand it, at the end of this fiscal year. We are adopting a new law, and what I am pleading with my friends for -- and I am going to ask the specific question -- is fairness.

Maybe the smaller States in the Senate have the votes, and I presume they do. But I know you well enough to believe that you want to be fair and that you feel you are being fair, and that is what I am pleading for.

And I am pleading with this body that before we deviate from a standard norm, which is given to us and which we accept as being accurate, complete, and current, we have a justification for it.

My question is this, and I would be happy to address this to my friends from Rhode Island, Vermont, or Maine, how do we justify giving the smallest 13 States, with 3.7 percent of the agreed-upon need, 8.5 percent of the money? That is the first questions.

I have a few other questions.

Mr. CHAFEE. Let me respond to the distinguished Senator from Michigan.

I think it is not possible to just look at this from 13 States. I think you have to look at where we were and what we are attempting to achieve overall.

<FWPCA § 203> As the Senator recalls, in 1981 the eligibility items for the Clean Water Act for the waste treatment grants were changed. No longer, for example, were combined sewer overflows included in the eligible categories.

Nor were intercepts, nor were collectors, for example. So therefore, a survey indicate was based on different factors than the old survey was based upon and it excluded those items which were changed in the 1981 law.

Now, in this survey as we would expect, those States in the Southwest where you have the increased population, the growing population, are Arizona and Texas, for example.

Their needs dramatically increased, and so when those needs increased and you look at an overall pot of money which has remained constant, you are going to have some dramatic changes.

<FWPCA § 205> Now, as far as the smaller States go in a whole host of formulas that we have adopted in this Congress we have had a half-a-percent set-aside for each smaller State.

You can argue about this, but nonetheless we have had it even though the needs of a particular State might be less than a half-percent, just as we have had set-asides of x percentage for Guam and American Samoa, and whatever it is.

So once we got into this, we found that if you just allocated the money solely on the basis of need there would be some dramatic swings.

For example, New York would have gone down way more than it went down.

Then we had an 80 percent hold harmless in here for the larger States. That changes the amount that is eligible for others.

For example, if Texas were just given strictly what it was entitled to under the formula, Texas would have gone up considerably more than it did. But when you put in a hold harmless -- maybe you should not have a hold harmless, but we felt that for a State to drop precipitously from where it was, namely, 100 percent, down to 70 percent or 60 percent, would be traumatic for that State. They have certain planning they have embarked on.

When we went into this program in 1981 we set forth with the administration's support that there would be $2.4 billion for x number of years out in the future and that would be the funding for the program. So these States had made certain plans. You can argue with whether the hold harmless should be there or not but we felt it was.

We wanted to take care of New York. New York would have gone down, as I said, more precipitously.

The Southwest growth States were represented ably, and they indicated sure, they would like more, and they went up some.

But to take them to their fullest extent there just would not have been the money available.

Now you get to the smaller States. You say they are only entitled to 2.6 percent, and they got 8.5 percent.

Mr. LEVIN. 3.7.

Mr. CHAFEE. Pardon?

Mr. LEVIN. 3.7.

Mr. CHAFEE. 3.7.

That is excluding the 1.5 percent that we have traditionally given them and indeed we did go up some from that.

That was based on a whole variety of criteria, one of which is the necessity to have the legislation passed, to be frank, and the amount of money involved was very, very small.

I do not think anyone would get up on this floor and say they are not entitled to the half of a percent.

Some a little bit above that was allocated. But in dollars I do not think it is significant in the overall picture of $2.4 billion.

I know the distinguished ranking minority member of the committee had some thoughts on this, and we would be glad to pursue it further when the times comes.

Mr. MITCHELL. I thank the chairman.

The distinguished Senator from Michigan has raised what I believe are relevant questions. But we have to recognize at the outset that there is no simple objective manner by which to measure fairness. The Senator used the word repeatedly throughout his remarks and his question. Fairness like beauty is often in the eyes of the beholder.

For example, this program has been in operation for 13 years and during [*15306] that time the Great Lakes hydraulic region which includes parts of seven States and the entire State of Michigan has received more money on a per capita basis than has any other part of the country -- $351 for each person living in that region. By contrast, a part of Texas has received an average of $99 per person living in that region.

Many people could have looked at that at any point during the past 13 years and said that is not fair, that one standard by which we ought to measure the effect of this program is what does it do on a per capita basis, which is as we all know one of the most common means for devising allocation formulas.

The Senator from Michigan understandably did not at any time during that period protest the operation of the formula as being unfair. Nor did anyone else even though it produced widely divergent results in various parts of the country.

The Senator has referred to the needs survey by the Environmental Protection Agency as a method of allocation or as an allocation. It should be clear that the EPA in this report has not and has never proposed a method of allocating funds. What it has done at the direction of Congress has been to conduct an assessment, a survey of what needs exist in the country for publicly owned waste water treatment facilities to achieve the objectives of the act.

What qualifies as eligible for inclusion in this survey has changed from time to time.

Generally, the law has become more restrictive, as we have seen, as Congress has seen that the scope of the program, the scope of the problem was so broad that we were unable to include all of what might otherwise have been deemed needs in each survey, and this survey that we are now referring to, the 1984 needs survey report to Congress, reflects a significant difference from the prior surveys not only with respect to where growth has occurred and, therefore, needs might be anticipated to increase, using a constant standard, but in significant part because the method, the criteria for determining what is eligible to be included as a need has changed so the standard is different.

As the Senator from Rhode Island indicated, some types of projects that were considered eligible to be included in the previous needs survey were not included in this because we determined we could not possibly do that and we wanted to target our resources in the places most appropriate.

That meant that the statement of needs differs from previous statements of needs in those two important respects and if we were to say that we ought to follow that statement in the allocation of formula in prescribing the formula for the allocation of funds, we would have rather sharp swings in several of the State programs, including dramatic reductions in some and significant increases in others.

Now, remember, if the Senator will, that this is a program that has been going on for 13 years that the administration proposes to terminate and that the committee proposes to continue for a limited period and then to convert into a State Revolving Loan Fund Program. So we are talking about winding up a program over a period of some 5 or 6 years. And the question is, particularly when faced with an important deadline of compliance in the summer of 1988, how you enable States to do that in a rational manner.

From the standpoint of pure logic, it is indisputable that the Senator is correct in saying if you just take the statement of need and allocate funds on that basis, that is the fairest way to do it. Some would say, "Well, wait a minute. We have not been doing that for 13 years. As a result, Michigan has got $2.1 billion under the program, a lot more per capita than other people have." Why now do we seek to adhere to a pure standard?

We have to work in other factors, the foremost of which is to modify the variations in the program to permit States to continue with viable programs. That is the principal objective of both the hold harmless and the tier system to which the Senator referred.

Now, it is without any question an imperfect result, far less imperfect in my judgment than the alternative which will be proposed here which has a much more specific and narrow objective, but nonetheless it is imperfect. But it had as its objective, and in my judgment achieves it, at least in rough form, to moderate the radical changes in the size of the program in each State that would result from following the pure needs survey and to do it in a manner that allows the smaller States to continue with the viable program particularly as they face the deadline of July 31, 1988.

And, so, first, we adopted a hold harmless that says that no State will get less than 80 percent of the amount that it previously had, notwithstanding any other provision. The alternative formula, which is to be proposed, provided a 90-percent hold harmless for some States and no hold harmless for other States. If we want to talk about fairness -- and that is relative, too; we are not talking about the committee formula in the abstract, we are talking about what the alter-

natives are -- what could be less fair than that, to say, instead of everybody getting an 80-percent hold harmless, some States get a 90-percent hold harmless and other States get none whatsoever?

The second mechanism was the tier system, which did in fact carry through the provision that has been a part of this law from the beginning that recognized that for a smaller State to have a viable program it needs a minimum amount of money in view of the large size of some of these projects. That was formerly expressed in the floor of one-half of 1 percent for each small State. It is now expressed in the tier mechanism, which the Senator rightly suggests gives them more than they would receive if we followed the strict needs bases. And the level that was adopted, 8.5 percent for the first category, the first tier category of several smaller States is inevitably an arbitrary number, but one which reflected the committee's judgment that that is the level best calculated to achieve the objective of permitting those States to continue with a viable program, to enable them to complete the programs as necessary prior to the deadline.

I do not suggest to the Senator that that is irrefutable logic, that it is purely an objective standard that one has to agree or disagree with. You could say, Why not 7.5 percent? Why not 9.5 percent? But every day in this body we make such judgments and they are relative judgments. I do not for a moment question the force and persuasiveness of the Senator's argument, but everything we do here represents that.

The formula that is going to be proposed as an alternative, which I assume the Senator supports, makes similar judgments, reflecting the different interests of the Members offering it but similar in the respect that they require some method of making a final determination.

So we decided that, for the reasons suggested, the allocation formula that the committee adopted best represents the needs of the larger part of the country, Fair? That is up to each individual Senator to make a judgment on, just as one could look, as I pointed out, at the previous 13 years and say that was not fair.

We thought it was. We provided it. It provided very large sums of money to some parts of the country and not to others. My statement was one that benefited from it. But it was an expression of what we felt the best way to meet these needs was in a difficult, complex area.

Mr. LEVIN. Mr. President, relative to the past. I say to my friend from Maine -- I am going to be brief because there are others on the floor who want to speak as well -- I presume when these formulas were adopted that this Senate felt they were fair and this Congress felt they were fair and the committee felt they were fair. I am not going to go back now, unless we want to spend literally weeks doing this, and debate whether or not the current formula, when it was adopted, was perceived as being fair. It was [*15307] based on an assessment of need. It is the only lodestar we have. There is not any other way to know what is fair, except to look at the EPA determination of what the needs are in each State. As a matter of fact, that is what we give the EPA the task to do. Why in Heaven's name are we asking the EPA to assess the needs of the States unless we view this as objective and fair?

Again, the committee seems to have accepted this. There is nothing else that the committee is proposing to us as to what the needs are except the survey which the committee says is the most current, complete, and accurate determination available of the needs. That is what we start with.

Now, my friend from Maine says we want to avoid wide swings. Fine, Provide for wide swings. But why is Texas getting less than it should get under this formula? They are a lot better than they are under current law, and I understand that. But why does Texas get less than its need or its proportion of the need? Why does it get 80 percent or 90 percent of the need and some States get 200 percent of what the need is assessed by the EPA?

That is what is happening. I am afraid that that is exactly the predicament that we are all in. I am not going to go into what other programs provide States and water bills and so forth because I do not think that is relevant. What is relevant is if we are going to deviate from a formula we ought to have a justification for it. I have heard none except that you have got to exercise some judgment.

We will give the smallest 13 States 8.5 this year instead of 6.5, Why? It is the best judgment of the committee. Based on what? And who is paying for it? We are paying for it.

And then there is another tier of States you are adding. Why? The next seven smallest States. They total 6.1 percent of need. They are getting 9 percent. That has never happened before.

My friend from Rhode Island has talked about a traditional 1/2 of 1 percent. And that has been traditional, but that is not what we are providing now. You are providing for that to the smallest 13 States and then you are adding another tier that are above 1/2 of 1 percent of the national need. The second tier was between 1/2 of 1 percent and 1 percent.

That is another group of States. I guess we call them the second smallest group of States. Who is paying for that arbitrary 9 percent when they should be getting 6.1, according to the EPA assessment, which we have asked them to do and which we say is the most current and most accurate assessment of need? Who is paying for it? The rest of us.

The rest of us are paying for it. It is new. It is new in this bill. This is not the traditional half of 1 percent in tier 2. It is a new group of seven States. My friend from Rhode Island as usual is extremely candid. He says, "Well, you need it to get the votes. We had to get a bill passed." I appreciate his candor. I have always appreciated his candor, his friendship, his integrity, and I always will. But when you look at this formula from the perspective of those of us that are on the losing end of it, we have to say why new formulas now?

I am going to close my comments at this point by simply saying that if there is any record, any hearing record which says that these 20 States that benefit from tier 2 and 3 need specific amounts to keep current projects going or close them, hey, you have my support. I have been at the other end. I have been at local government. I know what the Federal Government can do, and that they do not know what they are doing to local government. I know how arbitrary the Federal Government can be when it closes projects down in the middle, and does not fund enough to finish the project. I am all for doing the sensible thing. It happens all the time. They did not give us the data. It takes X number of million in Idaho to finish a project, and it takes X number of million in Maine to finish a project. Give us a hearing record and let us do the sensible thing. That may very well provide deviation from the EPA standard. I would be the first one to vote for it because again I have been at the other end of this, too, when the Federal Government has acted arbitrarily. I do not want to act arbitrarily. I am afraid we have a new formula for tier 3 now getting 8.5 percent of the money instead of 6.5 percent of the money, although they only have 3.7 percent of the need. Now we add another tier, tier 2. Several States that have never gotten special treatment are now getting special treatment. There is no logic offered for that. When the rest of us have to pay for it, I have to say, "Hey, let's be fair, now."

I cannot go back to the 1981 bill and 1977 bill and the 1979 bill. I was not here for most of them. I do not think any of us really want to go back to those debates. I think all of us at the time felt it was fair. I think all of us ought to feel now that this is fair. Many of us do not.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. I will make a brief comment. Then I will be glad to yield the floor to the Senator from New York.

The first point to be made is that the allocation formula has never merely reflected the needs survey. There have always been adjustments to achieve various objectives, the principal one being the one I described earlier. They were fairly complicated. They were the result of committee Senate action, committee House action, and conferences. The second point is the Senator says who is going to pay for the tier 1 States going from one level to another? And he says that it is not fair that the other States pay for it. Just prior to that, however, the Senator said he favors hold harmless.

Mr. LEVIN. If the Senator will yield. No, I did not. I said if the committee wants to consider a hold harmless provision, that is the committee's judgment to do that.

Mr. MITCHELL. Does the Senator favor or oppose hold harmless?

Mr. LEVIN. I think you can make a reasonable argument for a hold harmless provision. You can also make a reasonable argument against it. But you cannot make a reasonable argument for -- it seems to me, in answer to your question -- adding a new tier of States to benefit arbitrarily that have not done so before, and adding more benefits to the tier that has existed before the so-called tier 3 States. I cannot see any justification. I can see arguments pro and con on the hold harmless.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, this new formula was brought to my attention by my staff and by some of my colleagues. As I began to make some inquiries of staff as to how and why this formula is justified -- and there are those who are far more knowledgeable in the calculation and presentation of this formula -- it became apparent that at least to the eyes of this beholder that fairness would have appeared to escape as the essential ingredient in determining what the formula should be.

That need on the part of the individual States as the prevalent test becomes merely an objective to get around and to deal with, and I must suggest that the committee has done so, and in a manner that will most likely guarantee the passage of the committee bill. So as I indicated to you, I have mixed thoughts. What does someone who is elected to represent his constituents, and yes, the body as a whole -- this entire country -- do when he or she feels that there is a situation that should be addressed? Especially when one sees as a practical matter that there was little chance of success in arguing fairness or need. As my colleague from Michigan has suggested, let us take a look at this formula and what it would do, the impact it will have. I am wondering whether or not we are moving ever faster into a period of time in our history when it really becomes, "Let us line up the votes on one side to accomplish our ob- [*15308] jective. If we have to change the formula to get two, three, four, of five additional States into the basket to gain their support." I do not know. I think probably it is kind of an easy thing for each and for any one of us, including this Senator, who wants to accomplish a good purpose for his or her constituents, and consequently can justify oneself, particularly if one has the ability and the power with which we can change a formula that will result in meeting the needs of ones particular constituents in a particular State, or two States, for that matter.

So that is my dilemma. I can count votes. I understand a little better today than I did 4-plus years ago when I entered this body the leadership committee, what is attendant, and the power with respect to that. I appreciate it. I do not say it to degrade the Senator. I know unless we have the good offices of those who have helped or shaped or who brought this important bill before this body for consideration and seek to move it forward, and unless they undertake a review even at this 11th and a half hour, there is little likelihood that the outcome would be changed. Except, of course, if one were to do that which certainly does not endear us to out colleagues, certainly something that should be done very sparingly if at all -- and that is not only to point out the differences of opinion with respect to the proposed legislation, but to do it in such a way as to attempt to keep that legislative initiative, no matter how important, from moving forward.

I must confess to you that I have mixed feelings with respect to whether or not I would use that prerogative which is, I believe, important to governance, particularly important to the rights and protecting the rights of the minority. I have come to the conclusion that I will attempt to make my point to let the process go on but not without saying to my colleagues that if we continue to do the business of the people by pitting section against section, small State against large State, power against those who may for a particular time or occasion not have it lined up to their advantage, I do not think we do the business of the people in a way that we can be proud of, and more importantly, in a manner which can bring about a great disservice to this body and to that which it stands for. We are a union of States that have come together in the Federalist system recognizing the responsibilities that we have not only to our own constituents in particular States, but to the body as a whole, and to the 50 States as a whole.

Let me suggest to you as I look at the formula and what it would do, that certainly, if we made no change, the changing times of this country should be relected in an updated formula. Certainly, as the Senator from Michigan has spelled out, we understand the necessity of seeing to it that those smaller States have adequate resources to undertake, in certain cases, projects that would go far beyond their ability to fund, were they not to be granted special recognition due to the enormity of those problems and the limited resources that might be at the command of that State.

Mr. President, there is no way you can justify a 20-percent cut for any State, particularly the State of New York. We did not talk about 5 percent, 10 percent. We are talking about 20 percent. It is $53 million. There is no way that you can guarantee that the need of New York and its people will be constant. But certainly to suggest 20 percent as a reasonable cut I find impossible to justify.

Mr. President, I would simply ask that those who have the power to make the kinds of adjustments that others of my colleagues will suggest in legislative initiatives may not become bound in terms of pride, in terms of momentary victory, and would hopefully examine in the short time that remains between the debate on the presentation of this legislation and the consideration of other amendments examples of not only New York's dilemma but those of other States, and, more importantly, all of the people of this Union, and what the adoption of this legislation would mean.

I suggest a trend not emanating just from this body but maybe it has been historically part of our Government in the United States -- pitting various region against region and big States against small States. I view that as something coming more into focus, something that I have seen on a number of occasions addressed here with tremendous and admirable restraint.

I cannot help but reflect on the day a colleague of mine, Senator DOMENICI of New Mexico, actually was the critical vote on the mass transportation funding bill, notwithstanding the fact that his State would have been enhanced.

Because of the issue of fairness and the issue of equity he voted in such a way as to not come ahead with additional dollars and cents for his constituents, recognizing the need for fairness and equity.

Having dealt with my colleagues, having been privileged to do so here on the Senate floor and in committee, I suggest that I know my colleagues are capable of that same kind of vision, and I would hope even after the 11th and a half hour that there might be an accommodation that will take into consideration the points made by my distinguished colleague from Michigan and those which I have attempted in a most awkward way to put before this body.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I want to start by acknowledging the comments of my colleague from New York who has just spoken, and my colleague from Michigan who has come forward this afternoon on this issue. It is a very important issue. Under normal circumstances I would give my wholehearted support to a bill which reauthorizes the Clean Water Act.

Since this program was enacted we have made important strides in improving water quality across the country. Lake Erie, which many had mourned as a dead lake, has been revived and once again supports aquatic life. So we can change things for the better even in extreme circumstances, such as that which I mentioned.

This kind of progress can and must continue. My colleagues and I, who are speaking on this today, feel compelled to address this legislation because of our concerns about the fairness of the proposed Construction Grants Program formula and the impact which it would have on water quality across the country.

The reason that I am unable to support this particular bill at this time is that it greatly redistributes the limited funds available for building wastewater treatment facilities and changes that formula into what I consider to be unfair and unsound from the point of view of the broad national interest.

After all, we are here for the purpose of trying to have some degree of equity in these formulas across the country, and equity as it relates to need. But if we fail to do that, then in a sense we have not really done the job of protecting the water resources of the country in the way that we properly should. This is just a question of a politically advantaged State or region versus another. If we allow that to happen under some objective measure of need for facilities and for clean water activity, then, in fact, we short change the country as a whole and we will not have gotten the kind of mileage out of the dollar spent that I think we are obligated to do.

The formula which has been developed here, and which is in this legislation, is not fair. On its face it is not fair. I think it represents a manipulation of the wastewater treatment needs data in order to arouse sufficient support to spread this money in a way that necessarily must deprive a small number of larger States, including the State of Michigan and the other States which border on the Great Lakes.

As a matter of fact, those States, Michigan among them, bordering on the Great Lakes, are the States that have some of the most severe needs. It is obvious that anything that is done [*15309] to fail to meet clean water requirements in the States that border the Great Lakes creates additional jeopardy to the Great Lakes themselves. Since the lakes provide by far and away the lion's share of the surface freshwater resources of the country as a whole, I think we ought to take very particular care with the Great Lakes, in the national interest, not just from the point of view of the States that are fortunate enough to border on the Great Lakes.

In respect to this funding change, there have been no hearings held to allow us to investigate the full impact of the committee's changes. That just does not makes sense. This is far too complex an issue. The ramifications cut too deeply for us to start to make major changes in formulas of this kind without having the benefit of the full hearing process where these questions could be examined and witnesses could have a chance to testify and we have an ability to really get into sharp focus the question of need and how we might move to meet that need.

It is my view, based on the analysis that I have done, that the cuts proposed here, cuts that would hit the States that particularly border the Great Lakes, would be very damaging to the Great Lakes. In fact, the committee is asking the eight Great Lakes States to absorb $156 million in cuts for the total region, or a cut of nearly 20 percent. Michigan alone, which touches four of the five Great Lakes, would lose more than $20 million. Yet in our State, we still have over 200 communities with substandard treatment. Without Federal money, at least four communities discharging directly into the Great Lakes will not be able to meet the statutory requirements for secondary treatment by 1988.

That simply is not something that is sound or something we ought to allow to happen. If communities have to find other sources of funding in order to meet the statutory requirement, it is going to cost the average homeowner in Michigan $52 a month in sewage costs alone. In another law, we are looking at tax deductions now, the State and local taxes, property taxes, and it is proposed they no longer be allowed as deductions against the Federal income tax. If that goes through, it is going to make it that much more difficult for local communities to raise any amount of money in any form of taxation to meet needs of this kind. So it becomes very important how we elect to distribute the national funds that are devoted to what is seen properly as a national problem.

I think we have to be scrupulously fair in matching limited national dollars to a national problem, but on the basis of need, some objective measure of need.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. RIEGLF. Yes, Mr. President, I yield to the Senator from California.

Mr. CRANSTON. Mr. President, I want to say that I fully understand that smaller States need manageable enough sums so they can handle the costs of needed projects. The past formula that we have had has taken that into account.

It seems to me the change now proposed by the committee adds considerably more for the smaller States in a new three-tier system that works out in a way that is extremely unfair to some of the larger States.

Under the formula adopted by the committee, California stands to lose $180 million in Federal funds over a 5-year period. This would result in 15 California communities which need to build sewage treatment facilities not receiving funding. These communities would have received Federal funding under the current allocation formula which gives 7.29 percent to California, less than we would be entitled to on a per capita basis. The revised formula is based on needs in the core treatment categories. This hurts California because it does not take into account significant needs in San Francisco to correct combined sewer overflow problems. These projects are necessary to meet the enforceable requirements of the Clean Water Act.

Additionally, just in terms of what the general formula proposals would do, the revised formula increases funding to 32 States which, as of April 1, 1985, have unobligated fiscal year 1985 grant fund balances averaging 68 percent. Ten of the States that would receive increased funding under the new formula have unobligated fiscal year 1985 grant fund balances of 90 to 100 percent. Moreover, many of the benefited States have not obligated all of their fiscal year 1984 funds. California, on the other hand, has obligated 83 percent of its fiscal year 1985 Federal funds and essentially all of its fiscal year 1984 funds. It seems grossly unfair to transfer grant funds from rapidly moving States such as California to States with high percentages of unobligated funds.

I ask the Senator from Michigan, what do we do about this?

Mr. RIEGLE. Mr. President, I think what we do is find a way and means to alter this formula. There may be more than one suggestion as to how that ought to be done, but the Senator raises an important role. I think in the search for some better answer than the one that is before the Senate, some means has to be found to address the kinds of problems that we see in States that border on the Great Lakes, just as the issue that the Senator from California raises as it would affect his State, I think, also needs to be addressed.

I am left with the thought that we are not ready as things now stand to move ahead on this legislation; there are unresolved issues such as we are discussing, and until they are adequately attended to and incorporated in some reasonable way into a formula that makes sense across the country, we are really not ready to proceed.

Mr. CRANSTON. Mr. President, I am glad that the two Senators from Michigan and the two Senators from New York are concerned, and I shall be glad to work in tandem with them to try to find some way to achieve a fairer and more equitable solution that takes into account the smaller States but also recognizes the need for dealing in fairness with the larger States.

Mr. RIEGLE. Mr. President, I agree with the Senator from California. It will take some time to find an answer and a purely local answer cannot be found.

Let me take just one moment to address the specific dangers to the Great Lakes States.

In his testimony before the Governmental Affairs Subcommittee a few weeks ago, EPA Assistant Administrator Henry Longest gave tribute to the importance of the Great Lakes in our country. He pointed out, for example, that the Great Lakes is the largest body of fresh water in the world. The Great Lakes comprise 95 percent of the United States'

supply of surface fresh water and 20 percent of the world's supply of fresh water. That is an absolutely astonishing fact, one that we tend to take for granted but one of enormous long-term strategic importance to our Nation. It is very important that the Great Lakes water supply be preserved and protected in the best possible form.

At present, there are some 45 million people who rely upon the Great Lakes for water, transportation, recreation, energy, and, not the least, enjoyment. Yet in spite of their size, the Great Lakes are very vulnerable to contamination. This is well known. Scientific information bears this out. So for this reason, we cannot afford to ignore the very real need to take action to protect the water quality of the Great Lakes.

In fact, I am grateful to the committee for recognizing this important need by including a Great Lakes title in the bill. <FWPCA § 118> But the inclusion of the title is not adequate compensation by any means for the huge reduction in funding for wastewater treatment facilities in areas that border on the Great Lakes, which are in fact the most important means we have for controlling the flow of pollutants into the Great Lakes. We want to prevent that and we need to be in a position to prevent that as the States that border on the Great Lakes.

In a sense, we are the most immediate trustees of the Great Lakes in terms of the quality of the water be- [*15310] cause we adjoin the Great Lakes. Our colleagues must help us be in a position to respond as good stewards of that precious national resource to see to it that we are able to maintain and certainly not diminish the water quality in the Great Lakes. The stewardship that falls to us because of our immediately adjacency is not something that we can meet solely by ourselves if we are going to find a national clean water formula being titled in such a way that we are not able to have a fair share of the resources to meet an obligation that we have to carry out for the whole country and where the stakes for the future of the whole country are very much involved.

This is not a special-interest pleading. We are talking about something here that is probably the most plain to see national resource in the way of water, fresh water, in this country as you can hope to find. This is, in a sense, almost the entirety of our surface fresh water in the country, 95 percent of it. Let us make sure, as a Senator or as a nation, that we are wise stewards in terms of making sure that we are protecting this absolutely critical resource.

We are not asking for a differentially larger amount, although I would think that we might be able to make an argument for that. We are saying no, let us have this formula divised on the basis of a more objective measure of need, and where the needs are let us match the money to the need because, in the end, that is what is going to serve the country better than anything else. The main fact is that we are not spending enough in this area. We are not moving ahead as fully as we should. We are obviously feeling the pinch of the budget constraints, as every area is, so that when we know we are not going to be able to do as much as we would like, let us make sure we are getting the maximum amount of protective result based on need for every dollar spent.

It is very important to recognize that we share this very important body of fresh water with the nation of Canada. In 1972 and again in 1978, the United States and Canada together signed a Great Lakes water quality agreement which required both countries to make a financial commitment to provide sewage treatment for those living in the Great Lakes Basin. In spite of a December 31, 1982, deadline for completing the municipally controlled programs to carry out those international understandings, much more remains to be done. The Construction Grants Program is currently the primary vehicle for meeting these international water quality obligations which we have undertaken with our neighbors to the north. It is important that those obligations be met. It is important as a matter of our national standing and our national word, but it is also important in terms of why we entered into these agreements in the first place, and that is to protect the water quality in this important area.

The Council of Great Lakes Governors has sent a letter to the committee opposing the proposed formula, pointing out that it will jeopardize the Great Lakes, will strain the Federal commitment to cleaning up the Great Lakes and worsen the imbalance in the return of Federal tax dollars to this region of the country where historically we have certainly not been fair share participants. Mr. President, I ask unanimous consent to insert in the RECORD the letter from the Governors of the Great Lakes States written on June 7, to the chairman of the Environment and public Works Committee.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JUNE 7, 1985.

Hon. ROBERT T. STAFFORD.

Chairman, Committee on Environment and Public Works, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We are writing in strong opposition to the recent action by the Environment and Public Works Committee to alter the Wastewater Treatment Grant allocation formula contained in the Clean Water Act reauthorization. The Committee's proposed formula cuts $175 million in essential grant funds from the Great Lakes Region in 1986 alone.

The waters of the Great Lakes not only provide 1 in 10 Americans with drinking water, but also represent an international resource. The Great Lakes Water Quality Agreement of 1978 between the United States and Canada recognizes our joint responsibility for proper stewardship of this water resources.

Through a combined effort with Canada, water quality in the Great Lakes basin has improved significantly. Today's wastewater treatment facilities form the centerpiece of that effort. Fulfillment of these reforms relies significantly upon federal responsibilities for wastewater treatment standards and construction as outlined in the Water Quality Agreement.

The Committee's proposed formula jeopardizes this vital resource. The proposed formula change will not affect the federal deficit. Rather, it is an attempt to reallocate funds which would sorely strain the federal commitment and support for the Great Lakes watershed and exacerbate the imbalance on the return of the federal tax dollar to this region of the country. We oppose this proposed formula in the strongest possible terms.

Sincerely,

Gov. James J. Blanchard, Gov. Richard F. Celeste, Gov. Mario M. Cuomo, Gov. Robert D. Orr, Gov. Dick Thornburgh, Gov. Rudy Perpich, Gov. Anthony S. Earl, Gov. James R. Thompson.

Mr. RIEGLE. Mr. President, I note that this letter is signed by Governors Blanchard, Celeste, Cuomo, Orr, Thornburgh, Perpich, Earl, and Thompson, so this is a substantial bipartisan list of Governors from those States indicating how strongly they feel about this issue and the plea that they have extended to us.

Before yielding the floor, Mr. President, I believe very strongly in the need for tough water pollution controls in this country, and I very much want to be able to support the Clean Water Act reauthorization, but the bill that has been reported out of the committee is simply unacceptable because it reduces protections for one of the most vital and, on the face of this globe, most unique water resources that we have, namely the Great Lakes. So it would be very irresponsible not only for the Senate to take that action but doubly so for those of us adjacent to the area and who understand it to be a party to that kind of mistake.

I yield the floor.

Mr. STAFFORD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The question is on the motion to proceed to S. 1128.

Mr. STEVENS addressed the Chair.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. I suggest the absence of a quorum.

Mr. CHAFEE. I wonder if the Senator will hold up that request. It was my understanding the Senator from California was perhaps getting some of the folks together, and if he was going to do that we could use the time for opening statements.

Mr. CRANSTON. If I might just say briefly, a group who is concerned about this would like --

The PRESIDING OFFICER. Does the Senator from Alaska withhold his request?

Mr. STEVENS. For the time being.

Mr. CRANSTON. Those of us who have expressed some concerns and some others plan to meet at 4:15 to talk about what we can do in regard to the current situation and this formula. That meeting would not be a long meeting and we would come back to the floor as soon as possible.

Mr. MITCHELL. Does the Senator object to using the time for opening statements between now and then?

Mr. CRANSTON. No, we have no objection on the assumption there will be no action until we have a chance to talk and come back to the floor.

Mr. CHAFEE. I am prepared to agree that we allow the opening statements; that there will be no motion to proceed, we will not press the motion to proceed between 4:15 and when you get back, if you could be back around 4:45.

Mr. CRANSTON. Yes, we will do our best to be back before 4:45, possibly earlier.

Mr. STEVENS. Mr. President, just so there is no misunderstanding, this [*15311] Senator has not begun to address the issue, and I would not suggest that we can name a time when we can proceed with the motion when negotiations are going on off the floor.

Mr. CHAFEE. Well, I do not know what negotiations are going on off the floor.

In the interim, let us get on with our opening statements. Mr. President, today we are attempting to consider S. 1128, the Clean Water Act Amendments of 1985. This comprehensive bill which deals with both the regulatory and construction grants provision of the law was developed with the support and able leadership of our full committee chairman, BOB STAFFORD; our full committee ranking member, LLOYD BENTSEN; and the Environmental Pollution Subcommittee ranking member, GEORGE MITCHELL.

Before I outline the contents of this legislation I would like to take a moment to discuss the progress the Nation has made under the Clean Water Act. Often in our zeal to push forward with strong environmental legislation we fail to recognize the achievements of the Environmental Protection Agency. State and local governments, public interest groups, and industry in abating pollution from our waters.

More than 10 years ago we were besieged with reports of fish kills in our lakes and rivers, beaches closed to swimming, algae and slime choking our waters.

Congress responded with the Clean Water Act in 1972 and in a relatively short period of time we have seen results. Fish have returned to many of our rivers and people are swimming where they have not swum for decades. By 1982 there were over 15,000 wastewater treatment plants in operation. The number of persons utilizing secondary or greater treatment increased 67 percent from 1972 to 1982, while population only increased 11 percent.

According to the Environmental Protection Agency's national water quality inventory report, substantial reductions have occurred in pollutants. Sewage treatment plants are removing about 13,600 tons per day of the two principal conventional pollutants -- suspended solids and biochemical oxygen demand [BOD] -- an increase of 65 percent over 1973 levels. In July 1977, 37 percent of the secondary plants required by the Clean Water Act had been completed and by June 1983 that number had risen to 69 percent.

According to EPA, six key industrial pollutants including phosphate, heavy metals and dissolved solids were reduced by more than half since 1973.

The EPA has reported a majority of the Nation's waters assessed in 1982 meet the interim Clean Water Act goal of fishable, swimmable waters. Thirty six States have reported specific improvements resulting from the construction of municipal wastewater treatment facilities and 20 States reported improved water quality due at least in part to pollutant controls implemented by industry.

These trends are encouraging and demonstrate that the basic structure of the Clean Water Act is sound. Some of our more obvious and major pollution problems created by sewage treatment plants and unregulated discharges by industry are being solved. But, new more subtle problems must be addressed. These are problems of devastating toxic substances and pollution from nonpoint sources, such as runoff from farmlands and urban areas.

Although fish and shellfish communities are being reestablished in areas where they have been absent for decades because of the reduction of conventional pollutant loadings, hundreds of tons of toxic substances are being discharged into the Nation's waters each year from direct and indirect dischargers. It is indeed ironic that we must now warn people against consuming fish caught in many areas cleansed of conventional pollutants but which are contaminated by toxic pollutants to the point that they pose a potential health threat to those who eat them.

Toxic pollutants in water, fish tissue and bottom sediments can come from a variety of sources including industrial and municipal point sources and nonpoint sources. According to the EPA in 1982, 32 States cite water quality standards violations or use impairments due to toxic pollutants.

Although the structure of the Clean Water Act is sound and the program is working well, these amendments move us closer toward the fishable and swimmable waters goal of the act. <FWPCA § 101> Among other things the bill assures compliance with a strong water quality standards program and provides for greater control of toxic, conventional, and nonconventional pollutants. It establishes a new program to control pollution from nonpoint sources. It continues funding for the construction grants program at the current $2.4 billion level through fiscal year 1991 while establishing a revolving loan fund to ease the transition to full State and local sufficiency.

Now Mr. President I would like to outline the major provisions of S. 1128, the Clean Water Act Amendments of 1985. Members may refer to the committee report for a further detailed explanation.

The bill reauthorizes the regulatory provision under title I and the construction grants program under title II.

TITLE I

AUTHORIZATIONS

Section 101 of the bill reauthorizes a number of programs through 1989. The reauthorization levels are the same as the 1982 level.

<FWPCA § 104> Section 104(u)(1) of the Clean Water Act is amended to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring, and coordination.

<FWPCA § 104> Section 104(2) of the act is amended to provide $3 million annually for the manpower development training program. His program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works.

<FWPCA § 104> Section 104(u)(3) is amended to authorize $1.5 million annually for the employment needs forecasting program.

<FWPCA § 106> Section 106(a)(2) is amended to provide $75 million annually for grants to States and interstate agencies for programs for the prevention, reduction, and elimination of pollution, including implementing State delegated programs under sections 402 <FWPCA § 402> and 404 <FWPCA § 404> and enforcement directly through appropriate State enforcement officers or agencies.

<FWPCA § 112> Section 112(c), is amended to authorize $7 million per year for training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations.

<FWPCA § 314> Section 314(c)(2) is amended to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Finally $160 million per year is authorized for section 517 <FWPCA § 517> for carrying out the remaining provisions of the Clean Water Act.

SMALL FLOWS CLEARINGHOUSE

<FWPCA § 104> The act is amended so a portion of the funds set aside for innovative and alternative [I&A] technologies, but not obligated within the 2-year deadline, can be used to fund the Small Flows Clearinghouse. This clearinghouse was established under the 1977 amendments to collect and disseminate information on alternatives to traditional expensive community-wide sewage treatment systems, suitable for rural settings and individual or cluster application. The purpose of the clearinghouse is to assure the better utilization of the I&A set-aside money.

COMPLIANCE DATES

<FWPCA § 301> The Clean Water Act currently mandates that industry achieve effluent limitations based on best available control technology [BAT] for all toxic pollutants, and best conventional control technology [BCT] for all conventional pollutants no later than July 1, 1984, BAT for nonconventional pollutants must be achieved by 3 years after [*15312] promulgation but no later than July 1, 1987.

<FWPCA § 301> These dates were enacted in the 1977 amendments with the expectation that the EPA would promulgate guidelines in a timely fashion for the 29 major industrial categories to be regulated. The Agency has not met this objective. Guidelines for only five categories still have to be promulgated.

<FWPCA § 301> Since the 1984 compliance deadline has passed and since EPA has not promulgated these guidelines according to schedule, this section amends the law to require compliance with BAT and BCT for all pollutants as expeditiously as practicable but not later than 3 years after promulgation of the effluent limitations, but in no case later than July 1, 1988. During our hearings in the Environmental Pollution Subcommittee we learned that most industries need about 3 years after promulgation of effluent limitation guidelines to design and construct the necessary control facilities.

<FWPCA § 301> In extending these compliance deadlines, the committee emphasizes that discharges are to comply with technology standards as expeditiously as practicable, regardless of the outside limits prescribed by this legislation.

<FWPCA § 301> <FWPCA § 402> New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) <FWPCA § 304> have not been established or where limitations in addition to the guidelines are necessary to control pollutants or waste streams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a waste stream controlled by an effluent limitations guideline is combined with a process waste stream or a nonprocess waste stream, such as noncontact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged waste stream is controlled by a combination of both a guidelines based limitations and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

OCEAN WAIVER

<FWPCA § 301> In the 1977 Clean Water Act amendments Congress enacted a provision that would allow publicly owned treatment plants [POTWS] in coastal communities to apply for waivers from uniform secondary treatment requirements. Those amendments contemplated that only a few POTW's with primary treatment capability discharging into deep unstressed waters would be eligible for these so-called ocean discharge waivers. Court decisions however blurred this intent and thereby encouraged many communities to apply for waivers. Now over 200 communities have applied for these waivers and have put their secondary treatment plans on the back burner -- to the detriment of water quality -- until EPA decides on their applications.

<FWPCA § 301> This bill clears up ambiguities and restates congressional intent to require communities not originally intended to qualify for waivers to meet secondary treatment requirements. The bill amends section 301(h) of the Clean Water Act so applications could only be approved if POTW's are at least at primary or equivalent treatment. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to insure the control of toxic pollutants at the time of application.

<FWPCA § 301> Additionally, conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

<FWPCA § 301> No discharges should be permitted into saline estuarine waters which do not support a balanced indigenous population of shellfish, fish, and wild-life, or allow recreation in and on the waters, or do not meet applicable water quality standards or other standards necessary to support aquatic protection or recreational uses. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges. The presence of a balanced indigenous population is to be determined by comparison with the shellfish, fish, and wildlife population of an estuary of similar physical, tidal, and geographic characteristics.

MODIFICATION FOR NONCONVENTIONAL

POLLUTANTS

<FWPCA § 301> The bill amends section 301(g) of the act to restrict the circumstances under which a modification from best available technology standards [BAT] can be granted for nonconventional pollutants. This provision is similar to one proposed by the administration.

<FWPCA § 301> Current law allows modification to BAT standards for nonconventional pollutants if, upon a showing by the discharger, such modification will result, at a minimum, in compliance with best practical treatment; will not result in additional requirements on point and nonpoint sources; and will not result in unacceptable risks to human health or the environment or interfere with the attainment or maintenance of water quality standards.

<FWPCA § 301> According to the EPA, scientific data on a great number of nonconventional pollutants are nonexistent or very limited. Also, the Agency's resources to make decisions on modification applications are inadequate. EPA has estimated that it takes between one-half and 2 years between 0.75 and 3.5 fulltime employees; and between $20,000 and $50,000 to process a modification.

<FWPCA § 301> In the past, proposals for water quality based waivers for toxic and conventional pollutants have been rejected by the Congress. In many cases where information exists, nonconventional pollutants can be highly toxic to humans, fish and other aquatic organisms, and wildlife. Thus, nonconventional pollutants should be treated no differently from toxic or conventional pollutants, except in a very limited fashion. The amendment to section 301(g) allows modifications to BAT guidelines only for five well studied nonconventional pollutants -- ammonia, chlorine, color, iron, and total phenols [4AAP]. EPA has developed adequate information on these pollutants as a result of currently pending applications for modifications from the iron and steel and steam electric industries.

The Administrator may evaluate additional nonconventional pollutants and recommend to Congress that they be eligible for inclusion under section 301(g), but any such recommendations must be enacted by Congress to become effective.

<FWPCA § 301> The provision also limits to 1 year the time in which the Administrator can make a determination on a request for a modification under section 301(g)(4).

<FWPCA § 301> For pending requests, this provision is intended to restrict EPA's consideration to requests for modification to only those five nonconventional pollutants listed. Pending requests for modification for other nonconventional pollutants cannot be granted and, therefore, will not be acted upon. For completed applications pending at the time of enactment of the Clean Water Act Amendments of 1985, EPA must take final Agency action within 1 year of the date of submission of the completed application to EPA, the application will be deemed to be denied. This restriction applies specifically to completed applications as defined in EPA's regulations.

[*15313] <FWPCA § 301> The provision also forbids the stay of any requirements or limitations for any pollutant other than for the pollutants for which a modification may be sought. Thus, if a discharger applies for a modification for chlorine, such application shall not, under any circumstances, stay the discharger's obligation to comply with the applicable effluent guideline which requires control of toxic, conventional or other nonconventional pollutants to meet the compliance deadline, nor may the Administrator or a State extend the compliance deadline for any applicant.

FUNDAMENTALLY DIFFERENT FACTORS

<FWPCA § 301> The bill authorizes the Administrator to grant fundamentally different factors [FDF] modifications under certain conditions.

A FDF modification is an administrative mechanism to provide an opportunity for relief from the application of national effluent limitations guidelines and standards for categories of existing sources for toxic, conventional, and nonconventional pollutants. EPA will write a separate effluent standard for an individual facility if the factors that govern standard setting are found to be fundamentally different at the individual facility from the factors considered in establishing the guideline or standards for the industrial category.

<FWPCA § 301> Presently the Agency, by regulation, has created an opportunity for FDF modifications from national categorical effluent standards for direct discharges for BPT, BAT, BCT and pretreatment standards.

<FWPCA § 301> EPA's authority to grant FDF modification has been challenged in several different courts. Recently, the Supreme Court held that the Clean Water Act does not prohibit the granting of FDF variances from pretreatment standards for existing sources of toxic pollutants.

<FWPCA § 301> As a result of this decision, EPA is issuing FDF modification without explicit statutory authority and without statutory definition of the conditions under which such modification may be issued. S. 1128 imposes additional restrictions, beyond those in the current FDF rules.

<FWPCA § 301> First, to be granted relief under section 301(n), a facility must be fundamentally different with respect to at least one factor, other than cost, specified in sections 304(b), 304(g), <FWPCA § 304> or 307(b) <FWPCA § 307> and considered by the Administrator in establishing the specific national effluent limitations guidelines and standards of concern to the facility. Cost may not be a factor upon which relief may be granted.

<FWPCA § 301> Second, applications for an FDF modification must be based solely on information and supporting data which have been submitted to the Administrator during the rulemaking process and which specifically raise the factors that are fundamentally different for the facility.

<FWPCA § 301> Third, the amendment specifies that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicant's fundamental difference from the rest of the category or subcategory with respect to the statutory factors (other than cost) specified in section 304(b) or (g) of the act.

<FWPCA § 301> Fourth, if relief is granted, any alternative requirement shall not result in any nonwater quality environmental impact markedly more adverse than the impact considered by the Administrator in establishing the applicable national effluent limitations guidelines and standards.

<FWPCA § 301> An applicant for an alternative requirement must submit a complete application to the Administrator not later than 120 days after publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator may not waive this deadline or extend it for submission of additional data.

The Administrator shall deny any application that is not complete, without providing for an opportunity for reapplication.

<FWPCA § 301> The burden for making the necessary showing in the application is entirely upon the applicant, not EPA.

<FWPCA § 301> This provision is included because many applications for FDF modifications have submitted very incomplete applications and have requested a stay of all applicable effluent standards pending disposition of the application.

After submission of a complete application, final EPA action must be taken within 240 days of the application will be deemed to be denied.

<FWPCA § 301> This timeframe is necessary to assure that a final decision on FDF application will not jeopardize the applicant's responsibilities to meet compliance deadlines for BAT, BCT, or categorical pretreatment standards, should the application be denied.

<FWPCA § 301> The bill also prohibits an application for alternative requirements from staying the facility's obligation to comply with the effluent limitations guideline or standard which is the subject of the application.

The availability of FDF applications is limited to primary industrial categories identified in permit regulations issued under section 402 of the Act as of the date of enactment of the Clean Water Act Amendments of 1985.

<FWPCA § 301> Because substantial Federal resources are being devoted to processing applications for modifications, the bill requires the Administrator to establish a system of fees to recover the cost of processing these applications. Applications should be accompanied by an appropriate fee and will be considered incomplete until the fee is paid.

<FWPCA § 301> Though the fees collected under this requirement will be deposited in the miscellaneous receipts of the Treasury, the EPA budget should provide resources for processing modification applications that reflect the fees received by the Treasury.

<FWPCA § 301> The Administrator may not delegate the authority provided by this subsection to any State, though the Administrator should obtain the concurrence of a State with an approved NPDES or pretreatment program before approving any alternative requirement under this subsection.

<FWPCA § 301> The Administrator is expected to use this authority only rarely and only to create a separate standard for a facility so unique that it would have required a separate subcategory had EPA given it adequate attention

in the national rulemaking. The Administrator should first rely on the national rulemaking process to address the concerns of those who may seek an FDF modification.

WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT

A cornerstone of the bill's new toxic pollution control requirement is the so-called beyond-BAT program.

<FWPCA § 307> Under a court order in 1976 and later incorporated into the Clean Water Act Amendments of 1977, EPA is required to issue regulations for best available control technology requirements [BAT] for major industrial categories to treat 65 classes of toxic pollutants. Some 57,000 facilities that directly discharge into waters are affected.

During the subcommittee's hearings in the last Congress and again in this Congress it was learned that BAT requirement may not go far enough in order to attain water quality standards in highly polluted waters. It has become clear that some water bodies have become so degraded that compliance with BAT and secondary treatment requirements will not necessarily assure the attainment of the water quality goals of the act. To remedy this situation, the bill contains provisions that institute additional controls. Modifications have been made to sections 302 <FWPCA § 302>, 303 <FWPCA § 303>, 304 <FWPCA § 304>, and 305 <FWPCA § 305> of the act, which support the development of water quality based effluent limitations after the implementation of BAT and state water quality standards consistent with the goals and objectives of the act.

The bill amends section 305(c) to require that, within 2 years, States must identify water bodies in which toxics controls beyond BAT will be necessary. The bill also amends section 303(c) <FWPCA § 304> to require that water quality criteria be established in these waters, and adds to section 303(d) a mandatory duty for the States to establish effluent limitations, within 2 years after waters have identified, applicable to [*15314] individual sources based on such criteria. <FWPCA § 303> Finally, section 302 has been amended to give EPA a mandatory duty to address these highly polluted waters -- so-called toxic hot spot areas -- and to refine the modification mechanism of that section. <FWPCA § 302>

<FWPCA § 304> <FWPCA § 302> <FWPCA § 303> Although EPA was required under a 1976 consent decree to develop a beyond-BAT strategy, it has only recently begun to identify toxic hot spot areas, let alone develop control strategies. Adopting the beyond-BAT provisions, will assure that EPA continues to move forward rapidly on this program.

<FWPCA § 303> The bill differs from EPA's current approach in that it requires toxics criteria developed by States be numerical rather than narrative. Narrative criteria, implemented through biomonitoring, may be successful in expeditiously identifying and limiting toxic discharges on a broad scale. These techniques can be useful, especially when trying to analyze complex effluents that contain a variety of toxic pollutants but where health concerns are not evident. However, in developing toxic criteria, EPA and the States cannot exclusively depend on narrative criteria as the primary means to combat toxic hazards.

Biomonitoring techniques have not yet been proven to be successful as regulatory tools because they are limited to aquatic life and there are still many unknowns about overall costs and enforceability. Therefore, S. 1128 authorizes EPA and the States to use toxicity based limits derived from biomonitoring techniques until the required numerical criteria can be developed. <FWPCA § 303>

As I mentioned before, EPA is focusing more on the biomonitoring approach in its present beyond-BAT regulatory scheme so changes will be necessary to make that scheme conform to the numerical criteria approach required in the bill.

<FWPCA § 303>Both EPA and the States are required to develop and enforce controls in highly toxic water bodies. Although the provisions of the bill require the States to take the lead in the beyond-BAT program, let it be very clear that the provisions also require EPA to take timely action to ensure that effluent limitations in hot-spot areas are developed within the time frames set forth in the bill. EPA should closely monitor the state's progress in identifying areas, developing areas, developing guidelines and carrying out responsibilities under section 303(d). If a State fails to meet the statutory deadlines in section 303(d) EPA must be prepared to move forward under the authority in section 302 to carry out its responsibilities. <FWPCA § 302>

<FWPCA § 304> <FWPCA § 303> <FWPCA § 302> If we are going to repair the damage to those water bodies that have become highly degraded as a result to toxic substances we are going to have to move forward expeditiously on this beyond-BAT program. The Nation cannot tolerate endless delays and negotiations between EPA and the States on

this program. Both entities must move agressively in taking the necessary steps to make this program work within the timeframe established by the bill. Because of our keen interest in the timely success of the beyond-BAT program, the committee members expect to receive periodic progress reports from EPA to ensure that the requirements are being swiftly and fully implemented.

CIVIL AND CRIMINAL PENALTIES

Strong public support exists for aggressive enforcement action in cases of environmental misconduct.

<FWPCA § 309> The bill strengthens the enforcement provisions of the law by increasing the civil judicial penalty limit from $10,000 to $25,000 per violation, and clarifying that each distinct violation is subject to a separate daily penalty assessment of up to $25,000 and clarifying that violations of pretreatment program requirements are subject to civil penalties. The increase in the maximum daily penalty would make the Clean Water Act consistent with penalty limits under other environmental statutes and reflects the serious nature of these violations. In assessing penalties the courts must consider a number of factors, including, the economic benefit gained as a result of the violation. Violators should not be able to obtain an economic advantage vis-a-vis their competitors due to their noncompliance with environmental laws.

<FWPCA § 309> The Clean Water Act currently provides the Administrator with two civil enforcement options. When faced with a violation of the act, the Administrator may issue an order requiring compliance or the Administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

<FWPCA § 3091> The bill also gives the Administrator new authority to assess administrative civil penalties of up to $10,000 per day for each violation of a Clean Water Act requirement. us, a discharger who violated three daily maximum permit limits on a day could be subject to a maximum penalty of $30,000 for that day's violations. The total maximum administrative penalty that may be assessed under this provision is $125,000 for an individual enforcement action. This new authority is intended to complement and not to replace a vigorous civil judicial enforcement program.

<FWPCA § 309> First, this new authority is designed to address past, rather than continuing, violations of the act. Second, it includes a cap on penalty amounts and a lower daily limit than judicial penalties. These limitations are intended to assure that violations of greater magnitude are handled judicially and pursued in a judicial forum. Third, this new authority to administratively assess civil penalties sunsets after 5 years.

<FWPCA § 309> Prior to issuing an administrative order assessing a civil penalty, the Administrator must give the person against whom the penalty is to be assessed written notice of the proposed penalty and an opportunity to request, within 30 days of receipt of such notice, a hearing.

<FWPCA § 309> The Administrator is also required to provide the public with notice of the proposed penalty assessment and a reasonable opportunity to comment on the proposal. If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing.

<FWPCA § 309> If a hearing on the proposed assessment is conducted, any citizen who commented on the proposal shall be given notice of such a hearing and a reasonable opportunity to be heard and to present evidence at the hearing. If no hearing is held, the Administrator must set aside the penalty order and provide a hearing when presented with evidence that the order was inadequate or improper.

<FWPCA § 309> An order assessing a penalty becomes final and nonappealable 30 days after its issuance or, in the case of a postassessment request for a hearing, 30 days following the final action by the Administrator.

<FWPCA § 309> The potential for overlap between citizen enforcement suits and administrative civil penalties is specifically addressed in the provision.

<FWPCA § 309> Judicial review of a penalty assessment is available to any person against whom a civil penalty order is issued as well as to any citizen who commented on a proposed assessment. Judicial review is not to be de novo review, but will be based upon whether the assessment of the penalty is an abuse of discretion. Where it is clear that the Agency has assessed such an unreasonably low penalty as to constitute an abuse of discretion, the court may choose to impose its own higher penalty rather than exercise its authority to remand. The bill would also elevate penalties for knowing violations of the act to the felony level and add criminal sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage. Criminal liability shall also attach to any person who is not in compliance with all applicable Federal, State, and local requirements and permits

and causes a POTW to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 <FWPCA § 402> of the act.

[*15315] <FWPCA § 309> The felony level penalties for knowing violations (not less than $5,000 nor more than $50,000 per day per violation and imprisonment for up to 3 years) are more closely comparable to the levels provided by the 1984 amendments to the Resource Conservation and Recovery Act and reflect the commensurately serious nature of the violations to be criminally prosecuted under the Clean Water Act.

<FWPCA § 309> This section of the bill also adds enhanced felony penalties for certain life-threatening conduct. This new offense under the Clean Water Act is based upon violation of certain predicates in the act. In the event of such knowing violation, the amendment subjects to greater punishment one who knows that he thereby placed another person in imminent danger of death or serious bodily injury. The criminal penalties that apply upon conviction -- up to 15 years imprisonment plus a fine of up to $250,000 for individuals, a fine of up to $1,000,000 for organizations -- are equivalent to the RCRA knowing endangerment provision, as recently amended.

<FWPCA § 309> The maximum term of imprisonment contained in the provision of the current law penalizing the knowing making of false statements, representations and certification, or tampering with monitoring equipment required under the act, is increased from 6 months -- a petty offense -- to 2 years -- a felony. The provision doubling the maximum punishment with respect to both fine and imprisonment for second and subsequent convictions under the same paragraph of the act is extended to this provision as well as to the knowing endangerment provision.

This provision also extends and consolidates criminal sanctions involving violations of the provisions of section 405 <FWPCA § 405> governing disposal of sewage sludge, violations of requirements imposed in State pretreatment programs approved under section 402(b)(8) <FWPCA § 402>, violations of section 318 permits, and violations of section 404 <FWPCA § 404> permits issued by the Secretary of the Army or by a State.

PARTIAL NPDES PROGRAM APPROVAL

<FWPCA § 402> This section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the national pollutant discharge elimination system program to a State under conditions.

<FWPCA § 402> A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing 5 years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this second option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

<FWPCA § 402> In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a State-operated program, the entire program must be returned to the Federal Government.

<FWPCA § 402> States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. The bill includes modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

JUDICIAL REVIEW AND AWARD OF FEES

This section revises the provisions of section 509 <FWPCA § 509> of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 <FWPCA § 505> or 509 <FWPCA § 509> to prevailing or substantially prevailing parties.

<FWPCA § 509> The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from 90 to 120 days.

Proper venue for judicial review under section 509 of the act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question. The intent is to allow the filing of an application for review in the circuit in which the applicant resides, that is, has his principle place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed

facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

<FWPCA § 509> The bill, changes from 90 to 120 days the period within which an application under section 509 of the act for judicial review of an action must be made.

<FWPCA § 509> The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period.

<FWPCA § 509> The bill establishes a random selection procedure, to be administered by the administrative office of the U.S. courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award cost of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

<FWPCA § 509> The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. This process is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

<FWPCA § 509> Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intent that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

<FWPCA § 505> The bill limits the award of costs of litigation in citizen's suits under the act to prevailing or substantially prevailing parties.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. It is not reasonable or appropriate to compel either the Government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues.

<FWPCA § 505> <FWPCA § 509> These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor do they intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial [*15316] contribution to the successful outcome of the case.

NONPOINT SOURCE POLLUTION

<FWPCA § 319> The bill establishes a new section 319 of the Clean Water Act to require development of implementation program to control nonpoint source pollution.

<FWPCA § 319> During the course of the Clean Water Act reauthorization process it became clear to the committee that nonpoint source pollution cannot be ignored any longer. This form of water pollution includes runoff from agricultural areas, mining areas, urban areas, and construction sites. It includes sediments, pesticides, fertilizer, bacteria, toxic heavy metals and other serious pollutants. As point sources gradually are brought under control, nonpoint sources loom as a larger and larger problem. The evidence on nonpoint source pollution cannot be denied. In fact, many of the pollutants that are primarily from nonpoint sources have actually gotten worse in recent years. In the National Fisheries Survey performed by the Environmental Protection Agency and the Fish and Wildlife Service, State fisheries biologists identified nonpoint sources more frequently than point sources as the cause of poor or fair quality fishery waters. Virtually all States report significant water quality problems caused by nonpoint sources. These sources seriously threaten the water quality gains of the last decade, gains made as a result of large public and private investment.

The approach contained in S. 1128 is an important first step. It establishes a program whereby, under Federal oversight, States are to implement nonpoint source management programs that will target critical areas, identify the sources of nonpoint source pollution, identify the best management practices that are available to abate the pollution, and set

timetables for program implementation. In identifying these best management practices, the impact of the practice on ground-water quality must be taken into account.

<FWPCA § 319> The States are accorded considerable flexibility in designing their programs. The States as well as representatives of agriculture interests testified that effective programs would be developed under the more flexible approach in this bill. When designing its program, a State must commit to a timetable of performance, including implementation of best management practices as needed to reduce nonpoint source pollution.

<FWPCA § 319> Another important provision of this bill relates to the ability of States to affect the implementation of Federal assistance programs and Federal development projects which otherwise might undercut approved nonpoint source management programs. As part of the State program submission, the State is to indicate the Federal development projects and assistance programs for which it subsequently reviews individual projects and assistance applications to ensure consistency with the nonpoint source management program.

<FWPCA § 319> The Federal agencies must accommodate the concerns of the States regarding consistency of the applications or the projects with the nonpoint source management program, according to the requirements and definitions of Executive Order No. 12372 as in effect on September 17, 1983, which was approximately the date the committee acted on the bill. The purpose of this provision is straightforward. It allows the State a significant voice in the operation of Federal programs and projects that could nullify the benefits of the nonpoint source management program. This provision is based directly on Executive Order No. 12372 which establishes mechanisms for Federal/State coordination of Federal activities. It does not invent a new process; it utilizes the one already in existence.

<FWPCA § 319> The bill also would authorize $300 million in Federal matching funds over 3 years to support projects to implement State programs. Two-thirds of the funds will be available to the States according to an allotment formula in the bill. The allotment formula is based on population and agricultural lands in production. One-third of the appropriated funds will be held in reserve by the Administrator for distribution to States or combinations of States by application. These funds are to be used to control particularly difficult and serious nonpoint source pollution problems, to support implementation of innovative methods and practices for controlling nonpoint source pollution, for controlling interstate nonpoint source pollution problems, to assess the relationship between nonpoint source pollution and groundwater contamination, and to provide financial assistance for implementation by Indian tribes within the reservation of a nonpoint source pollution management program.

<FWPCA § 319> Under this bill the appropriated Federal funds may not be used for cost sharing with persons whose activities create sources of nonpoint pollution. States, of course, are free to appropriate State funds for that purpose as they wish but under the bill it would be inappropriate for Federal funds under this program to be paid directly to persons causing the pollution.

<FWPCA § 319> The bill also requires a comprehensive report to Congress on the progress of the nonpoint source management programs. This report is very important. Based on annual reports from the State, this report will allow Congress to determine whether the approach established by this bill for dealing with the nonpoint source pollution problem is, in fact, working. It will provide the baseline information that Congress will need to determine whether any of the provisions of this program need to be revisited and perhaps changed at a later date. Although I am confident that both the States and sources of pollution will perform their responsibilities in good faith, this requirement is an exercise in good program management and this report will provide a basis for evaluating the progress of the program.

<FWPCA § 205> Finally, this section of the bill directs the Administrator to reserve 1 percent or $100,000 -- whichever is greater -- from the State's construction grants funds to support implementation of programs established under the new section 319. <FWPCA § 319>

NATIONAL ESTUARY PROGRAM

<FWPCA § 320> The bill adds a new section 320 which authorizes the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Under the provisions, EPA would convene a management conference if the Administrator determines that the attainment and maintenance of water quality in an estuary requires the control of interstate or international pollution.

Estuaries are sensitive and diverse ecosystems. Their varied fish and wildlife resources and their proximity to large urban areas provide numerous recreational and economic opportunities for millions of citizens. Over the last decade, environmental and other resource values of many estuaries, including Narragansett Bay, Chesapeake Bay, Puget Sound, Long Island Sound, and Buzzards Bay, have experienced serious water quality degradation.

<FWPCA § 320> The management conferences would be convened for up to 5 years and would develop comprehensive conservation and management plans which recommend priority actions for the control of point and nonpoint sources of pollution.

<FWPCA § 320> I would like to note, however, that any priority corrective actions or compliance schedules recommended by the conference shall in no manner be less stringent than any requirements of Federal law. Nothing in this section shall affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial, or other dischargers.

The Administrator shall approve the plan if it satisfies the purposes of section 320 <FWPCA § 320>, and the affected Governor or Governors concur. Once a plan is approved, funds authorized to be appropriated under the title II Construction Grants Program, the title VI Water Pollution Control Revolving Loan Program, and the section 319 <FWPCA § 319> Nonpoint Source Pollution Program may be used in accordance with the applicable requirements of the act, to assist States in implementing programs. This provision, however, does not in [*15317] any way preclude the use of funds for any eligible project under title II, title VI, or section 319 <FWPCA § 319> of the act.

<FWPCA § 320> The provision authorizes $12 million annually for the management conferences. Expenses related to the administration of management conferences are not to exceed 10 percent of the amounts appropriated. Grants are provided on a 75 percent Federal, 25 percent non-Federal basis to States, interstate or regional water pollution control agencies to conduct research, monitoring, modeling, and other technical work necessary to develop conservation and management plans. Those agencies which receive grants are required to report to the Administrator 18 months after receipt of the grant and biennially thereafter.

<FWPCA § 320> EPA has established an Office of Marine and Estuarine Protection through which these provisions are to be implemented. The office has initiated studies in Narragansett Bay, Buzzards Bay, Long Island Sound, and Puget Sound as authorized by Congress in the EPA's fiscal year 1985 appropriations bill. The committee expects the office to continue its involvement and support for these estuaries as well as other estuaries as determined by the Administrator.

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

<FWPCA § 402> This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Only discharges from oil and gas exploration, production, processing, or treatment operations are covered by this provision.

ANTIBACKSLIDING

The bill clarifies the Clean Water Act's prohibition of backsliding on effluent limitations. This prohibition is inherent in the act's policy of requiring reasonable further progress toward the national goal of the elimination of the discharge of pollutants into waters of the United States. The intent of the policy is to preserve pollution control levels achieved by dischargers by prohibiting the adoption of less stringent treatment or control limitations, standards or conditions than those already contained in a permit except in certain narrow circumstances.

<FWPCA § 402> The provision makes explicit that a permit limitation based on best professional judgment [BPJ] may not be made less stringent because there has been a subsequently promulgated effluent guideline that would have resulted in less stringent effluent limitations had it been used as a basis for the permit.

<FWPCA § 402> These BPJ permits may not be made less stringent solely on the basis of a subsequent guideline. This provision is intended to exclude any consideration of a subsequent guideline as a basis for reducing permit limitations.

<FWPCA § 402> Where the permittee can demonstrate that installation and adequate operation of treatment facilities has failed to achieve the permitted effluent limitation, limits in the new permit may reflect the level of control actually achieved, but shall not be less stringent than required by the effluent guidelines in effect at the time of permit issuance or renewal.

<FWPCA § 303> The provision also addresses the antibacksliding issue in the context of permits developed on the basis of water quality based effluent limitations. These permits may be renewed, reissued, or modified on the basis of subsequently revised waste load allocation formulas [WLA's] but only if those WLA's are in compliance with a new section 303(d)(5). For the most part, this new section assures that backsliding is prohibited unless it is consistent with the water quality standards adopted by the EPA.

SEWAGE SLUDGE

<FWPCA § 405>The bill establishes a timetable for promulgation of management practices and toxic contaminant criteria for sewage sludge use and disposal. It also provides authority to implement and enforce criteria for toxic and other pollutants.

<FWPCA § 405> This phased approach reflects the fact that the Agency already has sufficient information to establish criteria for some contaminants and some sludge uses, while information may be lacking for other contaminants or uses. The amendment requires the Agency to proceed with regulation where it has the basis to do so. A longer timeframe is provided for pollutants for which needed information presently is not now available.

When a public treatment works is issued a discharge permit, it shall include the management practices and criteria issued by EPA. The permit shall also include requirements for the use and disposal of sludge in accordance with the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Marine Protection, Research and Sanctuaries Act or the Clean Air Act, or under applicable State permit programs.

INTERSTATE DISPUTE RESOLUTION

The bill requires the Administrator to decide through the permit issuance process between States as to whether a discharge for which one State proposes to issue a permit will violate water quality requirements or adversely affect public health in another State.

A new section 511(e) is added with the intention to cover sources not covered by permits. In instances where water quality is being adversely affected by pollutants from another State, the affected State or municipality may petition the Administrator who shall determine, after a hearing, if the pollution is violating a water quality requirement or adversely affecting the public health of such State. If the Administrator so determines, he must issue an order restraining the discharge or provide appropriate relief, taking into account the goals of the act and other equitable considerations.

The new authority in 511(e) shall only apply where cases cannot be resolved under the procedures established under section 402 or under agreements adopted under the authority of the Colorado Salinity Control Act and not impair rights to quantities of water. Additionally, the provision would not apply to water pollution caused by emissions from sources regulated under the Clean Air Act.

PRESERVATION OF OTHER RIGHTS

This section preserves State common law, permitting a person in a downstream State who is injured or aggrieved by pollution from an upstream State to seek relief in the courts of the injured party's State or in the courts of the neighboring State through State common or statutory law.

The provision does not apply to any dispute involving interstate water pollution which is pending upon enactment (or has been finally adjudicated) and on which the Supreme Court has rendered a decision.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

<WQA87 § 511> This places a cap on the amount of discharge of raw sewage by the city of New York. The cap would apply to the North River treatment plant and the Red Hook treatment plant if the facilities have not achieved their required treatment levels by established deadlines. EPA Administrator may grant limited waivers from the cap in the event of significant interruption in the operation of the wastewater treatment plants, or due to random or seasonal flow variations. Deadlines may be extended for limited reasons such as act of war or unanticipated natural disaster.

CHESAPEAKE BAY PROGRAM

<FWPCA § 117> An EPA Office of Chesapeake Bay programs is established in the bill: $10 million is authorized annually through fiscal year 1988 in grants to States in the Chesapeake Bay drainage basin to implement interstate management plan on a 55 to 45 percent Federal State basis. The bill authorizes $3 million annually through fiscal year 1988 for continued Chesapeake Bay research.

GREAT LAKES

<FWPCA § 118> The bill establishes a Great Lakes National Program Office within the EPA. Although an office has already been established administratively, this provision more clearly defines its duties, enhances its accountability to Congress, and authorizes funding.

[*15318] <FWPCA § 118> The program office has three basic duties: developing and implementing plans to carry out U.S. responsibilities under the Great Lakes Water Quality Agreement of 1978, establishing a water quality surveillance network, and serving as the liaison to the Canadian members of the International Joint Commission and the Canadian counterpart to the EPA. In addition, the office is required to develop programs for control of nutrients, including phosphate, and toxic chemicals.

<FWPCA § 118> A total of $10 million per year is authorized for fiscal years 1986 through 1990 for the Great Lakes National Program Office to carry out its duties under the section.

CLEAN LAKES

<FWPCA § 314> The bill amends section 314 of the act to provide for effective reporting of lake quality by State agencies on a regular basis. Reports are to identify lakes in each State, identify lakes with impaired uses, and include a description of the State program for lake protection.

<FWPCA § 314> To avoid unnecessary reporting burden, the lake quality reports will be included in the State water quality report prepared every 2 years under section 305(b) of the act. Also, a State must prepare and submit a lake quality report to EPA in order to receive a grant under section 314 of the act.

<FWPCA § 314> Finally, section 314 is amended to include saline lakes under the Clean Lakes Program.

TITLE II

Title II of the bill addresses the construction grants program; $2.4 billion is authorized annually for the construction grants program for fiscal years 1986 through 1988 and $1.2 billion annually for fiscal years 1989 and 1990. <FWPCA § 207> Although funding for the title II construction grants program is concluded as of 1990, other sections of the bill authorize Federal funds for capitalizing State revolving funds through 1994. <FWPCA § 607>

This legislation provides States and municipalities with the clear intent that the transition to State-local funding initiated in the 1981 amendments will be completed during the period of this authorization. By establishing certainty in this timeframe, States and municipalities will be able to plan effectively for assumption of increased funding responsibilities.

ALLOTMENT FORMULA

The bill establishes a new allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990. The formula in existing law expires with the fiscal year 1985 authorization.

The allotment formula in the bill is based on each State's needs for sewage treatment facilities, as expressed in the 1984 needs survey. This survey, conducted by the Environmental Protection Agency with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the act.

The formula is based on each State's aggregate needs for facilities providing secondary treatment (category I of the needs survey), advanced waste treatment required by water quality standards (category II), and correction of infiltration or inflow problems (category IIIA), and for interceptor sewers (category IVB). These are the only categories of treatment works fully eligible for funding under the law. In restricting eligibility to these categories of facilities in the 1981 amendments to the Clean Water Act, the Congress determined that on a national basis these are the facilities most related to attainment of the water quality goals of the construction grant program. Also, these are the core treatment facilities that have been completed to meet the 1988 secondary treatment deadline for municipalities.

To reach the allotment formula contained in the reported bill several steps were performed. First, those States with very small remaining needs were identified. These States need more than an allotment strictly on their share of needs. This is so they are able to have a manageable program of sufficient size to make meaningful investments in sewage treatment facilities as well as meet the 1988 secondary treatment deadlines.

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of 1 percent. Although this is somewhat arbitrary, it assures program momentum and avoids disruption. Because the number of these smaller States is growing, as the construction grant program nears its objectives, the formula establishes a mechanism to assure adequate program size for smaller States. Thus, the approach is more reflective of needs and less arbitrary than the minimum allocation approach.

The allotment formula establishes two groups of States with small shares of eligible needs. The first group of 13 smaller States whose individual needs are less then one-half of 1 percent of the total receive an aggregate allotment of 8.5 percent which is only 2 percent more than what these States would receive in the aggregate under the existing policy. The other groups of 8 States whose individuals needs are less than 1 percent of the total but greater than one-half of 1 percent, receive an aggregate allotment of 9 percent. The actual needs of these States constitute 6 percent of the total.

Because the actual needs of the States in the two groups vary greatly a method was sought to reduce the variation. A standard statistical approach utilizing logarithms was used to reduce the variations.

Because the States in the second groups had less variation than those in the first, a method was employed to reduce that variation, but to a lesser degree than the use of logarithms. The allotment among States in this second group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of actual needs for all the States in that group. This method was selected because it reduced the variation from that among actual needs, but not as much as the logarithms would have produced.

The remaining States, with individual actual needs in excess of 1 percent of total eligible needs, are allotted 82.5 percent of appropriated funds. So that no State in this group would receive an allotment less than that of a State with smaller actual needs, the bill provides a minimum 1.25 percent.

Because eligibilities of needs have changed greatly from the 1980 and 1976 needs surveys on which the previous allotment formula was based, a number of States would suffer dramatic losses. To minimize the program disruption which would result from such reductions, the bill contains a hold harmless provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula. Eleven States benefit from this 80 percent hold harmless provision: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

ELIGIBILITIES AFTER 1990

<FWPCA § 202> The "grandfathering" provisions in the 1981 amendments for phased-segmented projects and projects built to accommodate future population are terminated after fiscal year 1990.

DESIGN-BUILD PROJECT

<FWPCA § 203> States wishing to build treatment works which are under $8 million and are determined to be simple treatment systems -- for example, aerated lagoons -- may enter into an agreement with the Administrator to erect treatment works under alternative design-build grant procedures. Under this provision, smaller projects can avoid costly review and bidding requirements and can contract for both the design and construction of a treatment works. Under the agreement with the Administrator construction deadlines and management procedures are established and a bond from the contractor is required to protect the Federal interest in the project. Not more than 25 percent of a State's allocation can be used under this alternative. [*15319]

INNOVATIVE AND ALTERNATIVE PROJECTS

<FWPCA § 205> This provision reauthorizes the innovative and alternative set-aside program at its current levels.

MARINE CSOS AND ESTUARIES

<FWPCA § 205> Similar to the funding concept used in the nonpoint section of the bill, the Administrator shall reserve 1 1/2 percent of the sum appropriated of which two-thirds would be used to address water quality problems of marine bays and estuaries which are impacted by discharges from combined storm water discharges and one-third to implement the newly established national estuary program.

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

The bill creates a new title VI of the act by creating State water pollution control revolving funds [SRF's].

<FWPCA § 607> To carry out the SRF program, $1.2 billion is authorized for fiscal year 1989 and 1990, $2.4 billion for fiscal year 1991, $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993 and $600 million in 1994. Sums are allotted pursuant to the allotment formula in the bill. Funds must be obligated within 1 year and are subject to reallotment among the States.

<FWPCA § 602> To receive a grant, States must enter into an agreement with the Administrator. If a State has not complied with the agreement the Administrator shall withhold the capitalization grants. These sums may be subject to reallotment if the Administrator is not satisfied that the State has taken necessary corrective actions.

<FWPCA § 602> To receive a capitalization grant a State must agree to establish a water pollution control fund to receive all grants. The State must provide a 15 percent match to the Federal grant from State monies and make binding loan commitments in an amount equal to 100 percent of the grant payments within 1 year of receipt of the payments.

<FWPCA § 602> The State must also make adequate assurances that funds will be committed in an expeditious and timely manner; that treatment works constructed with funds made directly available from grants will meet the applicable Federal requirements for grant projects; and that funds will first be used to assure maintenance of progress in the completion of plants needed to meet the 1988 compliance deadline, or other enforceable deadlines, goals, and requirements of the act.

<FWPCA § 606> In carrying out the SRF program States are required to use acceptable procedures and maintain project accounts in accordance with accepted government accounting standards.

The SRF administered by the State shall be dedicated solely to providing financial assistance to municipalities for construction of publicly owned treatment works and for implementation of management programs established under sections 319 <FWPCA § 319> and 320 <FWPCA § 320> of the bill.

<FWPCA § 603> The SRF is authorized to make loans at or below market rates, including interest free loans, at terms not to exceed 20 years. Principal payments shall commence within 1 year of project completion and be fully amortized not later than 20 years after project completion. Loan recipients shall establish a dedicated source of revenue for repayment and all repayments shall be credited to the fund.

<FWPCA § 603> The SRF may be used to buy or refinance debt obligation of municipalities, to guarantee or purchase insurance for local obligations to improve credit access or reduce interest rates, as a source of revenue for SRF bonds issued by the State, loan guarantees for similar local SRF's, and for the reasonable cost of administering the program.

<FWPCA § 606> The bill requires States to carry out independent audits of SRF's and to prepare plans describing the short and long-term goals and objectives of the SRF. States are required to submit an annual report to the Administrator who shall conduct a review of the plans and reports.

<FWPCA § 205> States wishing to utilize title II construction grants funds for SRF's established in title VI may do so provided the loan fund is established in compliance with title VI requirements.

<FWPCA § 516> In 1990 the Administrator shall submit to Congress a report on the financial status and operation of SRF's. The report shall include an inventory of facilities in noncompliance, sources of available funds to meet construction needs; an assessment of loan portfolios and user charges and operation and maintenance of treatment works.

Mr. President, we have worked for a long time on this bill, and I certainly wish to extend again my thanks to the ranking minority member of the full committee, Senator BENTSEN; of course, to our full committee chairman, Senator STAFFORD; and to the minority floor manager of the bill, my good friend, Senator MITCHELL, for their long, hard work and efforts in developing this legislation, and I do urge my colleagues to support it.

The PRESIDING OFFICER. The Chair in his capacity as a Senator from Arizona suggests the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I extend my gratitude to the current occupant of the chair for his courtesy, and I thank him very much.

I have no statement to make now. I understand there are Senators who do wish to make opening statements.

Mr. MITCHELL. Mr. President, I join Senators STAFFORD, BENTSEN, CHAFEE, and others in supporting the reauthorization of the Clean Water Act.

The 1972 Clean Water Act set ambitious goals for the country: "to restore the chemical, physical, and biological integrity of the Nation's waters." <FWPCA § 101> We have made substantial progress toward achieving these goals. The bill we are considering today will reaffirm our commitment to the clean water goals established over a decade ago.

Over the past decade, we have improved our understanding of environmental issues and expanded our commitment to environmental programs. While there have been dramatic and necessary changes in the concept of environmental protection, it is important to recognize that the basic design of the Clean Water Act is still sound and the public commitment to clean water remains strong.

In the State of Maine, there is clear evidence of the effectiveness of the pollution control programs established in the Clean Water Act:

Atlantic salmon have returned to the Penobscot River after a 30-year absence; the Maine commercial shell fishing industry declined for many years due to the discharge of untreated sewage. But as of 1982, over 4,000 acres of soft shell clam flats had been reclaimed with an estimated value of $6.5 million a year.

I cite these examples as the success story of just one State. Virtually every State in this country has similar examples.

There are a number of amendments before us today which would significantly expand or revise the act to address emerging pollution problems or changing conditions. I would like to speak briefly to three of these issues; the control of toxic pollutants; management of nonpoint sources of pollution; and financing of waste water treatment plant construction.

TOXIC POLLUTANTS

Proposed amendments to the Clean Water Act would result in a second-generation program to achieve greater control of toxic water pollutants, where necessary.

Under the current law EPA is required to establish uniform best available technology limits for the control of toxic pollutants. There is no assurance, however, that compliance with a technology-based limitation represents a safe level for a particular toxic pollutant. Although the current law provides general authority for further control, these amendments initiate a specific process leading to the control of these toxic substances to protect [*15320] public health and water quality by a date certain.

Specifically, the amendments require States to:

<FWPCA § 304> Identify within 2 years waters that do not meet their water quality standards due to the discharge of toxic pollutants; adopt numerical criteria for the "problem" pollutants in such waters; and establish effluent limitations for individual discharges to such water bodies within 2 years and assure compliance with limits within 3 years.

This provision is an important addition to our ability to protect the public health of the American people from increasing amounts of toxic chemicals.

NONPOINT POLLUTION

EPA recently estimated that as much as half the remaining water pollution problems result from nonpoint sources. Controlling nonpoint pollution, however, has proven to be an extremely difficult problem.

<FWPCA § 319> The bill before us includes a major amendment providing for State programs to identify and control nonpoint source pollution. States will identify waters affected by nonpoint sources of pollution and develop programs to implement best management practices for controlling this pollution. State programs will include a schedule for implementation and will be coordinated with related Federal projects.

A total of $300 million is authorized over 3 years to support this important program. The majority of this funding would be allotted among the States. The EPA Administrator would also have discretion to fund special projects.

WASTEWATER TREATMENT PLANT FINANCING

<FWPCA § 207> The most significant issue addressed in this reauthorization of the Clean Water Act is the financing of wastewater treatment plant construction. This aspect of the reauthorization bill is important because it provides State and local governments with a clear statement of future Federal involvement in treatment plant financing and allows them to finalize plans to meet the compliance deadlines established in the law.

<FWPCA § 207> <FWPCA § 601> <FWPCA § 602> <FWPCA § 607> Amendments to the act would phase out the existing grant program and replace it with Federal support for State revolving loan funds. The bill provides for allocations of a total of $18 billion over the next 9 years to assist municipalities with these construction projects. The direct grant assistance program will continue for the next 5 years. Starting in 1989, States will receive a total of $8.4 billion over the following 6 years to capitalize State revolving loan funds to assist municipalities in financing of wastewater treatment projects.

So there will be an overlap in the middle 2 years with respect to the current grant program and the newly established State revolving loan fund.

Establishment of the State loan funds will complete the process of transfer to State control of the municipal treatment construction program.

CONCLUSION

In conclusion, I am confident that the basic design of the Clean Water Act is sound. We have before us amendments for fine tuning existing provisions of the act and addition of programs to address emerging problems. These proposals are consistent with the national consensus for clean water. The great majority of persons responding to a recent survey either supported the Clean Water Act or wanted it strengthened, even considering the costs of pollution controls. These amendments are an important step toward carrying out this mandate.

I join the chairman of the committee, Senator CHAFEE, the ranking member of the committee, Senator BENTSEN, and the chairman of the full committee, Senator STAFFORD, in urging their adoption.

Mr. BENTSEN. Mr. President, first let me state how much I appreciate the incredible amount of work, the time, and the effort that Senator CHAFEE, chairman of the Subcommittee on Environmental Pollution, and Senator GEORGE MITCHELL have done on this piece of legislation. It is an excellent job. It is a bipartisan job. It is a lot of hard work and it continues the effort toward a most important national goal. I am pleased to recommend this legislation to my colleagues in the Senate.

The effort to clean up our Nation's waters is maintained by the overwhelming support of the American public. From the Rivers and Harbors Act of 1899 to the legislation before us today, Americans have recognized the responsibility to our neighbors, our children, and ourselves to correct dangerous abuses to this critical aspect of the environment.

Our hearings proved that the Clean Water Act is paying off with substantial reductions in pollutants. Treatment plants are removing 65 percent more of the two conventional pollutants -- suspended solids and biochemical oxygen demand -- than in 1973. Our rivers are cleaner and our water quality has improved through measures including controls implemented by industry.

Take the Houston Ship Channel. That Houston Ship Channel had one of the highest octane ratings probably in the United States. We were always worried that the thing was going to catch fire on us. But now you have fish swimming in it and you have an incredible cleanup job that has been done in that regard.

This legislation, though, reflects that there is a lot of work yet to be done. And it provides some strong standards to deal with the problems of toxic substances, and it develops a new program to deal with pollution from nonpoint sources such as runoff from agricultural and mining areas, and construction sites.

<FWPCA § 319> Because of a growing national concern over nonpoint pollution, we included provisions to fund States in efforts to target and implement correctional programs.

The problem all along has been sporadic funding of these State management programs. If they can get the funds, States are willing and able to develop programs based on their assessments of what is achievable.

<FWPCA § 319> <FWPCA § 208> This approach allows States to build on the solid, voluntary conservation district structure, rather than imposing unnecessary Government regulation. Our farmers and ranchers have a great stake in these efforts, and they have demonstrated their willingness to cooperate in efforts to improve their stewardship of our land and water resources.

<FWPCA § 319> Given their track record, we will all benefit by asking their advice on runoff water pollution, not requiring that they do it strictly by a book written in Washington. This legislation recognizes the value of working with our States and our agricultural community, and it maintains a proper Federal role of assistance, not threats.

Much of the focus of our committee discussions was directed at the future of the construction grant program, and I commend members of the committee for their efforts in arriving at the solutions included in this bill.

I have heard quite a bit of controversy already about the allotment formula. I understand that. It is a tough one to arrive at, to develop equity in that kind of a situation. I have looked at what has happened in the past. We have had a massive migration of people to the Southwest and to the South. The committee formula tries to take recognition of that. It uses the latest census data in trying to establish those needs. I well understand that in some other areas and in the Northeast, many of the needs have been satisfied. Others remain yet to be done.

I look at situations like the example that we had of the State of Michigan. It had a per capita expenditure of $232, from 1972 through 1984. My friend, the distinguished Senator from Michigan, is rightly concerned about the fact that the per capita expenditure now would be about $69 under this particular piece of legislation, but the total for the life of the program will be $302. I look at the same thing for my friend in New York -- $247 up to now and $91 in this bill for a total of $338. But then I look at my own State of Texas. I look at the fact that up to now it has been $88. Another per capita expenditure of $60.66 and we finally get up to $149.

[*15321] We have gone a long way to try to correct what has happened in the past and to anticipate the needs up to the year 2000. We have not completely achieved it in the committee allotment formula but, as I understand the political realities of the Senate, and as I understand them in the House, I think it is a reasonable compromise. I am prepared to support it. I look at this situation. If we go to conference with the House and they determine they are going to take the old allocation based on the past and not recognizing the needs of the future, the damage will be even more to those of us in the growing States. I understand the problems of the smaller States. But I also understand that in this body the smaller States on a per capita basis have a tendency to do a little better than the rest of us. Again, those are the realities. I walk into my office and I see how many people I have, and how much square footage they have per employee. Then I walk into the office of some of my friends from some of the very smallest of States. I do not find myself bumping into any furniture. And I see a great deal more space per employee. Again, those are the realities. That is the way the system works. But I think that what we have done is kept them with sufficient funds where they can complete a project, where they will not have it partially done, and in turn we have said to some of those States that have actually lost population, that have had substantial expenditures in the past, and have completed many of their needs already, you are not going to get a violent change. We are going to put a safe harbor there. We are going to put a hold harmless. We are going to put a floor. We have moderated this kind of shift. I think it is a realistic compromise. I support that.

I would point out that the construction grant program was substantially reformed and in some ways reduced in 1981. A central element of the agreement that led to these reforms was the commitment of the administration to fund the program for 10 years at $2.4 billion per year. This would constitute the time and funding needed to do the job based on needs survey data available at that time.

But when we started to work early this year, we were looking at a proposal from the Office of Management and Budget to phase out the program before 1990, and to fund no new starts. That proposal broke faith with the Congress and the American people, departing from the 1981 commitment.

Mr. President, the legislation before us recognizes that the time is indeed coming when many of our States will have met their basic treatment needs. It recognizes that the 1988 deadline for municipal compliance is partially accountable. Under the 1981 amendment, the effective Federal share of total project costs is only 30 to 40 percent. The Federal Government has contributed more than $40 billion as its part in constructing publicly owned treatment works, and the results have been remarkable.

<FWPCA § 601> <FWPCA § 602> <FWPCA § 207> This legislation continues to shift the program to State and local governments, as intended in the 1977 and 1981 amendments, but it also recognizes that the OMB proposal to pull the rug out from under a national goal at a critical point of progress was too abrupt and poorly planned.

Under this legislation, States at their own discretion will be able to start planning for the future by using their allotments to start their own revolving funds to carry on the program. <FWPCA § 607> The current $2.4 billion annual authorization for construction grants would be extended for 3 years. <FWPCA § 207> In fiscal years 1989 and 1990, a full one-half of the annual total authorization of $2.4 billion would go to capitalization of State water pollution revolving loan funds under a new title VI.

In fiscal year 1991, no further authorizations would be made for title II construction grants, and the title VI revolving fund would be authorized $2.5 billion.

<FWPCA § 607> After that point, revolving fund authorization would be reduced to $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After that, authorizations for direct Federal contributions would be ended.

<FWPCA § 207> <FWPCA § 607> This orderly progression is a reflection of close cooperation with the States -- both to assure that the revolving fund mechanism is workable and to provide a period of transition to allow States with lengthy legislative cycles or difficult remaining needs to work out their problems.

Since the formula for allotting construction grant funds among the States expires with the 1985 authorization, the bill establishes a new allotment formula for the years 1986 through 1990. This allotment formula is based on the 1984 needs survey, the most up-to-date and accurate compilation available. It reflects a shifting population and progress in meeting needs, but it also includes a strong effort to minimize disruption in States where programs are closer to completion or whose needs do not match up to eligibilities.

The legislation provides a "hold harmless" provision, guaranteeing each State 80 percent of the allotment it had under the previous allotment formula, regardless of actual needs under the survey.

The result is a formula that provides equity for all States, one that makes real progress toward water quality goals.

I would point out that New York continues to receive the greatest share of funds under the formula -- a full $76 million more than the next highest State, California. Texas would receive the third largest allotment, $127.3 million, which is a sizable increase over previous allotments and reflects, as in other areas, a high rate of growth. However, Texas will receive $24 million less than it would under an allocation based strictly on eligible needs, in part because Texas is helping to fund shares of smaller States and hold harmless shares for New York and other States with declining relative needs.

There are several other features of the bill I will discuss briefly. One of special interest to Texas is the provision for partial delegation of the permit program. <FWPCA § 402> We have been unable to obtain approval for the Texas permit program to operate in place of the Federal program because permitting responsibilities are divided in Texas between the department of water resources and the Texas Railroad Commission. The railroad commission, which regulates oil and gas operations, has not been interested until recently in seeking delegation. This amendment will allow the Texas Department of Water Resources, which has a fine permit program, to gain Federal approval for permitting all the categories of sources under its jurisdiction.

<FWPCA § 301> Two other provisions of the bill deal with case-by-case modifications to the best available technology requirements of the act. Section 301(g) of the act has allowed modifications of these requirements for so-called nonconventional pollutants, if a rigorous demonstration of no effect on public health or water quality could be made. However, the Agency brought to our attention the enormous difficulty of obtaining adequate information to make or review such demonstrations for most nonconventional pollutants. Therefore, the committee accepted EPA's proposal to limit section 301(g) to several specific substances for which adequate information was judged to be available. This will allow modifications to be granted, if appropriate, for the categories of sources which have requested them prior to this amendment, including steam electric generating plants and the iron and steel industry. It will also allow categories of sources with effluent guidelines yet to be published to use section 301(g), for discharges of these listed substances. Otherwise, section 301(g) will not generally be available after enactment of this bill.

<FWPCA § 301> The committee also included a provision authorizing, but limiting, modifications of best available technology requirements on the basis of "fundamentally different factors." The Agency had adopted administratively a procedure for granting waivers from uniform effluent guidelines based on indi- [*15322] vidual characteristics of sources which were fundamentally different from the factors considered by the Agency in setting the effluent guidelines.

<FWPCA § 301> This procedure was upheld for indirect dischargers by the Supreme Court. The amendment to the Clean Water Act in the reported bill recognizes a "fundamentally different factors" modification, as the only waiver or modification available for toxic pollutants, and provides specific limitations on the time for considering applications as well as what applications are acceptable. This authority should allow the occasional source which really does not fit the categorical regulation to receive appropriate treatment, while providing for most cases to be considered for the creation of effluent guideline subcategories.

<FWPCA § 301> The potential for effluent guideline subcategories has always been available and has been used in many cases. Companies who have relied on the concept of "fundamentally different factors" should be prepared to fully

participate in the guideline development process to assure that adequate information is available to EPA to develop appropriate subcategories. Similarly, EPA should recognize that the limits this bill places on the use of "fundamentally different factors" may create a need to reopen some guidelines in order to properly include information for the purpose of defining justifiable new subcategories.

This is a sound bill. Each provision, every requirement the new enforcement standards, are all aimed directly at the goal of cleaning up our Nation's waters.

I urge my colleagues to consider that goal, and to support this important legislation.

Mr. METZENBAUM. Mr. President, I rise to object strongly to the new sewer construction grants formula contained in the Clean Water Act amendments.

Once again, the Senate is being asked to shift desperately needed Federal funds away from the older, populous States in the East and Midwest to benefit growth States in the South and West.

Under this formula change, every State bordering on the Great Lakes would lose at least 19 percent of the funds they currently receive to help pay for waste water treatment facilities. In my State of Ohio, the reduction would actually be a 21-percent cut form current funding levels. Instead of receiving $136 million in construction grants money each year as Ohio does now, the State would get only $109 million per year. This means that over the next 5 years, Ohio would lose more than $203 million.

In one fell swoop, the Senate Environment Committee has tagged a total of 18 States as losers in the allocation of Federal money used to control water pollution. The Environment Committee's arbitrary behaviour means that these losers will have to go without $262 million in EPA construction grants money every year.

Make no mistake, Mr. President, this annual cut of $262 million will not help reduce the Federal deficit. No, indeed. This $262 million will simply be shifted to those States which the Environment Committee has selected as the winners.

Because of the Senate Environment Committee's generosity, States like Texas, Utah, Arizona, and Mississippi will gain anywhere from 29 to 129 percent in new construction grants money for waste water treatment facilities.

Mr. President, the older, populous States in the East and Midwest need every penny of their fair share of limited Federal resources. It's dead wrong to encourage the shift of Federal tax dollars away from these States to high growth areas of the country.

Why should Ohioans only get back 87 cents' worth of Federal funds for every tax dollar they send to Washington when citizens in other States get back a far greater return on their Federal tax dollars? Why should a heavily populated State like Ohio rank 39th in terms of Federal money spent there? Why should a State like Ohio - a State with more than its fair share of water pollution problems -- be asked to give up millions of dollars specifically designed to help curb these problems?

Something is very, very wrong with the manner in which Federal tax dollars are being allocated among the States. Let's not make the situation worse by changing the construction grants formula under the Clean Water Act.

Water quality in the Great Lakes has improved over the years. This is due in no small part to the waste water treatment facilities located in the neighboring States.

We must not jeopardize the strides we have made in cleaning up the pollution in the lakes. Over 26 million Americans depend upon the Great Lakes for their drinking supplies and millions more depend on the lakes for recreational pursuits.

The Great Lakes States deserve their fair share of Federal funding to construct and upgrade municipal sewage facilities to treat waste water discharges to the lakes.

I urge my colleagues to reject the new construction grants formula contained in this bill.

SEWER GRANTS FORMULA UNACCEPTABLE

Mr. KASTEN. Mr. President, I rise to express my strongest possible opposition to the sewer grants allotment formula that the Committee on Environment and Public Works has adopted.

The committee-passed formula makes a mockery of our efforts to provide Federal assistance to the construction of municipal sewage facilities on a national basis. Instead, the new formula is a massive redistribution of Federal funds away from highly populated established cities and to subsidize the growth of new cities.

When the Congress first established the Clean Water Act and the Municipal Sewer Grants Program, it established the objective of providing sewage treatment facilities for all of our Nation's towns and cities. When this program was established, it was agreed that municipalities would be a partner in the efforts to build these facilities.

To achieve that objective, Congress developed a very complex formula on how those funds would be distributed. Most probably agree that that formula should be updated periodically. All agree that that formula should reflect the water quality needs of the Nation.

Unfortunately, the formula that is before the Senate today does not reflect the water quality needs of the Nation. Some have suggested that it more accurately reflects the distribution of political power around the Nation, but clearly it does not provide the mechanism for meeting our water quality goals.

If the committee intends to use the EPA needs survey to be the basis of the allocation of sewer grant funds, it should use that formula directly. Instead, the Senate today is considering an artificial manipulation of that formula.

That formula cannot be justified on merit. It can only be explained by looking at provincial needs.

Obviously, the Senate has broken into two sides on this issue. Those two sides are those who benefit from the committee-passed formula, and those whose States are losers. But that is not the whole issue. We should also look at the national interest, of how to achieve our water quality goals.

This formula does not achieve those goals. It does not help the Nation live up to its obligations specified in the Clean Water Act and other documents.

As a spokesman not only for the specific interest of Wisconsin, I would like to call my colleagues' attention to the impact of the committee formula on the Nation's most important water resource -- the Great Lakes.

The impact of this amendment on the Great Lakes is devastating. There is a net reduction of approximately 18 percent in funding for sewer programs in the Great Lakes.

How can this be? Have the needs of the Great Lakes region declined by 18 percent? Not at all! In fact, we are way behind not only in our domestic commitment to water quality, but also in the commitment that we made to another nation.

[*15323] In 1978 the United States signed an updated version of the Water Quality Agreement with Canada. As part of that effort, we made a commitment to provide adequate sewage treatment for our municipalities.

Today, only about two-thirds of the municipalities that discharge into the Great Lakes basin are adequately sewered. The Canadians have on the other hand completed 99 percent of their municipal sewage treatment construction program.

Clearly the obligations we made will not be served by the formula contained in the committee version of the Clean Water Act. Clearly, if we are to use a national needs survey, we should not provide for this excessive artificial manipulation of the formula.

We should put our financial resources where they will do the most good to protect our Nation's water.

For this reason, I will support Senator DURENBERGER in his effort to provide a formula that actually protects the Nation's water quality.

Any other objective is not acceptable and should be resoundingly defeated in the Senate.

Mr. ABDNOR. Mr. President, I rise in support of the EPA wastewater treatment construction grant allotment formula contained in the committee-approved bill, S. 1128.

Mr. President, the funding formula developed by the committee is based upon EPA's 1984 needs survey. Further, the committee bill includes an 80-percent holds-harmless provision. The committee intends that the distribution of funds reflect our most recent estimate of eligible needs, while preventing the disruption of ongoing program efforts in any of the States or territories.

Throughout the history of this program, EPA has directed the States to prioritize the wastewater treatment needs of their larger municipalities. My State of South Dakota has complied with the Agency's policy in this regard. Now, with the larger projects underway, the smaller communities are looking forward to seeing their water quality needs addressed. Under the committee bill, South Dakota's rural communities will have the opportunity to achieve their water quality goals.

Mr. President, the alternative construction grant allotment formula proposed by my friend and committee colleague from Minnesota, Senator DURENBERGER, reduces from $11,737,260 -- the amount provided under existing law -- to $6,544,000 South Dakota's construction grant allotment. An additional 12 States would be similarly affected -- losing 40 percent or more of their construction grant funds. Under the committee bill, no State would lose as large a percentage of its funds.

While I recognize that no formula will ever satisfy all 100 Members of this body, I believe the committee has attempted to respond to our Nation's water quality needs without creating havoc in any of the States. Mr. President. I strongly urge my colleagues to support the allotment formula developed by the committee.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABDNOR). Without objection, it is so ordered.

Mr. STAFFORD. Mr. President, I support S. 1128, the bill to reauthorize and amend the Clean Water Act. Senator CHAFEE has done an excellent job of describing its provisions. I agree with this explanation of the intent behind this bill. I congratulate him and Senator MITCHELL for their hard work in developing this bill, and I want to commend my other colleagues on the committee from both sides of the aisle for their efforts as well. I especially want to commend my good friend and colleague, Senator BENTSEN, for his contributions to this bill. As ranking minority member of the committee, he has worked tirelessly to help bring this bill forward.

The committee determined that the Clean Water Act is fundamentally sound. It is working, and water quality has improved in many areas as a result of Clean Water Act requirements. According to an extensive study by State water pollution control administrators, 47,000 miles of streams and rivers have improved in the past decade, as have 390,000 acres of lakes and 3,800 square miles of estuaries. In the face of substantial growth and development, we have managed to hold our own in an additional 296,000 stream miles and in most of our lakes and estuaries.

That is the good news. The bad news is that 11,000 miles of stream have been degraded. And water quality has gotten worse in over 1.6 million acres of lakes and 560 square miles of estuaries.

It is clear that although we can claim substantial water quality gains, we as a nation still have a way to go before the job is done. We are not yet able to relax. Instead, we need to improve the Clean Water Act's ability to address these persistent water quality problems. S. 1128 would do that.

The committee learned that the major remaining water quality problems are caused by toxic pollutants and nonpoint source pollution. The bill before us strengthens the Clean Water Act in both these areas.

<FWPCA § 304> <FWPCA § 203> <FWPCA § 302> Let me first mention the so-called toxic hot spots problem. The States report that 14,000 stream miles, 638,000 acres of lakes and 920 square miles of estuaries have acute toxic problems. S. 1128 establishes a schedule for States to identify these areas that will remain a problem after all technology-based requirements have taken effect and to modify discharge permits accordingly. Permittees then would be required to meet the toxics restrictions within 3 years.

<FWPCA § 319> The bill also gives long overdue attention to nonpoint source pollution. Polluted runoff from farmland, city streets, and construction areas now accounts for about half of the water pollution in this country. In some basins, it is the major pollution source. This bill calls for the implementation of nonpoint source management programs

by State and local governments. As my colleagues all know, this is always a difficult issue. But I am pleased to say that the nonpoint provisions in this bill have the unanimous support of all members of the committee.

<FWPCA § 301> The bill also shores up some weaknesses in the Clean Water Program. One of the most important involves the so-called fundamentally different factors variance. The committee bill, consistent with a recent Supreme Court ruling, allows industries to apply for modifications of applicable effluent standards under certain circumstances. However, it is designed to prevent abuse of this privilege. For example, it removes incentives to withhold information that EPA needs to set valid effluent standards. It also sets a timeframe for decision on applications in order to assure that the application for modification is not used as a device to delay other permit requirements.

I would mention in passing provisions to limit backsliding in discharge permits, to establish criteria and permit requirements for toxic contamination of sewage sludge, and to restrict waivers for ocean discharges.

<FWPCA § 207> <FWPCA § 601> <FWPCA § 602> <FWPCA § 607> We also have elected to continue the Construction Grants Program at its current level of $2.4 billion, while gradually phasing in a system of State Revolving Loan Funds that will replace the present Federal Grants Program.

In presenting this bill, the committee reaffirms its commitment to the goals of the Clean Water Act. <FWPCA § 101> These are the goals of the American public. Poll after poll has demonstrated the continuing public commitment to clean water. By an overwhelming majority, the people oppose any weakening of the Nation's clean water law.

S. 1128 is a good bill, and I recommend its passage.

[*15324] Mr. President, I ask unanimous consent that the remainder of my remarks be entered as if read.

There being no objection, the remarks were ordered to be printed in the RECORD as follows:

ADDITIONAL REMARKS OF SENATOR STAFFORD

I want to discuss in more detail some of the more important provisions of this bill.

<FWPCA § 304> <FWPCA § 303> <FWPCA § 302> First, I want to mention the importance of the provisions of S. 1128 related to "toxic hot spots." These provisions are designed to focus in on water bodies that are especially hard hit by toxic pollutants, and then to establish special limits on toxic discharges that are causing the problem.

These "hot spots" exist because technology-based standards for toxic pollutants, by their very nature, do not take into account conditions in the receiving water. The cumulative discharge from several toxic polluters can result in unacceptable concentrations of toxic pollutants even after implementation of technology-based controls. S. 1128 improves the Clean Water Act by establishing a timetable for identifying hot spots and bringing the polluters into compliance with water quality standards. <FWPCA § 304>

<FWPCA § 304> An important problem in this regard is that few States have numerical ambient criteria for toxic pollutants. The lack of ambient criteria make it impossible to calculate additional discharge limitations for toxics. EPA and some States are experimenting with a bioassay approach to setting effluent limits, but so far it has important shortcomings. The major one is that it does not consider human health effects or important environmental characteristics such as persistence and bio-accumulation, only direct toxic effects on certain aquatic organisms. The Committee bill, therefore, requires that the needed numerical criteria be developed, though they can be supplemented by biological monitoring and assessment methods as they are developed.

<FWPCA § 303> Revisions to water quality standards regulations originally proposed by EPA in late 1982 were not consistent with the objectives and requirements of the Clean Water Act. For that reason the Committee, when it considered the predecessor bill in the previous Congress, S. 431, felt obliged to propose incorporating into law language from EPA regulations expressing long-standing policies related to upgrading and downgrading of water quality standards and antidegradation. Subsequently, Administrator Ruckelshaus reversed his predecessor's efforts to weaken these policies, with the result that the final regulations do comport with the Clean Water Act in these key areas. Upon the Administrator's assurance that the Agency will aggressively implement these regulations and defend them from legal challenge, should they be challenged, the Committee agreed last year to delete certain parts of the bill with which the regulations now are consistent. Consequently, the bill before the Senate today does not contain the earlier language related to conditions under which water quality standards can be upgraded or downgraded, nor does it contain language to codify the antidegradation policy that is in the present regulations.

<FWPCA § 303> The fact that the Committee deleted these provisions should not be taken as a sign of diminished interest in the water quality standards program. Water quality standards are a vital supplement to the basic fabric of technology-based controls upon which the Clean Water Act relies. As the remaining best available technology requirements go into effect over the next few years, the water quality standards provisions of the Clean Water Act will become even more important. It is vitally important that the water quality standards program operate in such a way that it supports the objective of the Clean Water Act to restore and maintain the integrity of the Nation's waters.

<FWPCA § 319> Mr. President, I also wish to call attention to the problems of non-point source pollution. Non-point pollution sources are increasingly being identified as a major cause of the remaining water quality problems affecting America's streams and lakes. They were identified as a contributing factor for 94 percent of the stream segments State officials indicated have not met water quality standards in their 1980 water quality reports to EPA required under section 305(b) of the Clean Water Act. Twenty percent of the states making reports in 1982 said that non-point source pollution is the most important water quality problem in that State. And the State reports supporting a recent study of water quality improvements conducted by the Association of State and Interstate Water Pollution Control Agencies placed a similar or even greater emphasis on non-point sources.

This type of pollution comes from a variety of sources -- some comes from city streets, some from mines, some from construction sites, some from forestry operations, and much of it from the erosion of our agricultural lands.

<FWPCA § 319> In terms of pollutant loadings, non-point sources are responsible for up to 76 percent of the oxygen-demanding organic materials that enter in our waterways, and up to 99 percent of the suspended solids, 85 percent of the dissolved solids, 92 percent of nitrogen, 94 percent of phosphorous, and 98 percent of the bacteria. They are also a major source of pesticides, lead, zinc, cadmium, and copper contaminants which enter the nation's waters. The problem is immense. For instance, each year about 20 tons of soil is eroded for every person in the United States. As much as half of this ends up in our waterways.

The impacts of these pollutant loadings can be very serious indeed. It can seriously affect aquatic wildlife, destroying spawning beds, reducing fish reproduction, and seriously interfering with the delicate food chain necessary to support wildlife. It interferes with our ability to enjoy water through fishing, swimming, and other recreational pursuits. It increases the amounts that municipalities and industries and sometimes even farmers have to spend to treat the water before they can use it. And it is a major cause of increasing amounts that we are spending in order to try to prevent continued degradation of our freshwater lakes.

But the costs associated with these non-point sources of pollution do not stop here. We are becoming increasingly concerned about future water shortages, and yet sediment from land erosion is filling 1 million acre-feet of valuable reservoir capacity every year. When we build new reservoirs, we have to allocate about 20 percent of our storage capacities solely for the purpose of storing the sediment that is carried into them. And every year we spend hundreds of millions of dollars to dredge the sediment out of reservoirs and navigation channels so that they can continue to perform their functions. The sediment also becomes deposited in irrigation ditches and drainage ditches, decreasing the capacity of the former to carry irrigation water and of the latter to carry off flood waters. Floods are more destructive because the sediment increases flood volumes, chokes off the natural capability of streams and rivers to carry flood waters out to sea. It is also the sediment, and not the water, that often creates most of the monetary damages associated with floods in urban areas. In an agricultural area the sediment deposits can seriously reduce the fertility of some of our most fertile agricultural lands.

It is becoming increasingly evident that if we are going to achieve the goals of the Clean Water Act, the goals towards which we have already expended tens of billions of dollars, we are going to have to do something about non-point source pollution. It is also evident that we need to begin to do something about it soon. Through the section 208 <FWPCA § 208> planning process, we collected a substantial amount of information relating to non-point source pollution -- information that can provide a strong basis for beginning action. But because of the budget cuts and because of current inaction, some of this information is being irretrievably lost. The organizations that collected it are shutting down. The people who analyzed it are moving on to other jobs. It is time to get to work on dealing with this serious national problem before we have lost entirely the substantial amount of effort we have already put into understanding it.

<FWPCA § 319> The addition of a non-point source control program to the Act is thus a reasonable and necessary extension of the Act's existing requirements. It does not signal the discovery of a new problem. We have known about the problem for years and have taken pains to collect the information and carry out the planning needed to deal with it effectively. Nor does it imply that the point source control program at the heart of the Act has been a failure. <FWPCA § 402> To the contrary, the increasing relative importance of non-point sources results from our success in reducing

point source pollution. As the point sources are cleaned up, most of the pollution that remains results from the sources that have not been dealt with -- predominantly non-point sources. We are now at a point where we can begin to identify the specific areas where these controls are needed.

<FWPCA § 319> We do not need -- and are not proposing -- a program which would require every farmer, every city, every mine, every wood lot to implement controls. But we do need a targeted program that will begin quickly to identify serious non-point source problems and to abate them. The non-point provision developed by the Committee would do that. It would add a new section 319 to the Clean Water Act to require the development and implementation of non-point source programs by the States. As my colleagues on the Committee know, I favored a stronger bill with more requirements on States and polluters. But politically this is a very difficult issue, and it is important to start this effort with a strong consensus of support. We have achieved that. The bill was passed unanimously and enjoys broad support from the States and from affected interests. I am prepared to believe them when they say they will use these authorities fully and aggressively attack the nonpoint source problem. I expect every State to implement an effective program. If this approach fails, then of course we have to consider making the requirements stricter. But for now, the most important thing is to get started. I urge my colleagues to support this important new program in the Clean Water Act.

[*15325] <FWPCA § 319> Funding for the non-point program is provided in two ways. First, the new section 319 of the Clean Water Act contains an authorization for $300 million over the next three years. These funds are to be used by States to implement approved non-point programs. They can be used for administrative support, for monitoring and research, and for other implementation purposes, such as onsite technical assistance and environmental monitoring. These funds may not be used, however, to provide cost-sharing support to persons for construction or utilization of best management practices, except for demonstration projects. States, of course, are free to provide State funds for cost sharing if they choose to do so.

<FWPCA § 25> <FWPCA § 319>The second source of funds is a new one percent set aside of construction grant funds. This new paragraph (5) in section 205(j) of the Act would reserve funds for the same purposes as section 319 funds, with the same restrictions that affect Section 319 funds. The same State match also would be required. However, the provision in section 319(d)(2)(B) reserving one-third of allotted funds for special purposes would not apply to these funds.

<FWPCA § 205> <FWPCA § 319> I want to stress that these set-aside funds are intended to supplement the section 319 funds, not to substitute for them.

<FWPCA § 607> I also want to point out that S. 1128 would allow States to use their State Revolving Loan Funds, authorized by a new Title VI in the Clean Water Act, to fund nonpoint activities. However, there are fewer constraints on the use of these State funds than are placed on the use of the Federal funds authorized under section 319 <FWPCA § 3109> or reserved under section 205(j)(5) <FWPCA § 205>. The State Revolving Funds are to be used first for construction of publicly owned treatment works needed to assure maintenance of progress in completion of projects to meet the enforceable requirements of the Clean Water Act. <FWPCA § 602> After this condition is met, however, the Revolving Loan Fund can be used to make loans to individuals for implementation of best management practices. <FWPCA § 603> This flexibility should help rural States, like my own State of Vermont, achieve their clean water goals more efficiently.

<FWPCA § 405> I also want to call the attention of my colleagues to another important section of 1128, an amendment to Section 405 of the Clean Water Act which relates to the use and disposal of sewage sludge. I will acknowledge that this is not a particularly glamorous part of the Clean Water Act, but it is a very important one.

Sewage treatment plants are capable of incidental removal of some toxic pollutants from industrial sources discharging into the city sewage system and from households and other sources. From the point of view of water quality in the receiving waters, this is an advantage. However, many of these pollutants simply go into the sludge that is an unavoidable product of sewage treatment plant operation. The toxic pollutants render the sludge unfit for many use and disposal options that otherwise would be available and, as many of my colleagues are acutely aware, often put the city or town in a very difficult position regarding the use or disposal of the contaminated sludge.

For this reason, in the 1977 Clean Water Act Amendments Congress enacted a requirement that EPA within two years develop criteria for sludge use and disposal options. Unfortunately, the agency's response to this requirement has been abysmal. Not only have the required criteria not been published, it became apparent as we examined this program that it had received very little priority or attention at EPA until quite recently.

<FWPCA § 319> To encourage better performance by the Agency I offered an amendment to Section 405 of the Clean Water Act that was adopted by the Committee. The purposes of the amendment are to establish a new time frame for promulgation of sewage sludge use and disposal criteria, to require expedited regulation of problem contaminants, to provide a public health and environmental rational for sludge criteria development, and to establish deadlines for compliance with the sludge criteria.

<FWPCA § 405> The amendment also incorporates an Administration proposal concerning permits for sludge disposal. This provision is needed because present law does not specifically define compliance mechanisms for sludge criteria. The provision allows flexibility on the choice of permit programs. Any of several Federal permit programs or an approved state program can be used, or the amendment authorize permits solely to impose the sludge criteria if no appropriate permit program is available.

<FWPCA § 4051> <FWPCA § 307> I also want to point out the important relationship between sewage sludge criteria and the pretreatment program. The national pretreatment program establishes technology-based requirements for industrial sources of pollution that discharge into sewage treatment plants rather than directly into the water. These indirect dischargers are an enormous source of toxic pollutants and that is why a national pretreatment program is needed. Without sludge criteria, however, industry easily can simply transfer its toxic pollutants over to the city's ledger where they become a difficult economic and political problem.

<FWPCA § 307> <FWPCA § 405> As I mentioned earlier, many of these toxic pollutants either are discharged by the city into the waterway, which may put the city in jeopardy of violation of its discharge permit, or they are transferred into the sludge, thus making it more difficult for the city to find appropriate sludge management alternatives. In either case the sludge criteria and an effective pretreatment program work together to encourage recycling and reuse of toxic pollutants by industries.

<FWPCA § 301> In 1977, Congress added Section 301(h) to the Clean Water Act allowing coastal sewage treatment facilities to apply for waiver from the secondary treatment requirement. It was intended to be an extremely limited waiver, available only to discharges into deep marine waters that because of currents or tidal action are well flushed. The Committee report for the 1977 bill speaks eloquently of the built-in safeguards that would limit the availability of the waiver and prevent any environmental harm from occurring.

<FWPCA § 301> Unfortunately, we quickly learned an important lesson about loopholes: it is very hard to keep them small. As time has passed, more and more applications have been submitted, and cities are understandably reluctant to get on with construction to meet the Act's requirements as long as they think they have a chance for a waiver. The courts have been interpreted that section of the law as allowing the discharge of raw sewage into estuaries.

<FWPCA § 301> It was not the intent of Congress to allow untreated sewage, often containing large amounts of toxic chemicals, to be discharged into slow-flushing estuaries. Therefore, the Committee has adopted several provisions which would reduce the potential harm from marine sewage discharges and restore Congressional intent.

<FWPCA § 301> First, the Committee has made it clear that the discharge of toxic chemicals into the marine environment must be limited. Facilities seeking a waiver must be in compliance with applicable pretreatment regulations. Absent categorical standards, facilities serving a population of 5,000 persons or more must have adopted and be enforcing a pretreatment program. This provision will help to protect marine bottom-dwelling organisms, shellfish and fish which can be tainted by toxic pollutants.

<FWPCA § 301> Second, the bill requires that sewage receive at least a minimum or primary treatment. Since our coastal waters are heavily used for swimming, boating, clamming and oystering, it would not be appropriate to allow the discharge of untreated sewage.

<FWPCA § 301> About one-fourth of the pending waiver applications are for facilities discharging into semi-enclosed, slow-flushing bays. To assure adequate mixing and flushing of wastes the Committee has required that waivers not be given to facilities that would discharge into waters that are already stressed by pollution. If we are to restore the nation's waters, we must not allow sewage pollution to be added to waters which are not meeting the goals and objectives of the Act.

<FWPCA § 402> <FWPCA § 303> The Committee bill incorporates a provision to prevent backsliding in NPDES permits. The antibacksliding policy is not an addition to the Clean Water Act. It is inherent in the Act's policy of requiring reasonable further progress toward the national goal of elimination of discharge of pollutants. The intent of this pro-

vision is to assure that pollution reductions and concomitant water quality gains, once achieved, will not be yielded back except under narrow circumstances.

<FWPCA § 402> For example, it would be contrary to the Clean Water Act to allow one discharger to increase his pollution merely because another discharger has reduced his. Even if the increased discharge would not violate the minimum level of water quality specified in the standard, it would degrade actual water quality and negate the water quality improvements achieved by reduction of the first discharger's pollution level. Similarly, water quality gains achieved by a successful nonpoint source program should not be yielded over to point source dischargers. <FWPCA § 319> As water quality improves, the improvement should be protected.

<FWPCA § 303> <FWPCA § 402> The antibacksliding provision clarifies that where water quality exceeds the minimum specified in a standard, waste load allocation, total maximum daily loads, or other permitting standards may be revised only if consistent with the antidegradation policy. The reference to "other permitting standard" is deliberately broad to encompass all other mechanisms for establishing permit limits.

<FWPCA § 402> Similarly, the bill restricts backsliding in permits written according to "best professional judgment" in the absence of promulgated effluent limitation guidelines. The permittee is precluded from seeking a weaker permit on the grounds that a subsequently promulgated effluent limitation guideline would have led to a permit condition that is less stringent than those already being attained.

Mr. President, these remarks do not cover every aspect of this bill, but they do touch upon some of its most important provisions. A very great deal of effort by the Committee went into drafting this bill. I commend it to my colleagues without reservation.

[*15326] Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. HATCH). Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I thought I might give a little report for those listening in their offices on where we stand. We are in the course of negotiations, that is, Senators STAFFORD, BENTSEN, MITCHELL, and I, with those who were upset about the formula, and we are making every effort to arrive at some solution. Whether we will be successful or not we are not sure but in any event we are lacking now some further figures.

Those will be available to us in the morning and it is our hope that we can work something out in the morning.

Mr. MOYNIHAN. Mr. President, I simply express appreciation to the managers of the bill and to our beloved chairman for this effort. We hope it will succeed and we will learn more tomorrow.

This is very much in the spirit of the Committee on Environment and Public Works. We have managed to stay together over many a long year on many complex subjects, and I hope we can do it on this as well.

I thank all concerned.

Mr. LEVIN. Mr. President, if the manager will yield, I also wish to express our appreciation.

I know the effort is made in good faith. Hopefully we can work it out. It is appreciated because the feelings obviously are strong when these kind of formula changes are made. We do appreciate the effort which everyone is making here.

Mr. CHAFEE. I express my appreciation to the Senator from New York, the Senator from Michigan, and the Senator from Minnesota.

We also have a difficulty with the Alaskan Senators and we are also working on that. They are not available right now and it would be our hope that we could arrive at some kind of a resolution of that in the morning as well.

Where is all of this going to lead us? Obviously, it is our hope that we can get these matters squared away and we can then proceed to the consideration of the bill. And how rapidly we can dispose of it I do not know.

But we certainly are trying to proceed as fast as we can.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so order.

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The question is on the motion to proceed to the consideration of S. 1128.

Mr. DOLE. Mr. President, let me indicate to my colleagues who may want to know about plans for the evening that there will be no rollcall votes this evening. There have been discussions throughout the afternoon on a couple of very contentious matters dealing with clean water. It is my understanding there may be some hope for resolution of those and we will be able to move rather quickly. We hope to be back on the bill at 12 noon tomorrow.

We also hope yet this evening to approve the nomination of Martha Seger. That is now in the process of being cleared on the Democratic side. I am advised by the chairman of the Senate Banking Committee that if it is cleared, it can be done by a voice vote.

So I indicate to my colleagues that there will be no rollcall votes this evening and we will come in tomorrow morning at 9 a.m. There are six special orders that should take us to 10:30. At 10:40, we are to assemble to attend a joint meeting of the Congress to hear Prime Minister Ghandi. Then at 12 noon we hope to be back on S. 1128, and specifically the motion to proceed to S. 1128, the clean water bill.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

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CONGRESSIONAL RECORD
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CLEAN WATER ACT AMENDMENTS OF 1985

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the motion tot proceed to the consideration of S. 1128.

The clerk will report the pending business.

The assistant legislative clerk read as follows:

A motion to proceed to S. 1128, a bill to amend the Clean Water Act, and for other purposes.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 1128) to amend the Clean Water Act, and for other purposes.

The Senate proceeded to consider the bill.

Mr. CHAFEE. Mr. President. I will give a status report of where we are now. We are on the bill. We would ask those who have amendments to come to the floor and present any amendments that they may have. We know of an amendment by Senator STEVENS and Senator MURKOWSKI, and they are on their way now to present that amendment. That has been agreed to by a colloquy. There will be no rollcall vote on that.

At 2:45 p.m. we will be presenting a committee amendment dealing with some revision to the formula as worked out in a compromise with Senators DURENBERGER, MOYNIHAN, D'AMATO, LEVIN, CRANSTON, and Senator HAWKINS was also interested in it.

It would be our intention, Mr. President, to move as rapidly as we can with this legislation. Once the committee amendment is presented on the changes in the formula, we would assume that could be adopted by a voice vote. If there are no further amendments after that, we would be hopeful to get to final passage not long thereafter. We are talking about in the area of 3:30 or thereabouts.

So we are ready to do business and are awaiting at the moment for the amendment of the Senators from Alaska.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAUTENBERG. Mr. President, I rise in strong support of S. 1128, the Clean Water Act Amendments of 1985. The Environment and Public Works Committee has devoted substantial time and effort this year to the Clean Water Act. I commend the committee leadership for its efforts in bringing this bill to the Senate floor early in this session of Congress.

In the early 1970's, the people of this country made a fundamental decision that they wanted a concerted effort to clean up the Nation's

[*15617] waters -- waters that are used for fishing, swimming, recreation, and drinking water.

This decision was made because of our growing awareness of, and concern about, water pollution. News accounts told us about Lake Erie being "dead," the polluted Cuyahoga River in Ohio so filled with oil and debris that it caught fire, millions of gallons of raw wastewaters being dumped into the country's major rivers, such as the Hudson River, and many fish kills and oil spills.

The Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972. This act established a goal -- to restore and maintain the integrity of the Nation's waters -- which captured the essence of the Nation's desire for clean water <FWPCA § 101>.

During the 13 years this act has been implemented, impressive strides have been made in cleaning up our Nation's waters. But much remains to be done. The Clean Water Act Amendments of 1985 include a number of provisions which address problems which are preventing us from achieving the goal of the Clean Water Act.

Of great importance is future funding for the construction grants program. Since passage of the Clean Water Act in 1972. Federal, State, and local sources have invested more than $56 billion in municipal wastewater treatment facilities resulting in the construction or improvement of approximately 3,500 treatment facilities. Properly running sewage treatment facilities are an essential component for cleaning up the Nation's waters. For example, sewage treatment plants in 1983 were removing 65 percent more of the two principal conventional pollutants -- suspended solids and biological oxygen demand -- than they were a decade earlier.

Yet it is clear that the existing construction grants program is inadequate to meet remaining national needs. According to EPA eligible construction needs through the year 2000 are $53 billion. Ineligible needs -- those needs not eligible for Federal funding under the Clean Water Act -- are more than $50 billion. According to the latest estimates, New Jersey alone has $4.5 billion in eligible funding needs. New Jersey only receives approximately $100 million per year in existing Federal construction grant funding. Therefore it is imperative that we implement a new method of financing sewage facilities. A creative framework, which had its origins in New Jersey, is the concept of revolving loans <FWPCA § 601>.

The Clean Water Act Amendments of 1985 adopted this concept and will move us closer to the goal of providing an adequate source of stable funding for sewage treatment facilities. S. 1128 would authorize $18 billion over 9 years for Federal sewer construction grants and loans. Under the bill, the Federal Government will gradually reduce categorical grants for sewage treatment facilities as it phases in a program of grants for States to capitalize State revolving loan funds. These funds will provide the capital for municipal wastewater treatment facilities in the future. States can make low or no interest loans available to communities for construction of treatment facilities <FWPCA § 603>. As loans are repaid to the State revolving loan funds, the funds will be able to loan money to additional communities.

<FWPCA § 603> In addition, Mr. President, this bill will help spur the construction of needed sewerage facilities. In the case of municipalities which proceed to begin construction with their own funds, refinancing is permitted from a State revolving loan fund. Presently, most municipalities wait until it is their turn to receive Federal construction grant funding before they begin constructing needed facilities. This refinancing feature of the revolving loan program would eliminate the disincentive for municipalities to move ahead quickly with construction that now exists with the grants program. Municipalities are facing a 1988 deadline for installing sewerage treatment facilities which provide secondary

treatment. EPA has threatened to restrict development in municipalities which are not in compliance with the 1988 deadline. New Jersey right now has imposed sewer bans in 70 municipalities and has warned over 100 additional municipalities that they face such bans if the discharge from their sewerage plants will not comply with requirements of the Clean Water Act. The reimbursement provisions in S. 1128 should stimulate cities to meet the 1988 deadline.

Under the bill, States will have to enact legislation to give a legal entity of the State the powers prescribed in the act <FWPCA § 603>. During consideration of S. 1128 in the Environmental Pollution Subcommittee, the committee agreed that this legal entity can be an existing or new State entity or agency. When States enact legislation to implement State revolving loan funds, they will have the flexibility to determine how the fund will operate subject to the requirements of this provision of the Clean Water Act <FWPCA § 603>. For example, States would be able to establish loan terms based on the financial needs of municipalities with easier loan terms available to poorer municipalities. States can decide to initiate their loan funds prior to fiscal year 1989, the year they are required to do so. When States enact revolving loan legislation, they can determine whether to begin using their construction grant funds to capitalize their revolving loan funds prior to fiscal year 1989 and if so, under what terms <FWPCA § 607>. Discussion during our subcommittee markup clarified that it is the committee's intent that EPA, in issuing grants, would be bound by these State decisions.

<FWPCA § 601> Mr. President, I believe that the revolving loan concept contained in the bill will provide a stable source of funding for the construction of sewerage facilities while providing States with the flexibility to minimize the financial burden of these facilities on local municipalities.

<FWPCA § 205> The Clean Water Act Amendments also include a revised allocation formula for construction grants funding. This formula uses the latest estimates of construction grants needs from the 1984 EPA Needs Survey. By using these figures. New Jersey's allocation would increase, reflecting the State's large sewerage facility needs.

<WQA87 § 511> S. 1128 also includes S. 30, the Raw Sewage Abatement Act of 1985. This legislation, which I sponsored, limits the discharge of raw sewage by New York City. New York City is the only major municipality in the country which still discharges raw sewage and wastewater into surrounding waters, without preliminary treatment of its wastes. It does so because of the absence of sewage treatment facilities in two major drainage areas in New York City. Today, New York City is dumping approximately 230 million gallons of raw sewage a day into the Hudson and East Rivers. This practice has gone on for decades. Two court-ordered deadlines to cease this practice have long passed. My amendment will impose a cap on raw sewage discharges from the drainage areas in New York City currently without treatment plants if the city falls to meet the deadlines for achieving advanced preliminary treatment contained in its current consent decree. If these deadlines are met, the cap will be unnecessary because all raw sewage discharges will cease. If the city fails to meet these deadlines, a cap will be imposed in the drainage area in violation of the decree. It will stay in effect until the city brings the affected plant online and it operates successfully for 6 months.

<WQA87 § 511> The imposition of a cap on raw sewage discharges upon a violation of the consent decree in effect says to the city of New York, "You cannot continue to grow without restraint if you cannot treat your wastes."

<WQA87 § 511> <FWPCA § 309> Upon violation of the cap, the city would be subject to the enforcement provisions in section 309 of the Clean Water Act. These penalties would be in addition to those provided for violation of the consent decree. They include tough civil and criminal penalties, and would enable EPA to seek a temporary or permanent injunction against the city, to bring civil actions against the city, and to initiate crimi

[*15618] nal prosecution in cases of negligence or falsification of records.

<WQA87 § 511> <FWPCA § 309> With the changes proposed this year to section 309 of the Clean Water Act, a violation of the cap imposed by this amendment could result in substantial penalties of up to $50,000 a day. A violation stemming from a criminal conviction could lead to imprisonment.

<WQA87 § 511> Finally, Mr. President, the legislation states that it is the sense of the Congress that EPA should not extend the deadlines in the city's existing consent decree any further.

New Jersey has had its share of water quality problems. But not one New Jersey municipality is discharging raw sewage. Treatment plants in northern New Jersey are all achieving advanced preliminary treatment, and the major plants serving northern New Jersey are achieving secondary treatment.

The New Jersey Department of Environmental Protection has imposed 50 sewer hookup bans in a number of New Jersey municipalities to improve compliance with the Clean Water Act. Several communities may finance the upgrading of their sewage treatment plants to secondary treatment without any Federal or State aid. In some cases, the Department

of Environmental Protection in New Jersey is requiring private sector parties to contribute to local efforts to upgrade sewage treatment facilities as the price of securing a sewer hookup permit and proceeding with planned development.

Mr. President, New Jersey and New York do not need to grow at each other's expense. Regional growth is good for both States. By the same token, Mr. President, this growth should be accompanied by appropriate environmental protection. It must not come at the expense of the environment. It must not come at the expense of New Jersey's tourist and commercial and recreational fishing industries.

<WQA87 § 511> Mr. President, these provisions in S. 1128 will provide strong incentives for New York City to comply with its consent decree and bring its sewage treatment plants on line as quickly as possible.

S. 1128 contains a number of other provisions which will strengthen this Nation's effort to clean up its water. These include:

<FWPCA § 304> <FWPCA § 302> <FWPCA § 303> Requiring the cleanup of toxic hot spots;

<FWPCA § 319> Establishing a nonpoint source pollution control program;

<FWPCA § 301> Restricting the use of nonconventional pollutants modifications and fundamentally different factor modifications;

<FWPCA § 303> <FWPCA § 402> Clarifying the Clean Water Act's prohibition of backsliding on effluent limitations;

<FWPCA § 320> Establishing a national estuary program to solve pollution problems in interstate estuaries such as Delaware Bay and the Hudson-Raritan estuary; and

<FWPCA § 405> Requiring EPA to establish toxic contaminant criteria for sewage sludge use and disposal and to establish a public health and environmental protection basis for these criteria.

Mr. President, I want to make clear my position on two amendments which may be offered to S. 1128.

<FWPCA § 309> This bill gives EPA authority to use civil administrative penalties for violations of sections 402 <FWPCA § 402> and 404 <FWPCA § 404> of the Clean Water Act. I understand an amendment may be offered which would eliminate section 404 <FWPCA § 404> violations from the civil administrative penalty provisions contained in S. 1128.

<FWPCA § 309> <FWPCA § 404> Mr. President, I will oppose this amendment. Administrative civil penalties, now used on numerous environmental laws, offer an effective enforcement mechanism for handling a large number of violations. The current system of requiring the United States to go to the Federal courts to seek enforcement of section 404 is inadequate. A 1984 Office of Technology Assessment Report on wetlands concluded, "the Corps has experienced significant problems in prosecuting violators." The OTA found that U.S. attorneys often are reluctant to handle section 404 cases because cases are regarded as of lesser importance than other cases. Moreover, evidence presented at an oversight hearing on the section 404 program this past Monday shows that there are serious deficiencies in the corp's existing enforcement program. Amendment to eliminate civil administrative penalties for the section 404 program will, if agreed to, remove an effective enforcement tool from EPA.

<FWPCA § 404> A second amendment which may be offered would extend the maximum length of permits governing discharges into waterways from industrial and other facilities to 10 years from the existing 5 years. This issue was considered at length by the Environment and Public Works Committee, which decided to leave the maximum permit period at 5 years. The primary rationale for this amendment is that it will help reduce the backlog of permit applications. The testimony received by the committee, however, was that the backlog already is shrinking. In addition, a 10 year permit provision could result in less stringent pollution control of toxic pollutants. I believe the 5-year permit term plays an important role in improving water quality. Therefore, I will oppose any amendment to extend the maximum permit term to 10 years.

Mr. President, I believe that enactment of the Clean Water Act Amendments of 1985 represents a positive step in the Nation's effort to clean up its water resources. Again, I commend Senators CHAFEE and MITCHELL and all the staff that worked so hard to bring this bill to the floor.

AMENDMENT NO. 333

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

<WQA87 § 214> The Senator from Illinois [Mr. DIXON], for himself and Mr. SIMON, proposes an amendment numbered 333.

Mr. DIXON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 78, before line 1, insert the following new section and renumber succeeding sections accordingly:

CHICAGO TUNNEL AND RESERVOIR PROJECT

SEC. 203 <WQA87 § 214>. Section 201(g)(1) of the Clean Water Act is amended by adding the following sentence: "The Chicago tunnel and reservoir project may receive grants under the previous sentence without regard to the limitation contained thereon, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.".

Mr. DIXON. <WQA87 § 214> Mr. President, I rise today with my distinguished colleague, Senator PAUL SIMON of Illinois, to offer an amendment to the Clean Water Act amendments which will clarify the eligibility of a cost-effective combined sewer overflow system, the Chicago tunnel and reservoir project [TARP]. The amendment merely lifts a 20 percent cap on the use the Governor may make of the Governor's discretionary fund and does not cost any additional funds.

<WQA87 § 214> TARP consists of approximately 110.2 miles of tunnels, connecting structures and pumping stations, all integral parts of the water pollution control system for the Chicago metropolitan area. This amendment is critical to the completion of TARP, and the prevention of the discharge of raw sewage and stormwater, with the resulting pollution and flooding problems.

<WQA87 § 214> The 1981 amendments to the Clean Water Act provide that, beginning in October 1984, combined sewer overflow elimination systems, such as TARP, are only eligible for funding from the Governor's discretionary fund of an amount up to 20 percent of the State's allotment. The Governor's discretionary fund, however, is insufficient to provide the funding needed for the next segment of TARP. Thus, because combined sewer overflow projects are no longer eligible for Federal funding, except for the Governor's fund, and because this pot is too small to fund the next segment of

[*15619] TARP, the subject amendment is needed to complete TARP.

<WQA87 § 214> I can assure my colleagues that the support for this amendment is bipartisan in nature. The distinguished Governor of Illinois, James Thompson, is very concerned about the completion of TARP and has worked with Senator SIMON and myself on this amendment. Governor Thompson has also discussed the issue with Senator CHAFEE.

<WQA87 § 214> The Governor has proposed to spend, and the State of Illinois is already spending, substantial sums on TARP. This local commitment of funds indicates the high priority the State places upon the completion of TARP. The combined sewer overflow program in Chicago is important because without such a program, the level of pollution would be equivalent to the refuse of 1 million people being dumped into the Illinois River without treatment every sixth day. This clearly is a pollution problem that the Clean Water Act should address. The 20-percent cap effectively prevents the Governor from meeting local needs.

<WQA87 § 214> At the present time, TARP is approximately 50 percent completed. Approximately 47 miles of tunnels have been completed, 31/2 miles are now under construction, and 60 miles are yet unfunded. In addition, all of the pumping stations are completed. The next segment to be constructed will service the western suburbs outside Chicago and will cost between $60 and $75 million, which is much more than the present cap can provide. It would make no economic or practical sense to deny adequate funding to a project which is half completed. Stormwater and flooding problems are particularly acute in these western suburbs.

<WQA87 § 214> To date, the TARP project has been completed on schedule and the final payment will be less than originally anticipated. The estimated revised 1985 cost for the remaining TARP projects is $1,028 billion, a reduction of $303.5 million or approximately 23 percent from the total cost of $1,331.5 billion shown on the 1985 budget.

<WQA87 § 214> Lifting the 20-percent cap is critical because if TARP is not completed or completion is delayed significantly, a number of outfall conditional permits granted by the EPA to Illinois communities would be in violation of national pollutant discharge elimination system requirements. The communities holding the outfall permits would probably have to construct treatment at each of the overflow points. The Federal cost of providing this treatment would be approximately $1.55 billion -- or more than twice the cost of completing TARP. Thus, to deny the Governor the flexibility of using the discretionary fund in the manner best suited for local needs would be foolhardy economically, because we would end up spending twice as much as we would in the absence of the adoption of this amendment.

<WQA87 § 214> Let me stress that this amendment does not reopen the question of categorical eligibility and applies only to the Governor's discretionary authority to allocate the funds Illinois receives under the Sewer Grant Construction Program.

Therefore, I urge my colleagues to support this amendment to the Clean Water Act amendments.

Mr. SIMON. <WQA87 § 214> Mr. President, I rise in support of the amendment I am cosponsoring with my colleague, Senator DIXON. It will aid in the tunnel project of the Chicago Metropolitan Sanitary District. While it will cost eventually an estimated $751 million, the savings to the Federal Government will be over $800 million above that amount. If we do not go ahead, the cost will be approximately $1.55 billion. It has become crucial to the suburbs in the Chicago area. It is a project that has been of great benefit not only to the people in our country but to researchers in other countries. I am pleased to support it and hope that it has the support of this body.

Mr. DIXON. <WQA87 § 214> Mr. President, I say to my distinguished colleagues that this matter has been cleared on both sides with the distinguished manager of the bill [Mr. CHAFEE] and with the distinguished minority manager [Mr. MITCHELL]. If there is no objection to my amendment, I have nothing further to say.

Mr. CHAFEE. <WQA87 § 214> Mr. President, the Senator from Illinois is quite right. This is an unusual situation that Illinois has with this TARP project, which, I understand, is some 110 miles long with its connecting intercepts and laterals to it. The bill itself has a limitation of 20 percent that can be used by the Governor set aside for discretionary purposes.

<WQA87 § 214> The situation in Illinois is such that they have a mammoth program that the legislature has enacted with their own funds for waste treatment disposal throughout the State. This would permit the Governor to exceed that discretionary limitation of 20 percent in the case of Illinois, where they have this particular project, as the Senator from Illinois has designated, known as TARP. So, speaking for this side, we are in support of the amendment.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, I commend the Senator from Illinois [Mr. DIXON] for the diligence and vigor with which he has represented his constituents in this matter. I associate myself with the remarks previously made. We have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

<WQA87 § 214> The amendment (No. 333) was agreed to.

Mr. DIXON. Mr. President, I thank the distinguished managers of the bill on behalf of my colleague [Mr. SIMON], Governor Thompson, myself, and the entire membership of the Illinois delegation for the courtesy and kindness they accorded us on this occasion.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. <FWPCA § 301> Mr. President, it is my understanding that the House of Representatives' version of the Clean Water Act Amendments of 1985 is likely to contain a provision on the remining of abandoned coal mine sites with preexisting pollutional discharges.

<FWPCA § 301> Mr. President, this provision provides incentives to coal operators to remine such areas and so improve the water quality of these areas.

<FWPCA § 301> Nationally there are in excess of 1.5 million acres of abandoned mine lands that have not been reclaimed to standards required by the Surface Mining Control and Reclamation Act of 1977 [SMCRA]. The vast majority of these lands and the streams adversely affected by sediment or acidity from such abandoned operations are located in the Appalachian region. The Abandoned Mine Land [AML] Program created under title IV of SMCRA established a fund to reclaim these sites where there is no continuing reclamation responsibility under Federal or State law. The AML fund is generated by collection of a reclamation fee levied on coal operators. The fee collection began in 1978 and will continue through 1992, and it is expected that approximately $3 billion will be collected during that period. These resources, however, are inadequate to deal with the full magnitude of the abandoned mine land problem. It is estimated that the fund will resolve only about 20 percent of the problem areas.

<FWPCA § 301> Therefore, the water quality problems associated with many of these sites will continue unless the coal industry is given the incentive to remine and consequently reclaim these areas.

<FWPCA § 301> It is estimated that as much as 40-50 percent of these lands contain additional reserves that can be mined today with economic and land reclamation benefits. However, a substantial percentage of those sites will not be reclaimed and remined unless a limited modification from the applicable

[*15620] Clean Water Act effluent limits is enacted.

<FWPCA § 301> The advantages of such a provision are to provide a source of economically competitive coal and to improve water quality. Coal produced from remining operations is likely to be very competitive on the coal export market. Old gob piles and abandoned mine sites are environmental hazards. A remining provision would create a useful incentive to remove those hazards.

<FWPCA § 301> In addition, it will provide an increased reserve base which will ensure future employment and a continuing tax base in traditional mining areas. This is particularly important given the scarcity of virgin lands in many established mining communities.

<FWPCA § 301> Mr. President, I ask the Senators who will be conferees whether they would seriously consider accepting the House provision in conference, so that this vital environmental, economic, and trade issue can be addressed.

Mr. CHAFEE. <FWPCA § 301> Mr. President, I assure the distinguished minority leader that I am willing to give all possible consideration to adoption of the House remaining provision in conference. I can see the value in a program that will result in enhanced water quality as a benefit of mining abandoned sites.

Mr. MITCHELL. <FWPCA § 301> Mr. President, I assure the distinguished minority leader of my willingness to work to assess and develop an appropriate remedy on this vital matter that will be acceptable to all interested parties. I acknowledge and support the importance of adopting a program on this matter.

Mr. BYRD. Mr. President, I thank the distinguished Senators who are managing the pending measure. I thank them for their support and for their assurance that they will do everything they can in conference in support of this proposal.

* * * *

[*15622]

CLEAN WATER AMENDMENTS OF 1985

The Senate resumed consideration of S. 1128.

AMENDMENT NO. 334

Mr. STEVENS. Mr. President, I send an amendments to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for himself and Mr. MURKOWSKI proposes an amendment numbered 334.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 76, after line 18, insert the following:

"SEC. 125(a) <WQA87 § 407> Not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Clean Water Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities.

"(b) The requirements of sections 301(a) and 402(a) of the Clean Water Act shall be stayed until October 12, 1985, or until an agreement is entered into under subsection (a), whichever is earlier, for discharges associated with such facilities, except discharges of dredged or fill material.

"(c) <WQA87 § 407> Such agreement shall be developed to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

"(d) <WQA87 § 407> Where both sections 402 and 404 of this Act apply, log transfer facilities that have received a permit under section 404 of this Act prior to the date of enactment of this section shall not be required to submit a new application for a permit under section 402 of this Act. If the Administrator determines that the terms of an existing permit under section 404 of this Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of this Act, a separate application for a permit under section 402 shall not be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of an existing, permit under section 404 of this Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of this Act, modifications to the existing permit under section 404 to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402.

"(e) <WQA87 § 407> For the purpose of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States, and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft."

Mr. STEVENS. <WQA87 § 407> Mr. President, this amendment pertains to log transfer facilities and it has been the subject of a long negotiation here in the past few days.

<WQA87 § 407> It does not provide the best solution to a very serious problem facing the timber industry in Alaska. It provides the best compromise solution that could be reach between the parties.

In my State there are many small logging concerns that have 5 to 10 employees. Usually the employees are really family members, who log from the Forest Service lands of our State. These people must comply with regulations from both State and Federal agencies to operate their log transfer facilities. Currently in Alaska these facilities are regulated under section 404 <FWPCA § 404> of the Clean Water Act section 401 <FWPCA § 401> State certification, section 10 of the Rivers and Harbors Act, and the Coastal Zone Consistency Management Program.

Now the EPA has sought to enforce section 402 <FWPCA § 402> requirements over log transfer facilities in my State, although it does not enforce these requirements in any other State.

<WQA87 § 407> I hope the Secretary and the Administrator will work out what would be known as a one-stop concept so that these small entities do not have to deal with yet another level of bureaucracy.

I think it is important for the Senate and everyone to understand that there are probably more Forest Service people in my State than there are loggers, and there are more Corps of Engineers people than there are Forest Service people, and now there will be more EPA people, than there are either Corps of Engineers or Forest Service people, involved in regulating the same small business people.

<WQA87 § 407> I am sure Members realize that I have been slightly reluctant to yield on the question of the basic amendment which was before us as submitted by the administration which would have specified that log transfer facilities are not point sources of pollution.

<WQA87 § 407> We have had a long negotiation, as I indicated, and this amendment represents the consensus of what is attainable now to try to reduce to a minimum the increased regulatory burden on this besieged logging industry as the result of the EPA's extended jurisdiction.

This amendment requires the Administrator of the Environmental Protection Agency [EPA] and the Secretary of the Army to come up with an agreement as to how these two Agencies will handle permitting of log transfer facilities in Alaska by October 12, 1985. The Administrator and the Secretary are advised to highlight this date on their calendars. It is not a deadline to be ignored. I fully intend to seek drastic cuts in their funding if an agreement is not reached by the October deadline.

<WQA87 § 407> The Administrator and the Secretary should understand that their agreement should focus on those section 402 <FWPCA § 402> requirements that are necessary to cover discharges from logs. I suggest that they closely examine 40 CFR 122 to see which sections should apply to these type of facilities. Further, I would recommend the Secretary and Administrator consult with the Alaska Timber Task Force, of which the Corps of Engineers and EPA are members. This group has been meeting over the last year in an attempt to resolve this problem on a regional basis. Their experience and insight should be helpful in meeting the October 12, 1985, deadline.

<WQA87 § 407> I expect the agreement to contain workable and reasonable guidelines. I hope that the Secretary and the Administrator will give serious consideration to the economic burden additional requirements will have on the logging industry and balance that with the potential environmental impact that these facilities raise.

I am going to monitor the progress of this negotiation closely. I hope it will be successful. These Agencies

[*15623] have had a difficult time in the past in coming to an agreement. It can be done if people of good will work to assure that the regulatory processes that are mandated by this act do not lead to the demise of the logging industry. This would be the ultimate in regulation, I guess. It would be to just kill off the industry itself and there would be nothing more to regulate.

That is certainly not my goal and I do not think it is the goal of the Senate, and I am delighted that my two friends who are managing the bill, Senators CHAFEE and MITCHELL, as well as Senator STAFFORD, are willing to pursue the objective of obtaining an agreement that will carry out the intent of the act while at the same time allow these small entities in our State to continue logging pursuant to the permits they currently hold.

I compliment them for their willingness to proceed this far. There is reluctance on their part, too, I can assure the Senate.

But the circumstances are such that my colleague, Senator MURKOWSKI, and I feel that we have no alternative but to really try to preserve this industry despite the extension of yet another Federal regulatory agency into their area of endeavor.

If my friend wishes to make any comments I will yield to the manager of the bill.

Again, I think it has been an act of courtesy and friendship that has led the managers of the bill to be so patient with my colleague and me. We were prepared to go to great lengths to extend our interest in this matter to the Senate and to describe it to the Senate, but I am glad we do not have to pursue that course, and I again, however, wish to make sure the RECORD indicates that if an agreement is not reached we might have to pursue that sometime in the future. I hope we will not have to do so.

Mr. STAFFORD. Mr. President, will my very able friend from Alaska yield?

Mr. STEVENS. I am happy to yield to my good friend.

Mr. STAFFORD. I will be pleased to be added as a cosponsor of the amendment if the Senator from Alaska wishes.

Mr. STEVENS. We are delighted to have the cosponsorship of the chairman of the committee, and I thank him.

I ask unanimous consent, Mr. President, that the distinguished Senator from Vermont [Mr. STAFFORD] and the majority leader, Mr. DOLE, be added as cosponsors.

Mr. CHAFEE. I wish to be included in that request.

Mr. STEVENS. And the Senator from Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I commend both Senators from Alaska, Senators STEVENS and MURKOWSKI, for their vigilance on behalf of Alaska. We deal with many Senators here who represent their States ably, but I think no two Senators do it with more force, vigor, persistence than do Senators STEVENS and MURKOWSKI. And I have been dealing with both of those Senators for I guess well over a month now in connection with this.

Mr. MURKOWSKI. Mr. President, as the Senate considers the amendment my colleague, Mr. STEVENS, and I have offered, I ask that the distinguished Senator from Rhode Island discuss some features of this proposal with Senator STEVENS and myself.

<WQA87 § 407> Would the Senator from Rhode Island agree that the purpose of this amendment is to compel the EPA and Corps of Engineers to enter into an agreement whereby one of those agencies will process a permit that meets the requirements of sections 404 <FWPCA § 404> and 402 <FWPCA § 402> as required for log transfer facilities?

Mr. CHAFEE. <WQA87 § 407> The Senator is correct. I might add, Mr. President, that this matter has been discussed at some length among the members of the Environment and Public Works Committee. The committee has corresponded with the Administrator of EPA, and we are informed that the Agency has the authority to enter into the agreement as set forth in the amendment.

<WQA87 § 407> Mr. President, I ask unanimous consent that the May 21, 1985 letter from EPA Administrator Thomas to Senator STAFFORD and myself, be printed in the RECORD. This letter sets forth the authority of the agencies under their respective programs.

<FWPCA § 407> There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. ENVIRONMENTAL

PROTECTION AGENCY,

Washington, DC, May 21, 1985.
Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and
Public Works, U.S. Senate, Washington,
DC.

DEAR MR. CHAIRMAN: Thank you for your letter of May 8, 1985 regarding the Committee's concerns about the coverage of log transfer facilities (LTF's) under the Clean Water Act (the Act). As you are aware, the Agency has been actively working on this matter since October 1983, and appreciates the opportunity to address the issues your Committee has raised.

<FWPCA § 402> <FWPCA § 404> You have asked for our opinion as to whether statutory authority exists either to require that section 404 permits contain requirements to regulate the discharge of pollutants associated with the operation of LTF's or to issue joint or consolidated permits to LTF's under the authority of both sections 404 and 402. With respect to the first question, the nature of the pollutants discharged from an LTF will determine whether authority exists under section 402 or 404 to regulate that discharge. Section 301(a) <FWPCA § 301> of the Act prohibits the discharge of any pollutant into waters of the United States without a permit. Section 402 authorizes the Administrator of EPA to issue permits for the discharge of all pollutants, except as provided in section 404. Under section 404, the Secretary of the Army may issue permits for the discharge of dredged or fill material.

<FWPCA § 402> <FWPCA § 404> Thus, the Administration may issue a permit for the discharge of all pollutants, except those regulated under section 404 (i.e., dredged or fill material) for which only the Secretary of the Army may issue permits. These two sections are intended to regulate distinct pollutants and activities and thus, are not redundant in coverage. Moreover, since each section is specific as to its scope of authority, section 404 would not authorize the imposition of permit conditions to regulate the discharge of pollutants other than dredged or fill material. Any permit is-

sued under the CWA, whether under the authority of section 402 or 404, is subject to the provisions of section 401 <FWPCA § 401> of the Act, whereby the State must certify that the discharge will comply with all applicable State requirements. Therefore, it is possible that a State may request that certain conditions be placed in both the 404 dredge or fill permit and the NPDES discharge permit. In such a case, those terms and conditions would be implemented and enforced in accordance with the appropriate statutory authority of the respective federal Agencies.

<FWPCA § 402> <FWPCA § 404> With respect to the second question, where both a 402 and 404 permit are required for an LTF operation, there is no reason why a joint or consolidated permit cannot be issued, so long as all applicable requirements of each program are satisfied.

<FWPCA § 402> <FWPCA § 404> You have further asked us to review our programs to determine if there are duplicative regulatory requirements for these two programs. As indicated above, section 402 and 404 permits are intended to address separate types of discharges and different environmental concerns and are, therefore, not substantively duplicative. Since there is authority to issue joint 402/404 permits, the Agency will work to coordinate the issuance of such permits in the future to avoid any duplication and minimize procedural burdens. However, you should be aware that the majority of existing LTFs in Alaska (approximately 90) have already been issued 404 permits. EPA could not retroactively issue a joint permit to facilities already holding a 404 permit. However. the Agency could issue NPDES permits consistent with certain terms and conditions of the facility's existing 404 permit where it determines such terms and conditions are appropriate to control the operational discharges.

<WQA87 § 407> The Agency recognizes the unique economic circumstances and the small business nature of many of the operators of these facilities. We will, therefore, continue to work to avoid undue administrative and economic burdens on the industry compatible with our statutory responsibilities. As part of this effort, we will fully explore the possibilities for joint permitting and general permits. The general permit approach has significant potential for reductions in permit application monitoring and paperwork costs.

While we are investigating these options, we will issue individual NPDES permits, as needed, in the near future <FWPCA § 402>. We expect to make a decision on our long term permitting strategy before there is a need for a large scale individual permitting operation.

I hope this has been responsive to your questions. Please feel free to call on me if you need any further clarifications.

Sincerely,

LEE M. THOMAS.

[*15624] Mr. MURKOWSKI. This amendment sets a firm deadline on the agencies to enter into an agreement on or before October 12, 1985. Are we in complete agreement that the agencies must begin to negotiate the agreement immediately, and that they must complete the agreement before October 12, 1985?

Mr. CHAFEE. Again, the Senator is correct. I expect the corps and the EPA to commence discussions tomorrow to develop the agreement.

Mr. STEVENS. Mr. President, will my colleague from Alaska yield?

I am greatly concerned that there be no enforcement or issuance of section 402 <FWPCA § 402> permits for existing log transfer facilities by the EPA until October 12, when we expect an agreement will be reached. The amendment addresses this concern. However, I ask what the Environment and Public Works Committee would intend to do in the event that the agencies ignore the mandate of the amendment and fall to reach an agreement on or before October 12?

Mr. STAFFORD. <WQA87 § 407> Mr. President, if the Senator from Alaska will yield on that point, as chairman of the Environment and Public Works Committee, I pledge my full support to the Senators from Alaska on this amendment. The EPA and the Corps of Engineers must abide by the intent of the Senate in completing an agreement by October 12. The staff of the committee will continually monitor progress on this matter, and will be vigilant in ensuring that the agencies meet the deadline.

Mr. STEVENS. Mr. President, I thank Senator STAFFORD.

<WQA87 § 407> There must be an assurance that the agencies will meet the deadline. They have not been able to work together on this matter for 2 years, and the logging industry in Alaska simply cannot continue to spend time and effort in working on needlessly duplicative permits while the agencies procrastinate.

Mr. CHAFEE. Mr. President, if the Senator would yield on this point, the amendment now calls for a stay of enforcement of the section 402 <FWPCA § 402> requirements between now and October 12. The agencies must meet that deadline. If they do not, then I would support a measure to extend the stay of enforcement for a further limited period of time and perhaps other steps to force the agencies to reach the agreement.

Mr. STAFFORD. <WQA87 § 407> Mr. President, if the Senator from Alaska will yield, I, too, would support such an extension of the enforcement stay if the agencies fail to abide by the amendment.

Mr. DOLE. Mr. President, if the Senator from Alaska will yield, I understand that this matter of 402 <FWPCA § 402> and 404 <FWPCA § 404> permits is of deep concern to my colleagues from Alaska. The majority leader has been involved in working with the Senators from Alaska, and the Environment and Public Works Committee to fashion this agreement.

Let me say, Mr. President, that a great deal of time and effort has been spent by Senators to arrive at this agreement. We simply cannot tolerate the EPA or the Corps of Engineers ignoring the clear intent of this body to enter an agreement by October 12 <WQA87 § 407>. I would join with my colleagues in extending the enforcement stay, if that is necessary.

<WQA87 § 407> But let me add, Mr. President, that the agencies must be placed on notice that to ignore our clear direction on this matter could result in other sanctions. For example, by October, the Senate will likely be considering funding measures affecting the corps and the EPA. If they ignore this amendment, then the Senator from Kansas will seriously entertain measures to terminate specific funding for either or both agencies.

Mr. STEVENS. <WQA87 § 407> Mr. President, I want these agencies to know that, as a member of the Appropriations Committee, I will not hesitate to seek cuts in funding for both agencies if it even looks like they intend to ignore the mandate of this body.

Mr. MURKOWSKI. Mr. President, will my colleague yield?

Mr. STEVENS. I yield.

Mr. MURKOWSKI. Mr. President, I appreciate the cooperation of the Senator from Rhode Island, Senator CHAFEE, and that of Senator STAFFORD, the chairman of the Environment and Public Works Committee. In addition, the majority leader has been instrumental in helping the parties reach an agreement on this matter, and I am grateful for this assistance.

<WQA87 § 407> Finally, Mr. President, my friend, the senior Senator from Alaska. TED STEVENS, must be commended for the time and effort he has given in resolving this matter. He has worked diligently over the past 2 years to end needless duplication in permits that must be obtained by the Alaska logging industry. I am confident that the amendment we offer today will force the agencies to do what they should have done years ago. When the agreement is completed, Alaskans affected by section 404 <FWPCA § 404> and 402 <FWPCA § 402> requirements will be able to get on with the conduct of business, and will no longer have to waste their efforts working paper through two agencies.

Mr. President, I ask for the adoption of the amendment.

Mr. CHAFEE. Speaking for this side, Mr. President, we are prepared to accept the amendment.

The PRESIDING OFFICER (Mr. DOLE). The Senator from Maine.

Mr. MITCHELL. Mr. President, Senators STEVENS and MURKOWSKI have highlighted for the Senate problems posed by the current approach to regulation of log transfer facilities under the Clean Water Act.

I agree with my colleagues from Alaska that this problem needs attention and I support their proposed amendment.

<WQA87 § 407> The proposed amendment would direct the EPA and the Corps of Engineers to develop a process to issue joint permits under sections 402 <FWPCA § 402> and 404 <FWPCA § 404> of the Clean Water Act. The amendment leaves in place the important concept that logs are a water pollutant and therefore the discharge of logs to water requires a permit under section 402 <FWPCA § 402>.

Some have questioned the descriptions of logs as a pollutant. Let me point out that my home State of Maine banned log drives on rivers years ago because of damage to rivers. Log bark leaches a variety of tannin and organic chemicals. Logs also damage marine environment.

The State of Alaska itself has called log transfer facilities "one of the most serious longstanding and widespread water quality problems in coastal Alaska."

Log transfer facilities also involved dredge and fill activities and require a permit under section 404 <FWPCA § 404> of the Clean Water Act.

<FWPCA § 402> <FWPCA § 404> These two legitimate permitting activities were not well coordinated. This lack of coordination has placed an unnecessary administrative burden on Alaskan loggers.

<WQA87 § 407> The proposed amendment goes directly to the problem of poor coordination and unnecessary regulatory burdens. It specifically directs the EPA and the corps to develop a joint permitting process by a specific date.

I am confident that this amendment will result in a more efficient and effective permitting process for log transfer facilities and I am pleased to support Senator STEVENS and Senator MURKOWSKI in this amendment.

Mr. STEVENS. Mr. President, I am delighted to have that comment from my good friend, the democratic manager of the bill.

The conditions in our State are slightly different -- we, for instance, do not log in freshwater. Unlike the Senator from Maine [Mr. MITCHELL] I view this issue as an overregulation problem rather than a pollution problem. Senator MITCHELL has attributed a statement to the State of Alaska as representative of the State's view on this issue. The statement is flat wrong. I ask unanimous consent that a letter from the commissioner of the department of environmental conservation be printed. This letter properly puts forth the State of Alaska's sentiments on the issue.

<WQA87 § 407> There being no objection, the letter was ordered to be printed in the RECORD, as follows:

[*15625] STATE OF ALASKA,

Juneau, June 11, 1985.
Hon. TED STEVENS,
U.S. Senate,
Washington, DC.

DEAR SENATOR STEVENS: On May 30, 1985, a letter from representatives of several environmental groups was sent to Senator John Chafee opposing the proposed amendment to the Clean Water Act (CWA) that would exempt log transfer facilities (LTFs) from the requirements of Section 402 <FWPCA § 402> of the Act.

<WQA87 § 407> The State of Alaska's position on the amendment in question is spelled out in my letter of March 15, 1985, to Robert Loescher. However, I would like to take this opportunity to clarify several issues raised in the more recent letter to Senator Chafee.

The letter contains a statement that characterizes LTF pollution as "one of the State's most serious water quality problems." While the problems associated with LTF's are serious enough to warrant our attention, there are several other water quality issues that are considerably more severe than those surrounding the sitting and operation of LTF's.

The letter then indicates that the discharge of pollutants from LTFs has been unregulated in Alaska. I believe this is the most important issue at hand. The sitting, operation, and maintenance of LTF's in Alaska are subject to review by both state and federal agencies under Section 404 <FWPCA § 404> of the CWA. The State has considerable opportunity through certificates issued under Section 401 <FWPCA § 401> of the CWA, and through consistency determinations authorized by the Coastal Zone Management Act, to address any potential water quality problems. Under these processes, state and federal agencies can and do attach stipulations to the 404 <FWPCA § 404> permit that are intended to prevent or minimize water pollution.

<FWPCA § 402> Finally, the letter indicates that retention of the NPDES permit requirement under Section 402 is essential to protection of water quality in Alaska. The State has worked for several years and continues to work to eliminate pollution from LTFs without having in place a 402 permit system. Indeed, only one LTF in Alaska has received an NPDES permit to date, and that permit resulted from a judicial interpretation concerning the original mode of transport

for logs by helicopter, not over the environmental necessity for the permit. We believe we have addressed any problems associated with LTFs absent a Section 402 permit, and will continue to do so.

I hope that this information is helpful. Please do not hesitate to contact me if you require additional information.

Sincerely,

BILL ROSS, Commissioner.

Mr. STEVENS. Mr. President, in the future, I believe that we ought to do more here in the Senate of pursuing what I call the one-stop process so that these small business people need only deal with one Federal entity in order to obtain the clearances they need to comply with Federal law.

This is a step in that direction. I am delighted to be a part of it and have the support of the Members who have co-sponsored this amendment. I ask for the adoption of the amendment.

Mr. MURKOWSKI. Mr. President, as the Senate considers the amendment my colleague, Mr. STEVENS, and I have offered, I ask that the distinguished Senator from Rhode Island discuss some features of this proposal with Senator STEVENS and myself.

<WQA87 § 407> Would the Senator from Rhode Island agree that the purpose of this amendment is to compel the EPA and Corps of Engineers to enter into an agreement whereby one of those agencies will process a permit that meets the requirements of sections 404 and 402 as required for log transfer facilities?

Mr. CHAFEE. <WQA87 § 407> The Senator is correct. I might add, Mr. President, that this matter has been discussed at some length among the members of the Environment and Public Works Committee. The committee has corresponded with the Administrator of EPA, and we are informed that the Agency has the authority to enter into the agreement as set forth in the amendment.

Mr. MURKOWSKI. <WQA87 § 407> Senator CHAFEE, this amendment sets a firm deadline on the agencies to enter into an agreement on or before October 12, 1985. Are we in complete agreement that the agencies must begin to negotiate the agreement immediately, and that they must complete the agreement before October 12, 1985?

Mr. CHAFEE. <WQA87 § 407> Again, the Senator is correct. I expect the Corps and the EPA to commence discussions tomorrow to develop the agreement.

Mr. STEVENS. <WQA87 § 407> Mr. President, I am greatly concerned that there be no enforcement or issuance of section 402 permits for existing log transfer facilities by the EPA until October 12, when we expect an agreement will be reached. The amendment addresses this concern. However, I ask what the Environment and Public Works Committee would intend to do in the event that the agencies ignore the mandate of the amendment and fail to reach an agreement on or before October 12?

Mr. STAFFORD. Mr. President, if the Senator from Alaska will yield on that point, as chairman of the Environment and Public Works Committee, I pledge my full support to the Senators from Alaska on this amendment. The EPA and the Corps of Engineers must abide by the intent of the Senate in completing an agreement by October 12. The staff of the committee will continually monitor progress on this matter, and will be vigilant in ensuring that the agencies meet the deadline.

Mr. STEVENS. Mr. President, I thank Senator STAFFORD.

There must be an assurance that the agencies will meet the deadline. They have not been able to work together on this matter for 2 years, and the logging industry in Alaska simply cannot continue to spend time and effort in working on needlessly duplicative permits while the agencies procrastinate.

Mr. CHAFEE. Mr. President, the amendment now calls for a stay of enforcement of the section 402 <FWPCA § 402> requirements between now and October 12. The agencies must meet that deadline. If they do not, then I would support a measure to extend the stay of enforcement for a further limited period of time and perhaps other steps to force the agencies to reach the agreement.

Mr. STAFFORD. Mr. President, I, too, would support such an extension of the enforcement stay if the agencies fail to abide by the amendment.

Mr. DOLE. Mr. President, I understand that this matter of 402 <FWPCA § 402> and 404 <FWPCA § 404> permits is of deep concern to my colleagues from Alaska. The majority leader has been involved in working with the Senators from Alaska, and the Environment and Public Works Committee to fashion this agreement.

<WQA87 § 407> Let me say, Mr. President, that a great deal of time and effort has been spent by Senators to arrive at this agreement. We simply cannot tolerate the EPA or the Corps of Engineers ignoring the clear intent of this body to enter an agreement by October 12. I would join with my colleagues in extending the enforcement stay, if that is necessary.

<WQA87 § 407> But let me add, Mr. President, that the agencies must be placed on notice that to ignore our clear direction on this matter could result in other sanctions. For example, by October the Senate will likely be considering funding measures affecting the corps and the EPA. If they ignore this amendment, then the Senator from Kansas will seriously entertain measures to terminate specific funding for either or both agencies.

Mr. STEVENS. <WQA87 § 407> Mr. President, I want these agencies to know that, as a member of the Appropriations Committee, I will not hesitate to seek cuts in funding for both agencies if it even looks like they intend to ignore the mandate of this body.

Mr. MURKOWSKI. Mr. President, I appreciate the cooperation of the Senator from Rhode Island. Senator CHAFEE, and that of Senator STAFFORD, the chairman of the Environment and Public Works Committee. In addition, the majority leader has been instrumental in helping the parties reach an agreement on this matter, and I am grateful for this assistance.

<WQA87 § 407> Finally, Mr. President, my friend, the senior Senator from Alaska, TED STEVENS, must be commended for the time and effort he has given in resolving this matter. He has worked diligently over the past 2 years to end needless duplication in permits that must be obtained by the Alaska logging industry. I am confident that the amendment we offer today will force the agencies to do what they should have done years ago. When the agreement is completed, Alaskans affected by section 404 <FWPCA § 404> and 402 <FWPCA § 402> requirements will be able to get on with the conduct of business, and will no longer have to

[*15626] waste their efforts working paper through two agencies.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

<WQA87 § 407> The amendment (No. 334) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 335

(Purpose: To provide for a Great Lakes Research Office)

Mr. KASTEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

<FWPCA § 118> The Senator from Wisconsin [Mr. KASTEN] proposes an amendment numbered 335.

Mr. KASTEN. Mr. President, I ask unanimous consent that further reading of the of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

<FWPCA § 118> On page 71, after the end of line 13 strike out the period and insert "; and".

<FWPCA § 118> On page 71, between lines 13 and 14, insert the following:

(5) 'Research Office' means the Great Lakes Research Office established by subsection (d).

<FWPCA § 118> On page 74, between lines 2 and 3, insert the following:

"(d) GREAT LAKES RESEARCH. --

"(1) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report on such issues prior to the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs, and to the extent feasible, those of private organizations and other nations, relating to the Great Lakes system, and shall update that inventory every four years.

"(4) The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes System.

"(5) The Research Office shall develop, in cooperation with the Program Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, and other Federal laboratories, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

"(7) The Great Lakes Research Office shall be located in a Great Lakes State.

"(e) RESEARCH AND MANAGEMENT COORDINATION. --

"(1) Prior to October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

"(2) Each plan prepared under paragraph (1) shall --

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water Quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

On page 74, line 3, strike out "(d)" and insert "(f)".

On page 74, line 17, strike out "(e)" and insert "(g)".

On page 70, line 21, insert "(a)" immediately before "Title".

<FWPCA § 118> On page 75, strike lines 1 through 11, and insert in lieu thereof the following:

"(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS. --

There are authorized to be appropriated to carry out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989 and 1990. Of such amounts as are appropriated each fiscal year --

"'(1) fifty percentum shall be used for the Great Lakes National Program Office demonstration projects on the feasibility of controlling and removing toxic pollutants;

"'(2) seven percentum shall be used for the Great Lakes National Program Office's program of nutrient monitoring; and

"'(3) thirty percentum shall be used for the Great Lakes Research Office.'

"(b) Section 517 of the Clean Water Act is amended by inserting '118,' immediately after '115'.".

Mr. KASTEN. <FWPCA § 118> Mr. President, today I am offering an amendment to provide for the coordination of research efforts conducted on the Great Lakes.

<FWPCA § 118> This amendment is based on S. 765, the Great Lakes Management Act which I introduced earlier this year. Twelve other Senators have joined me by cosponsoring that legislation.

The Great Lakes are one of the world's most spectacular resources. They contain 95 percent of this Nation's surface freshwater.

The Great Lakes stretch for over 1,000 miles, and have a surface area of 94,510 square miles. That is an area the size of the States of Maine, West Virginia, Maryland, Massachusetts, Delaware, Vermont, and New Jersey put together.

They contain 6 quadrillion gallons of water. That is one-fifth of all the freshwater in the world.

In short, the Great Lakes are the world's most important source of a very valuable, and increasingly scarce resource -- clean water.

Unfortunately, the Federal efforts to manage the world's most valuable supply of freshwater is in disarray.

Federal efforts to manage the Great Lakes are frightingly inadequate. No single agency is currently charged with the responsibility of overseeing the resource on a basinwide basis.

<FWPCA § 118> The legislation I have introduced will correct this textbook example of how not to manage a resource. The Committee on Environment and Public Works has already acted on the EPA provisions of this legislation.

<FWPCA § 118> Today, I am offering, that portion of S. 765 that was outside of the committee's jurisdiction -- to give NOAA additional responsibilities to protect the resources of the Great Lakes.

<FWPCA § 118> Specifically, the amendment I am offering establishes, within the National Oceanic and Atmospheric Administration, the Great Lakes Research Office.

<FWPCA § 118> The Research Office shall be the lead agency in conducting basic scientific research on the Great Lakes. In addition it will be responsible for overseeing all other Great Lakes research.

<FWPCA § 118> In short, this office shall be responsible for assuring the coordination of all research efforts on the Great Lakes. Such research efforts are currently conducted by each of the eight Great Lakes States, universities, NOAA, EPA, the Fish and Wildlife Service, USDA, the Corps of Engineers, and others.

<FWPCA § 118> Finally, this amendment provides for the coordination of research and management efforts. This amendment gives priority to the research needs of those agencies that are responsible for managing the resources of the Great Lakes.

<FWPCA § 118> By taking these steps, I believe that we will make a major achievement in protecting the world's most important freshwater resource. This action will not only benefit the 27 million Americans who currently depend on the Great Lakes for their drinking water, but also the millions more who depend on them as essential components of industry and their way of life.

This program which we are adopting today will assure that those resources are available to our children and their children so that they too may enjoy and benefit from the bounties of our Nation's inland sweetwater seas.

Mr. President, we have discussed this amendment with the manager of the bill. I am optimistic that it can be adopted.

Mr. CHAFEE. <FWPCA § 118> Mr. President, this is a good amendment, we believe, on this side. It provides an important role for the National Oceanic and Atmospheric Administration in coordinating research with the EPA on the Great Lakes. We are prepared to accept the amendment.

Mr. MITCHELL. Mr. President, I associate myself with the remarks of the

[*15627] distinguished manager of the bill and support the amendment.

Mr. KASTEN. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment.

<FWPCA § 118> The amendment (No. 335) was agreed to.

Mr. KASTEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 336

Mr. MITCHELL. Mr. President, on behalf of Mr. RIEGLE, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. SIMPSON). The clerk will report.

The assistant legislative clerk read as follows:

<FWPCA § 118> The Senator from Maine [Mr. MITCHELL] on behalf of Mr. RIEGLE proposes an amendment numbered 336.

Mr. MITCHELL. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

<FWPCA § 118> The amendment is as follows:

On page 72, line 1, strike "appropriation" and insert in lieu thereof "appropriate".

On page 72, line 2, after "agencies," insert "and in accordance with section 101(e) of this Act.".

On page 73, line 8, strike "such agreement" and insert in lieu thereof "the Great Lakes Water Quality Agreement of 1978".

On page 73, line 14, after "Great Lakes" insert "system, including the monitoring of groundwater, air transport and acid deposition, and sediment".

Mr. MITCHELL. <FWPCA § 118> Mr. President, these are a series of technical amendments offered by Senator RIEGLE to the Great Lakes provision of the bill, we have reviewed them and find them to be in order and support the amendment.

Mr. CHAFEE. Mr. President, speaking for this side, we also find the amendment acceptable and urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

<FWPCA § 118> The amendment (No. 336) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Later the following occurred:)

Mr. MITCHELL. <FWPCA § 118> Mr. President, I ask unanimous consent that amendment No. 336 be modified to reflect a change now at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

<FWPCA § 118> The modified amendment follows:

On page 72, line 1, strike "appropriation" and insert in lieu thereof "appropriate".

On page 72, line 2, after "agencies," insert in accordance with section 101(e) of this Act.".

On page 73, line 8, strike "such agreement" and insert in lieu thereof "the Great Lakes Water Quality Agreement of 1978".

On page 73, line 14, after "Great Lakes" insert "system, including the monitoring of groundwater and sediment".

AMENDMENT NO. 337

(Purpose: To further refine the National Estuary Program contained in the Clean Water Act Amendments of 1985)

Mr. CHAFEE. Mr. President, on behalf of Senator WEICKER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Clerk will report.

The assistant legislative clerk read as follows:

<FWPCA § 320> The Senator from Rhode Island [Mr. CHAFEE], on behalf of Mr. WEICKER, proposes an amendment numbered 337.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

<FWPCA § 320> The amendment is as follows:

On page 50, strike all after line 9 through line 21 and insert the following:

"The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out tasks assigned under subsection (g).

"(f) <FWPCA § 320> Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section;

"(g) <FWPCA § 320> (1) In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones --

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation, dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zone.

"(2) The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including --

"(A) a listing of priority monitoring and research needs;

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (a)(1)(D) of this section.

"(h) <FWPCA § 320> For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher."

Mr. WEICKER. Mr. President, I would like to commend the Senator from Rhode Island for his recognition of the serious pollution problems in our Nation's estuaries and for taking action to correct these problems in section 320 <FWPCA § 320> of this bill. I also would like to commend him for giving the EPA Administrator the option of using the substantial capabilities of the National Oceanic and Atmospheric Administration [NOAA] to do water quality monitoring and ecosystem assessment research in the estuaries under part (g)(1) of this section.

<FWPCA § 320> Mr. President, section 320 represents a synthesis of ideas on how to best correct pollution problems which currently plague our estuarine resources. This provision also draws from the substantial experience gained through the study of pollution problems in the Chesapeake Bay. In addition, this bill provides for the continued involvement of the EPA Office of Marine and Estuarine Protection in studies initiated in Long Island Sound, Narragansett Bay, Buzzards Bay, and Puget Sound earlier this year, made possible by funds included in EPA's fiscal year 1985 appropriation. This measure provides for a scientific mechanism and an institutional structure which can

[*15628] make it possible to restore biological vitality of our Nation's sounds and bays.

<FWPCA § 320> It is important to note that section 320 makes, available to EPA the substantial marine pollution monitoring and assessment capability created at Federal expense within NOAA's National Marine Fisheries Service. The coordination of EPA's research, abatement and management effort with NOAA's expertise in water quality monitoring and ecosystems assessment is essential if the enormous task of restoring the health of the Nation's estuaries is to be accomplished in a timely, consistent and efficient manner. NOAA's role, however, should directly support and be compatible with EPA's requirements for ensuring that adequate water quality standards are maintained within the designated estuaries. It is appropriate for such cooperation to take place and the groundwork for this cooperation is found in section 104(a) <FWPCA § 104> of the Clean Water Act.

<FWPCA § 320> Under section (g)(2) of the National Estuary Program the Congress can expect a report prepared jointly by EPA and NOAA which will present the findings of the activities taken under this section. This report will provide a listing of priority monitoring and research needs; an assessment of the state and health of the Nation's estuarine zones to the extent evaluated; a discussion of pollution problems and trends in pollutant concentrations that have a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each-estuarine zone; and an evaluation of pollution abatement activities and management measures implemented to determine the degree of improvement made toward restoring and maintaining the chemical, physical, and biological integrity of the estuaries studied.

<FWPCA § 320> Mr. President, this measure brings us much closer to finding and implementing scientifically based solutions to the pollution problems which are currently degrading our Nation's estuaries and adversely effecting the shellfish, fish, and wildlife and recreation resources which these ecosystems sustain.

Mr. GORTON. <FWPCA § 320> Mr. President, section 320 of S. 1128, the Clean Water Act Amendments of 1985, would authorize the Administrator to convene management conferences to solve pollution problems in interstate and international estuaries. Section 320, the National Estuary Program, will be of great benefit to the State of Washington in its ongoing efforts to develop and implement a conservation and management plan for Puget Sound. Booth Gardner, the Governor of Washington State, recently signed into law legislation creating the Puget Sound Water Quality Authority, a government entity charged with the responsibility for developing a comprehensive water quality plan for Puget Sound by January 1, 1987.

The Authority is required to prepare a comprehensive Puget Sound water quality management plan which will prescribe the needed actions for the maintenance and enhancement of Puget Sound water quality. The plan will address all the water of Puget Sound, the Strait of Juan de Fuca, over which the United States and Canada have joint jurisdiction, and, to the extent that they affect water quality in Puget Sound, all waters flowing into Puget Sound, and adjacent lands. The plan will include: a statement of goals and objectives for long- and short-term management of the water quality of Puget Sound; a resource assessment which identifies critically sensitive areas, key characteristics, and other factors which lead to an understanding of Puget Sound as an ecosystem; demographic information and assessment as relates to

future water quality impacts on Puget Sound; identification of research needs and priorities; and recommendations for guidelines, standards, and timetables for protection and clean-up activities and the establishment of priorities for major clean-up investments and nonpoint source management, and the projected costs of such priorities.

<FWPCA § 320> Because the Puget Sound Water Quality Authority shares the same objective as the management conferences which would be established under S. 1128 and is nearly identical in its responsibilities and activities to these conferences, can we view S. 1128 as allowing the Administrator the authority to designate the Puget Sound Water Quality Authority as the management conference for the purposes of this act?

Mr. CHAFEE. <FWPCA § 320> Yes; the Administrator of the Environmental Protection Agency is authorized to designate a State entity, such as the Puget Sound Water Quality Authority, as the management conference for the purposes of section 320 of the Clean Water Act Amendments of 1985.

Mr. GORTON. <FWPCA § 320> If the Administrator did not designate the Puget Sound Water Quality Authority as the management conference for the purposes of section 320, can we assume that it is the Congress' intent that S. 1128 in no way interfere with or preempt this State initiative, and that the Administrator make every effort to integrate the initiative underway in Washington State into the National Estuary Program?

Mr. CHAFEE. <FWPCA § 320> Yes; section 320 of the Clean Water Act Amendments of 1985 is not meant to interfere with or preempt activities of the Puget Sound Water Quality Authority, insofar as these activities comply with the requirements of Federal law. Indeed, the Puget Sound Water Quality Authority is a fine example of State initiative and the Administrator should make every effort to accommodate and support the Authority's activities.

Mr. GORTON. One final issue-within the last year the Environmental Protection Agency denied the waiver requests of over 25 utilities on Puget Sound which had previously been granted tentative waivers under section 301(h) <FWPCA § 301> of the Federal Clean Water Act. These public utilities have received orders from the Agency to proceed with implementing secondary treatment, and a majority of them will be placed on compliance schedules which extend beyond the 1988 compliance deadline. These compliance schedules reflect the Environmental Protection Agency's prosecutorial discretion.

<FWPCA § 320> Can we view section 320 of S. 1128 as in no way affecting legal compliance schedules agreed upon by the Agency and the utilities?

Mr. CHAFEE. <FWPCA § 320> Yes' it is the express intent of the committee that nothing in section 320 affect compliance schedules or other requirements established by law or by the Agency for municipal, industrial or other dischargers.

Mr. EVANS. <FWPCA § 320> Mr. President, I rise to commend to my colleague from Rhode Island for his perseverance in establishing a National Estuary Program. He has pursued this objective for some time and I commend him for a job well done. The program established in section 320 of the Clean Water Act Amendments of 1985 is critical if we are to protect our Nation's estuaries. This program will certainly enhance Washington State's efforts to protect Puget Sound and I can assure my good friend we will support the National Estuary Program to the fullest extent possible.

In February of this year, I held a 1-day conference on the nature and scope of the problems facing Puget Sound. I heard presentations from the scientific community, from those responsible for activities affecting Puget Sound and from legislators responsible for laws governing such activities and the necessary funding. After hearing the various perspectives, I chaired a roundtable discussion during which we tried to reach a more common understanding of the needs of Puget Sound and some of the means to address these needs.

The roundtable discussion participants agreed that the Puget Sound Water Quality Authority was the appropriate entity to be responsible for developing a comprehensive water quality plan for Puget Sound. I note the exchange between Senator CHAFEE and my fellow Washingtonian. Senator GORTON, expressing the view of Congress that the Puget Sound Water Quality Authority can be designated as the management conference for the

[*15629] purposes of section 320 <FWPCA § 320> of this act. This removes any questions that might be raised on this matter and I thank my colleague for his willingness to clarify this for the RECORD.

Mr. CHAFEE. <FWPCA § 320> Mr. President, this amendment allows EPA to transfer up to -- not $5 million, but up to -- $5 million of the $12 million authorized under the National Estuary Program which is established in this bill.

<FWPCA § 320> Under the amendment, the transfer of up to $5 million would be by EPA to NOAH, the National Oceanic and Atmospheric Administration. Under the amendment, EPA shall utilize the National Oceanic and Atmospheric Administration to carry out research in the estuary should EPA so agree.

Mr. President, I think it is a good amendment and would urge its passage.

Mr. MITCHELL. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

<FWPCA § 320> The amendment (No. 337) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON. Mr. President, I would like to take this opportunity to express my support for S. 1128, the Clean Water Act Amendments of 1985. I commend my distinguished colleague from Rhode Island, Mr. CHAFEE, for working so diligently to develop the legislation and steer it through committee consideration so early in this Congress.

The Clean Water Act has been one of the most successful of our environmental laws. In my view, the committee did a fine job of correcting those problems which do exist and reporting a strong reauthorization of the act. I am particularly pleased that this bill adds a new section 320 <FWPCA § 320>, the National Estuary Program, which authorizes the Administrator to convene management conferences to solve pollution problems in certain critically important estuaries. The National Estuary Program will provide Washington State with a unique opportunity to preserve an estuary of both regional and national importance. Puget Sound.

During the 98th Congress, at the request of myself and Senator EVANS, Puget Sound was added to a list of estuaries eligible to receive $4 million in fiscal year 1985 for estuarine pollution monitoring and assessment. The State of Washington, the region 10 office of EPA, and local citizens joined forces to create a joint Federal/State program and these funds were used by the program to identify and address the growing number of water quality problems in Puget Sound. The National Estuary Program will allow the work of the program to continue and will be of great benefit to the State of Washington in its ongoing efforts to develop and implement a conservation and management plan for Puget Sound <FWPCA § 320>.

I thank Senator CHAFEE and his staff for their excellent work in developing this vital program. In particular, I would like to thank professional staff member Bob Hurley for the attention and assistance he gave not only to my staff, but to a number of interested parties from the State of Washington as the National Estuary Program was being developed.

Mr. PROXMIRE. Mr. President, I thank the chairman for giving me the opportunity to speak to this amendment and to engage in a brief colloquy with him as to its meaning and applicability.

As he knows, the case of Illinois versus City of Milwaukee, in all of its forms, has been before various Federal and State courts for almost 15 years. It has twice been adjudicated by the U.S. Supreme Court and is the subject of numerous lower Federal court opinions.

In *City of Milwaukee v. Illinois, 451 U.S. 304 (1981),* known as Milwaukee II, the Supreme Court declared that Congress had so occupied the field in enacting the Clean Water Act amendments that Federal common law of nuisance jurisdiction over interstate water pollution disputes had effectively been displaced.

If the Court had ruled otherwise, the city of Milwaukee might have been subjected to a judge-made water pollution cleanup schedule many times stricter than those imposed on all other cities by the EPA acting under the terms of the Clean Water Act.

The additional requirements of the common law based schedule would have cost Milwaukee $1 billion over and above the $1.7 billion needed to meet Clean Water Act requirements and none of the extra funds would have been reimbursed by EPA under the sewer grants program.

Milwaukee is currently meeting the terms of its Clean Water Act cleanup schedule and making every effort under the act to minimize pollution of Lake Michigan.

<FWPCA § 118> Is it the Senator's intention to exempt the Illinois versus City of Milwaukee dispute in all of its forms from the scope of section 118(a) Clean Water Act actions for interstate water pollution brought under State statutory or common law authority in the Federal courts?

Mr. CHAFEE. <FWPCA § 118> Yes, that is correct, this dispute will be exempt from the reach of section 118(a) of the Clean Water Act, as amended.

Mr. PROXMIRE. <FWPCA § 118> Then even though there may be additional opinions issued as part of the ongoing litigation between Illinois and Milwaukee concerning pollution of Lake Michigan, section 118(a) will not apply to the dispute?

Mr. CHAFEE. <FWPCA § 118> Yes, that is correct.

Mr. PROXMIRE. I thank the distinguished Senator for his consideration of Milwaukee's situation and for his assistance in resolving this problem.

Mr. WILSON. Mr. President. I rise in support of S. 1128, the "Clean Water Act Amendments of 1985." This bill represents several years of hard work by the distinguished Senator from Rhode Island and our colleagues on the Committee on Environment and Public Works. These continued efforts have resulted in a very good bill.

Mr. President, I would like to take this opportunity to discuss several points with the Senator from Rhode Island, chairman of the Environment and Public Works Subcommittee on Environmental Pollution, which I believe will lead to a successful conference with the House. It is on this point that I would like to explore with Senator CHAFEE his willingness to work in conference on some issues of particular concern to the State of California.

To begin with, a matter of great concern to my State, particularly southern California, which has come to a head in the time since the Subcommittee on Environmental Pollution, under the able leadership of my friend, the distinguished Senator from Rhode Island, reported S. 1128, the "Clean Water Act Amendments of 1985."

<WQA87 § 510> Mr. President, the concern to which I refer, is two major sources of uncontrolled and untreated industrial and domestic sewage which flow from Mexico into my State in both the Tijuana/San Diego area and the New River/Calexico area. While both of these situations are critical, today I would like to focus on the Tijuana sewage hazard.

The chairman is no doubt aware of this intolerable sewage situation.

Mr. CHAFEE. The Senator from California is correct, I am well aware of the Mexican sewage flowing untreated into California.

Mr. WILSON. Mr. President, I would like to briefly highlight the Tijuana problem, the inherent health hazard, and the actions recently taken.

Under the terms of a 20-year-old international agreement, the city of San Diego treats between 13 and 15 million gallons of Tijuana sewage daily. As a result, city sewer customers have been burdened with a $1.8 million a year tab for treating Tijuana's sewage.

The remainder of the estimated 20 million gallons per day [MDG] of sewage produced by Tijuana flows untreated into the ocean south of that

[*15630] city or north into the Tijuana River and its tributaries on the U.S. side of the border. Sewage from both the river and the ocean pollutes San Diego's South Bay beaches and has frequently forced county health officials to quarantine them.

The fact that the origin of the pollution is in Mexico has complicated the difficult task of finding a solution. The net result of all this is an uncontrolled source of pollution which is a daily hazard to the health and environment of San Diego County.

I cannot stress enough the public health implications of this situation. This situation is intolerable and we must not allow it to continue. The State Department, the Environmental Protection Agency, the State of California and the city of San Diego all have struggled with this problem; and despite all of that, the problem continues and, indeed, grows worse.

My friend from Rhode Island, Mr. CHAFEE, will recall that the serious nature of this situation caused me to seek his support last year for the authorization of a binational sewage treatment plant to be located on the U.S. side of the

border. Since the close of the 98th Congress, the Mexican Government has renewed its commitment to the resolution of this problem and taken several significant steps to stem the flows of untreated sewage in to the San Diego area.

During a series of two meetings, the first in Tijuana and the second in Mexico City, representatives of the State Department and the Environmental Protection Agency, along with observers representing Congress, the California Legislature, and the city and county of San Diego met with their Mexican counterparts to discuss a new Mexican proposal to resolve the sewage problem at the Tijuana/San Diego border. The Mexican Government has committed to build a treatment plant, in Mexico, as part of their effort to expand Tijuana sewage and water systems.

To make this plan a reality, Mexico recently sought a $46.4 million loan from the Inter-American Development Bank [IDB]. The IDB approved the loan in early March and Mexico broke ground for the new treatment plant in mid-May. The plant is expected to be operational in 12 to 15 months.

In the spirit of cooperation, Mexico agreed to several stipulations to the loan that the United States had requested to assure the ultimate completion of the plant. Additionally, an International Boundary and Water Commission [IBWC] minute which gives the United States further assurances and construction observation rights is ready to be signed. A third agreement -- an annex to the 1983 Presidents Reagan and de la Madrid accords -- is expected to be signed this summer and will elevate the IDB project to a formal commitment between the Governments of the United States and Mexico.

<WQA87 § 510> Mr. President, it is my belief that the effluent from Mexico which is polluting this portion of my State must be combated because we have a responsibility to protect American citizens who are the victims of a problem not of their own making. American citizens have a right to expect that we will undertake a defensive action against a problem caused by another country's inaction.

<WQA87 § 510> To that end, Mr. President, while I believe the last 6 months to be, perhaps, the most significant in the 40 year history of this border sewage problem with the Mexican Government finally producing its own solution to the Tijuana/San Diego problem, I must ask the subcommittee chairman for his assistance with an authorization for a supplemental defensive system which offers these American citizens the full guarantees they deserve.

Mr. CHAFEE. <WQA87 § 510> I would like to inquire of the Senator from California as to what authorization actions the House has taken for a facility to treat Tijuana sewage?

Mr. WILSON. <WQA87 § 510> The House bill authorizes construction of a $32 million supplemental treatment works project to protect residents of San Diego and surrounding areas from pollution resulting from any inadequacies, or breakdowns in wastewater treatment works systems in Mexico. The supplemental system consists of catch basins and a major sewer line on the U.S. side of the border to intercept spills of raw Mexican sewage and transport it back to Mexico.

<WQA87 § 510> Additionally, the bill includes authorization for a treatment works in the city of San Diego to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico. Should this treatment works have a capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

<WQA87 § 510> Further, the bill provides that construction of the treatment works to provide treatment of municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreement negotiated with the United States.

<WQA87 § 510> Mr. President, it is important to recognize that the House committee does not believe that it will be necessary to construct a treatment works in the city of San Diego. Accompanying report language states "the Committee commends the efforts of the Mexican Government and is confident of the willingness and ability of Mexico to construct and maintain such facilities." The committee goes on to say "it is the belief of the committee that a treatment plant on the U.S. side of the border to treat Tijuana sewage will not be necessary; however, such facility shall be constructed if the Administrator [EPA], in consultation with the appropriate Federal, State and local entities, determines that the Mexican facilities do not sufficiently resolve the problem."

Mr. CHAFEE. <WQA87 § 510> I thank the Senator and wish him to know I understand the seriousness of the Tijuana sewage situation. Am I correct in my understanding that a treatment works in San Diego is not likely to be built?

Mr. WILSON. <WQA87 § 510> That is correct. Construction will occur only on the off chance that the Mexican facilities do not adequately solve this problem.

<WQA87 § 510> Mr. President, I will summarize then: The Tijuana language is not in the measure before us; however, it is incorporated into the version which is being considered by the other body. H.R. 8, includes language authorizing a supplemental defensive system which will compliment the Mexican facilities. Additionally, if the Mexican plant does not sufficiently address the problem, and only then, may a treatment works be constructed in San Diego.

I would ask the distinguished subcommittee chairman to carefully consider the Tijuana language when the conference committee begins its work.

Mr. CHAFEE. I can understand the Senator's keen interest in this issue and respect him for his efforts on behalf of a region of his State which is adversely affected by a problem not of its own making.

Although I cannot promise the Senator from California that his request will be included in the final bill, I do want to assure my friend that I will give this request every consideration during the committee conference.

Mr. WILSON. I want to express my thanks to my good friend, the Senator from Rhode Island, for being so helpful on this issue. I look forward to reaching a mutually satisfactory resolution to this situation.

<FWPCA § 301> Turning to other matters, I would like to direct the chairman's attention to changes the House is expected to make in section 301(h). If enacted, these changes would significantly improve section 301(h) without reducing protection of our marine waters. This modification specifically relates to section 301(h)(2). This change would respond to a need to tighten the coverage of this waiver provision while at the same time limiting the scope of the monitoring to those scientific investigations which are necessary to study the effects of the existing discharge. It would require monitoring programs to include methods which

[*15631] are widely proven and accepted with demonstrated value in assessing impacts that can be attributed to the permittee's discharge and that relate directly to qualifiable objectives promulgated in advance by the Administrator. Using widely proven cost-effective techniques will help assure that data collection is not hastily or poorly done and that comparable results can be achieved throughout the Nation. It would also assure that costly programs are not imposed on section 301(h) permittees without good reason.

Section 301(h) would also be clarified in the House bill to assure that the Administrator shall grant to the applicant removal credits to reflect the consistent removal of a pollutant achieved by the treatment works. This amendment in the House bill seeks to clarify existing law to be sure that section 301(h) agencies are treated like anyone else when applying for removal credits. The amendment further provides that there must exist an effluent limitation on the treatment works for the pollutant and the revised requirement must not result in the effluent violating such effluent limitations and that the revised requirement should not result in interference with the method of disposal or reuse of sludge from the treatment works. The revised requirement will not result in a pollutant interfering with the operation of the treatment works. Also, all other criteria of section 301(h) must be met.

These modifications to section 301(h) that the House is expected to make are ones that I support and would hope will be viewed favorably in conference.

Mr. CHAFEE. Knowing of my good friend's long association with this issue, I appreciate hearing his views and promise to give this matter careful consideration in conference.

Mr. WILSON. <WQA87 § 522> I thank the Senator. Proceeding further, I would ask that the Senate conferees support a study, expected to be authorized in the House bill, which would be conducted by EPA, in consultation with the city and county of Los Angeles, on the problem of corrosive effects of sulfides in collection and treatment systems. This is a phenomenon which appears to occur only in hot, dry climates and which, if answers are not found, could jeopardize millions of dollars in Federal, State, and local dollars invested in sewers. It does not seem to be caused by industrial discharge, but is a result of a combination of sulfur, naturally occurring in the water, with hydrogen. This problem is particularly troublesome because we are sunsetting the construction grants program and reducing the total authorization for this program at the same time. If there is a possibility of preventing the premature deterioration of these multimillion dollar projects, it is incumbent upon us to take the necessary steps. This study would offer an opportunity to examine the reasons behind the premature deterioration of our sewer systems and provide alternatives to correct the problem.

<WQA87 § 522> Mr. Chairman, I would appreciate it if the chairman would convey to me his intent with respect to this important proposed study.

Mr. CHAFEE. <WQA87 § 522> I thank the Senator. I will look seriously at this amendment in conference and try to accommodate the Senator from California (Mr. WILSON) concerns.

Mr. WILSON. I very much appreciate the Senators interest. On another front, the chairman is aware that I supported inclusion of authorizing language for an innovative waste treatment process facility in San Diego, CA in the Senate bill. Because of his reluctance to authorize individual projects in this legislation, you deferred judgment on whether to include it in the excellent bill that the Senate is debating at this point. The language authorizing the project is in the House version.

Briefly, this is an innovative waste treatment project known as CCBA which promises to solve two crucial environmental problems at the same time. It reclaims wastewater and it does so in a way that it produces a useable byproduct instead of unuseable and unwanted sludge. The project has been successfully run on a small scale, and it now is ready to be tested on a larger scale. If it tests favorably, it will then be suitable for widespread application throughout the wastewater treatment program.

I believe that for a relatively small investment of $3 million, we can learn a great deal about an innovative project that solves several environmental problems at the same time. Senator CRANSTON supports this project as does Senator DECONCINI of Arizona. Both of my colleagues and I realize that there is simply not enough water in the Southwest to go around, and any innovative effort which can prove itself to successfully reclaim wastewater should be encouraged.

Therefore, I would urge the chairman to look upon the House-authorized provision for the San Diego project favorably, and to support the House's efforts to include this in the reauthorization of the Clean Water Act. Would the Senator at this time state his disposition with respect to this project?

Mr. CHAFEE. I appreciate having this project brought to my attention and I will look carefully at it when we consider it in the conference committee.

Mr. WILSON. Mr. President, during the chairman's deliberations on the excellent clean water bill that he has now brought to the floor, I and my staff brought to his attention a unique problem affecting a major utility on the east side of the San Francisco Bay, the East Bay Municipal Utility District. I understand that he was unable to resolve this problem in his committee, but I would like to bring it to his attention again.

Briefly, as background, the East Bay MUD transports and treats wastewater from 600,000 residents in the Oakland and Berkeley, CA, area. It has a separate storm and sanitary sewer system. When it is not raining, 350 or more days a year, East Bay MUD meets or exceeds all of its applicable NPDES permit standards, something that is not true of many cities throughout the country. Yet, during heavy rainfall conditions, the volume in the system swells considerably and results in the overflow of sewage, highly diluted by the rainfall, into the bay. As a Senator from California, I am extremely concerned about any water quality impacts that might occur as a result of these overflows and I have been assured, and the local environmental community agrees, that these impacts do not cause an adverse effect on the important waters of the San Francisco Bay.

Ironically, were East Bay MUD a combined sewer system, like so many communities in the country, the Administrator would be able to provide a reasonable set of requirements so that when it rained, these overflows could occur legally. Because of a fairly obscure court case, however, EPA is forced to require that East Bay MUD meet full secondary treatment for its entire stormwater overflow.

Mr. President, this is a terrible expense. The severe rainfall causes a 1,000-percent increase in flow, from 80 million gallons to more than 800 million gallons. Meeting secondary treatment requirements for this 10-times-per-year occurrence would entail probably the largest secondary treatment plant in the country, consuming tremendous amounts of land and huge amounts of capital. It is not an appropriate response to the problem.

An appropriate response would require a rigorous program that East Bay MUD would implement to reduce the inflow of rainfall into the system. East Bay MUD is willing to do this and will have to do this with local dollars. Yet, under the current law, as interpreted by the court case, that will not be enough.

Mr. CHAFEE. I appreciate the fact that the Senator from California, Mr. WILSON, brought this unique situation to my attention during markup and I understand his concerns. I will continue to work with my good friend to see if we can't adequately resolve the problem you have described.

Mr. WILSON. My thanks for the chairman's understanding and I look forward to working with him on this

[*15632] critical issue for the East Bay Municipal Utility District.

<WQA87 § 213> As a final matter. I am informed that the House will likely agree to a section in its as yet uncompleted version of Clean Water Act amendments which will direct the Administrator to make grants to the city of Avalon, CA, for improvements to its sewage treatment facility. While I can appreciate the intent of the committee to keep this bill before us today as simple as possible. I would ask the chairman to give this expected House language favorable consideration in the forthcoming House/Senate conference.

<WQA87 § 213> The city of Avalon, located on Santa Catalina Island, is in trouble because its sewage treatment plant was designed for an average daily flow of 500,000 gallons and a peak of 1 million gallons per day. However, with the many thousands of tourists that flock to this island paradise just off Los Angeles, the average daily flow has been 900,000 gallons per day, with peak flows up to 1.8 million gallons per day. Raw sewage has washed up on the beaches of Avalon several times in recent years.

<WQA87 § 213> In order to increase the capacity of this facility, and thus, avoid raw sewage from flowing into the ocean, the city of Avalon has assessed a tax which will raise an estimated $135,000 per year -- a sizable contribution for a city of approximately 1,000 residents. However, this amount is not sufficient to fund the cost of the facilities improvements which are estimated to be approximately $2 to $3 million.

<WQA87 § 213> Avalon, is unique in that almost all of the land on the island is a natural conservatory -- akin to a national park -- and is funded by Federal tax laws. Thus, without, improvements in the sewage treatment facility, the raw sewage flowing into the ocean is threatening this great national resource.

Mr. President, while I understand the chairman's reluctance to add line item authorizations to title II of the act by including any amendments, I urge him -- in the House/Senate conference on this measure -- to seriously consider this measure and accept the House-passed version, if he decides to accept amendments to title II of the act.

Mr. CHAFEE. I thank my good friend from California. Mr. WILSON, for bringing this matter to my attention, and you can be assured that I will give the House proposal dealing with the city of Avalon serious consideration.

Mr. WILSON. Mr. President, the chairman and the other members of the committee and his staff have done an excellent job in bringing this important bill to the floor. I appreciate the additional efforts he has extended on my behalf to help me meet the great needs of my State. Please accept my sincere thanks for the assistance provided me and my staff. I look forward to a successful House/Senate conference.

Mr. CRANSTON. I wish to associate myself with the remarks of my colleague from California [Mr. WILSON].

I do have one significant concern, however, about reports coming from California about the condition of Santa Monica Bay. Both the city and county of Los Angeles have applications pending for 301(h) <FWPCA § 301> waivers. If approved by EPA, both the city and county will be able to continue discharging effluent which has received less than full secondary treatment into the bay. I question narrowing the scope of monitoring required of 301(h) <FWPCA § 301> permittees at a time we are finding more pollution -- including high levels of DDT and PCB's -- in Santa Monica Bay.

But monitoring alone is not the answer. We need additional research. A 1981 report done by Tetra Tech under contract with the Environmental Protection Agency concluded that existing data is totally inadequate to determine what the changes in the ocean environment of Santa Monica Bay really mean. Tetra Tech found that further study is required to identify the relative contributions of municipal sewage effluent and other sources. The 1983-84 Biennial Report of the Southern California Coastal Water Research Project also recommends further research.

We need to ask: What level of monitoring is necessary to determine the impact of discharges on the ocean environment? What can be done to reverse the degradation that has already occurred in Santa Monica Bay? How long would it take to study the problem and develop a cleanup program? What would it cost? Who should pay? What are the environmental tradeoffs?

I would like to ask the chairman of the Environmental Pollution Subcommittee if he would join with me in raising these important questions with both the Environmental Protection Agency and the NOAA and taking appropriate action.

Mr. CHAFEE. I would be happy to join the Senator from California in such an inquiry.

Mr. WARNER. <FWPCA § 117> Mr. President, I rise today in strong support of the provisions of the Clean Water Act Amendments of 1985 which will revitalize the Chesapeake Bay's living resources, and continue our national commitment to rehabilitating the world's largest natural estuary.

But, I also want to bring to the attention of my colleagues my severe reservations with the committees new allocation formula for the Sewer Grants Construction Program.

One of my first initiatives after I was elected a Member of this body, was to join with my colleague, Senator MATHIAS, to focus national attention on the critical pollution problems in the Chesapeake Bay.

Following several discussions with President Reagan, our colleagues in the Congress and other executive branch agencies, President Reagan recognized the Bay as a "special national resource" and unveiled a strong Federal commitment to restoring the Chesapeake Bay in his 1984 State of the Union Address to the Congress.

I am very satisfied that we have been successful in securing $10 million to strengthen the Environmental Protection Agency's continued involvement in the bay cleanup program.

An additional $3.8 million has been approved for other agencies including the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Fish and Wildlife Service, and the U.S. Army Corps of Engineers.

The importance of a revitalized bay, as these actions clearly indicate, reaches far beyond Virginia, Maryland and the other States which directly touch the bay.

The Chesapeake Bay has always been a vital resource of the United States.

The bay's popularity itself may be the single greatest cause of its decline.

Each year, the bay provides millions of pounds of seafood, supplies a huge natural habitat for wildlife, functions as a major hub for shipping and commerce, and offers a wide variety of recreational opportunities for both residents and visitors.

If the decline of the bay is not arrested, the economies of Virginia and Maryland will be severely impacted.

But, of overriding importance will be the irreplaceable loss of an ecologically unique estuary.

We have demonstrated the widespread bipartisan support for the bay cleanup efforts as a national priority -- not just a local or region responsibility.

And, I speak to you today to urge that we not retreat from this commitment.

<FWPCA § 117> Toward this goal, I commend the chairman and members of the Environment and Public Works Committee in recommending the establishment of an Office of Chesapeake Programs to coordinate State and Federal projects in the continuing Chesapeake Bay program as a part of the Clean Water Act amendments.

<FWPCA § 117> In addition to coordinating and disseminating all research information concerning the bay's environment, the Office of Chesapeake Programs will conduct research on sediment deposition, and on the impacts of pollutant loading on the bay's water quality.

[*15633] Ongoing research has revealed that contaminants entering the bay are not readily flushed out into the ocean but, because of the unique circulation pattern of the bay, they accumulate within the estuary.

I appeal to you that saving the bay is as much a battle against time, as it is a battle against pollution.

Biological death of the bay is incomprehensible to all but those intimately involved with this fragile estuary.

But, if we do not continue our cleanup efforts with all available technologies, this will be the fate of the bay.

Because the bay is an ecosystem which ignores State boundaries, such a loss will be devastating to the entire Nation.

It has taken many years to bring this deserved national attention to the bay, and it is the result of much hard work by my colleagues in the Senate, and the Governors of Virginia, Maryland, and Pennsylvania.

Because we have finally begun to make progress in this effort, I have grave concerns with a provision in the Clean Water Act amendments which I believe threatens the accomplishments we have made to date.

I refer to the new allotment formula for parceling out Federal sewer grant construction funds to the States.

The new allocation formula devised by the committee reduces significantly the current level of funds received by Chesapeake Bay States for this program.

I believe that if the Senate approves this new formula it will be a major step backward in our efforts for the bay.

Sewage is the most detectable form of land-based pollution, and a reduction of this magnitude to bay States represents a serious threat to the ability of our States to meet the water quality requirements of this act.

I believe that a loss of funds to improve water quality will result in continued contamination of the Chesapeake Bay and negate all of the positive work we have put into this program for the past few years.

As I have earlier stated, saving the bay is as much a battle against time, as it is a battle against pollution.

If we do not continue to provide critical funds to improve water quality we will be retreating from our commitment to revitalizing the Chesapeake Bay.

I urge my colleagues to support Senator DURENBERGER'S amendment to ensure that all States retain at least 90 percent of their existing sewer grant construction allotment.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 338

Mr. CHAFEE. Mr. President, at this point I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 338.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page, line, insert the following: Technical and Conforming Amendments

<FWPCA § 309> On page 25, line 21, strike "402(b)(8)" and insert in lieu thereof "402(a)(3) and (b)(8)".

<FWPCA § 309> On page 26, line 3, strike "then" and insert in lieu thereof "than".

On page 9, after line 15 add the following subsection "(d) Section 301(g)(1) is amended by inserting "(1) immediately after "subsection (b)(2)(A)".

On page 23, line 2, strike "shall" and insert in lieu thereof "shall".

Mr. CHAFEE. <FWPCA § 309> Mr. President, there are actually four technical amendments. I am offering four technical amendments. The first amendment corrects an oversight in the bill, and conforms the knowing violation standard of the bill with the negligent violation standard section of the bill with respect to violation of State-administered pretreatment programs.

The second amendment changes the misspelled word "then" to "than."

<FWPCA § 301> The third amendment restores language that inadvertently was dropped from the bill which reaffirms existing policy on 301(g) modifications for pretreatment programs.

The fourth amendment changes the misspelled word "shall," with one "1,"' to "shall," with two "1's."

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MITCHELL. Mr. President, I have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island [Mr. CHAFEE].

<FWPCA § 309> <FWPCA § 301> The amendment (No. 338) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 339

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

<FWPCA § 505> The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 339.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

<FWPCA § 505> The amendment is as follows:

Section 505(c) is amended by adding the following new paragraph:

"(3) Whenever any action is brought under this section in a court of the United States, the plaintiff shall provide a copy "of the complaint to the Attorney General of the United States and to the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator."

Mr. CHAFEE. <FWPCA § 505> Mr. President, this deals with notification in connection with citizen suits. The amendment requires that notification of proposed consent decrees be provided to the Attorney General, and to the Administrator.

<FWPCA § 505> It requires that copies of complaints be provided to both the Administrator and the Attorney General. It was originally proposed in the administration's Clean Water Act amendments but was inadvertently omitted from the committee bill. The administration bill contained a clause which specifically disclaimed that the United States could be bound by judgments in cases to which it is not a party.

<FWPCA § 505> That provision merely restates current law and thus we have decided that it is not necessary to include it in this amendment. The amendment is not intended to change existing law that the United States is not bound, since that rule of law is necessary to protect the public against abusive, collusive, or inadequate settlements, and to maintain the ability of the Government to set its own enforcement priorities.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. MITCHELL. Mr. President, I associate myself with the statement made by the manager of the bill. I have no objection to the amendment.

The PRESIDING OFFICE. The question is on agreeing to the amendment of the Senator from Rhode Island.

[*15634] <FWPCA § 505> The amendment (No. 339) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold the quorum call?

Mr. CHAFEE. Yes.

Mr. SYMMS. Mr. President, I want to make a few comments, if the distinguished managers will allow me. I do not want to interfere with what they are doing. I want to make a few comments about the legislation.

I am in general support of the legislation. I particularly wish to thank Senator CHAFEE and Senator MITCHELL, and the rest of the committee -- Senator STAFFORD, our chairman -- for their cooperation with respect to a couple of issues that I want to talk about briefly.

When I think of all of the environmental legislation that has passed the Congress over a period of many years, probably the single most important thing for us as a nation is to protect the quality of water in this country because once water becomes poisoned and ruined, it certainly can be detrimental environmentally. It can have all kinds of negative impacts.

<WQA87 § 525> I am happy that Senator CHAFEE so graciously worked with me to include in this legislation the Pend Oreille amendment which is going to take a look at a problem in Lake Pend Oreille which is the largest lake in Idaho. It is a world class lake. It has the world class Kamloops trout in it. But the water that runs into the lake out of the Clarks Fork River has brought a great deal of concern to a lot of my constituents. They feel that there is effluent in the Clarks Fork River that is running into the lake. The EPA is directed by this bill to take a look at this, try to analyze if there is damage being done to the water quality in Lake Pend Oreille, where it is coming from, whether it is coming from the Clarks Fork River and the pulp and paper manufacturing mill up in Montana and running down into Lake Pend Oreille, whether it is actually coming from the many, many residences that surround the lake, or whether it is a combination of both.

I think we cannot risk having this pristine lake become damaged because of a lack of proper treatment of sewage if that is the problem, or proper treatment of effluent from the pulp and paper factory further upriver.

So I appreciate the chairman's cooperation on that. I would like to mention briefly that I hope the chairman can work out a solution on the formula. I think he worked it out pretty well in the committee. I hope that stands. I do not know whether that has been agreed to yet or not. But I appreciate the chairman's effort on that.

I would like to congratulate the committee on the interstate resolution section because it is extremely difficult to adequately protect the rights of both upstream and downstream States on water quality questions. I think that this section of the bill speaks as well to that as is possible.

I think it was good that in this bill we have extended industrial compliance deadlines to match the reality <FWPCA § 301>. I think that is another plus to the bill. The modifications on criminal and civil penalties in the bill are also sensitive and questionable but probably are appropriate <FWPCA § 309>. In my judgment they tend to lessen the risk of unfair legal actions. I am in support of issuing general permits to groups of dischargers with similar wastewater <FWPCA § 404>. I would prefer to leave nonpoint pollution control in the hands of the States.

<WQA87 § 407> I heard Senator STEVENS on the floor earlier. I would like to be on record as one who supports -- and has been supportive -- what the Alaska delegation is trying to do to establish a practical permitting system for the log transfer facilities.

There is one section of the bill that gives me a great deal of concern. I hope maybe something can be done about that. That is the part of the bill that gives EPA the authority to enforce compliance on Corps of Engineers section 404 <FWPCA § 404> permits. I would like to see an amendment to the bill that would correct that. I do not know whether it is forthcoming. But it appears to me that it is a problem that needs to be addressed, and needs to be studied so we can work out the differences between the EPA and the Corps of Engineers.

I think we are concerned in a general sense. I think everyone in this country wants pure, clean water. But the concern I have is that occasionally in our zeal to have a Clean Water Act that has national standards we impose standards that are far too rigid, and compliance is impractical.

If I can address the distinguished manager of the bill, the Senator from Rhode Island. I am making a point that the direction and thrust of the bill for clean water is good. I think all of us are in support of that. However, we have some problems in the Western States.

One that I would like to bring to the attention of the committee is that our State water quality standards include dissolved oxygen standards. They have served us pretty well the way they have been managed up to this point. The EPA looked at the State of Idaho and admits that they cannot observe adverse impacts of low oxygen content in the State. But in spite of this, EPA intends to issue stricter standards that will be very burdensome below many water impoundments.

I think the point that we are concerned with is that in low water years EPA standards may require wasting irrigation water and increasing the cost of electric generation when there is no damage being done to the fisheries.

I cite American Falls as a good example. In Idaho, at one of the finest fisheries in the State of Idaho or in the Nation, right below the dam there is apparently no damage, yet somehow the dissolved oxygen standards are not quite up to specs; what EPA thinks they ought to be. The fish do not seem to know it. They seem to do all right. The State of Idaho is in a position where I do not think it can comply. I wonder if the distinguished chairman from Rhode Island can offer a recommendation in this field or is there any way we can give guidance here on the floor of what is intended with this act with respect to what should be done.

I can see that we might end up in an irreconcilable position between the State of Idaho and the Environmental Protection Agency if the State were in some way asked to spill water over certain impoundments, water that was needed for the irrigation of crops, and they refused to do it and the legislature refused to require it.

I will ask the chairman if he can comment on that or give some guidance, possibly, for EPA, in the direction of this bill. Where do we want to go with this legislation?

(Mr. BOSCHWITZ assumed the chair.)

Mr. CHAFEE. First of all, I suppose one source of consolation is that this has been going on for many years and there have not been any problems arise so far.

Second, if warranted, if it is warranted according to the water quality standards regulations, a State may downgrade the designated stream use, consistent, of course, with public review and under the criteria spelled out under the regulations.

I know the concerns of the Senator as he has expressed them to me privately, but I just think this will be taken care of.

Mr. SYMMS. I appreciate the Senator's answer. There are two dams in the State which are equipped to monitor dissolved oxygen. Does the chairman think that the intention of EPA is that all dams are going to have to be retrofitted in this respect? What about private irrigation impoundments that are called dead water dams, so to speak?

I do not want to get into the situation where EPA is trying to force individuals to risk crops to meet standards that are not necessary. In other words, the Idaho Fish and Game Department

[*15635] says the fish are doing well, that there is no evidence of any damage being done. But I just think that we have risk here of an irreconcilable situation that could evolve in a low-water year. I think we ought to address that. I do not propose an amendment because I am not certain an amendment is appropriate. It seems like a very broad application of common sense on the part of EPA would be best. But we are now coming closer and closer to a confrontational situation between EPA and the State of Idaho. I would like to ask the chairman for some guidance on that and some guidance in the law, the intent, what is in store and what will happen if EPA has enough personnel to force compliance in every one of the estimated 100 impoundments in Idaho?

Mr. CHAFEE. In response to the question of the Senator from Idaho, I do not want to get into specifics, but I would say this: under the regulations, for a variety of reasons, some of which may pertain to this particular situation, the State, as I mentioned earlier, can downgrade the designated use of the stream. I think that is where the Senator's State might fit in.

Mr. SYMMS. So there may be a way out, then, for the State of Idaho?

Mr. CHAFEE. I believe so.

Mr. SYMMS. I thank the distinguished chairman. I might say that I will consult with my senior Senator on that and maybe we may have some more information before the bill is passed to place into the RECORD.

AMENDMENT NO. 340

(Purpose: To add a new provision to the bill to encourage to refrain from pursuing an independent enforcement action where a State is already taking or has already completed an appropriate enforcement action)

Mr. WALLOP. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 340.

Mr. WALLOP. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. BYRD. Mr. President, it is a short amendment. I would like to have it read.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read as follows:

<FWPCA § 309> On page 29, after line 21, amend Section 309 of the Clean Water Act by adding to Section 109(d) of the bill the following new subsection:

"(8) The Administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court, in good faith and the penalty assessed is in reasonable relationship to the violation."

Mr. WALLOP. <FWPCA § 309> Mr. President, this amendment simply adds a new subparagraph to section 309 of the Clean Water Act to encourage EPA to refrain from pursuing an independent enforcement action where a State is taking or has already completed an appropriate enforcement action. Presently, 36 States have assumed enforcement activities under the Clean Water Act, and they are, by EPA's admission and everyone else's, doing a good job. They deserve the chance to vigorously enforce the act's provision without undue interference from EPA.

<FWPCA § 309> Although it true at present that dual enforcement is rare, the new administrative penalties section heightens the chances for dual penalties under the act. Therefore, I think it is important that Congress clarify that, in setting out these new enforcement penalties, we do not intend for the States and EPA to impose administrative, civil or criminal penalties for the same violation. It simply is not fair to subject our cities, towns, and industries across the Nation to double jeopardy.

For over 100 years, those of us who represent Western States have been keenly aware of how precious our water resources are and how important State primacy is in protecting its availability for future use. I might say, Mr. President, that the Congress itself has recognized how important State primacy in these things can be if a State qualifies, and 36 States do qualify, to administer these laws or provisions of the Clean Water Act.

Water is of little use if it is not potable, Mr. President, or if it is a hazard to human health. Therefore, it is in the State's best interest to keep its waters clean and to clean up its polluted waters. This amendment of mine allows no compromise on the protection now afforded our Nation's water way -- none whatsoever.

<FWPCA § 309> Let me restate that: My amendment allows no compromise of the protection now afforded our Nation's waterways. Although States with approved NPDES programs would have the lead in enforcement, EPA would still retain enforcement authority in these States and it could act if a penalty bears no reasonable relationship to the violation, or if the State is acting in bad faith.

<FWPCA § 309> In those States without an approved NPDES program, EPA would be -- as it is now, and there is not anticipated a change -- the primary enforcement authority. In fact, they would be the lead enforcement authority.

<FWPCA § 309> I believe this not only makes the intent of Congress clear with respect to primacy in enforcement, but by so doing, it gives the States the tools they need to vigorously enforce the Clean Water Act without worrying about duplicate enforcement actions being brought by EPA. If this were to happen, it would only undermine the authority of State officials and make the States shy away from spending any money at all to enforce the provisions of the act.

<FWPCA § 309> We simply do not need, nor has anyone demonstrated a need, for dual penalties under the act. We need the Federal Government working together with the States, not at odds with the States, to achieve the dual goals of clean waters within the deadlines that I approve of, and I expect Congress will endorse, that are set out in S. 1228.

<FWPCA § 309> A vote for this amendment is, in effect, a vote to gain the full cooperation of the States in working side by side with the Federal Government in a more meaningful way.

<FWPCA § 309> If we are, in fact, phasing out the Federal financial assistance to the States, as S. 1228 proposes to do, then let us give the States the very authority they need to enforce the act without undue Federal interference.

<FWPCA § 309> Mr. President, that is the essence of this amendment. It is, in effect, made and designed to say that when an enforcement action is underway, there should not be two agencies with which the offending polluter might have to deal, but one. Clearly, if the States are either incompetent or acting in bad faith, the ability to retrieve control over the program rests with the act. But absent such a showing, there is no justification whatsoever for people to have to deal twice on the same offense with officers of the Federal Government and the State government.

Mr. CHAFEE. Mr. President, if I might, I would like to ask two-questions of the Senator from Wyoming in connection with his amendment.

<FWPCA § 309> Is the Senator conscious of some specific area where this has come up? Is he aware of an instance where this has occurred? To my knowledge, EPA has plenty to do and is not anxious to rush in and duplicate the efforts of a State where they are conducting enforcement actions.

Mr. WALLOP. <FWPCA § 309> Mr. President, I may say by way of beginning the conversation, should that be the case, there should be no objection to this amendment.

<FWPCA § 309> Let me suggest to my colleague that the new big-money penalties that are encompassed within this bill will tend to make that the case prospectively, rather than going on the basis of what we are now experiencing.

Mr. CHAFEE. <FWPCA § 309> I am not sure that that follows, Mr. President, but I take it that the Senator's answer is that he is not aware of any specific situation where this has taken place.

Mr. WALLOP. <FWPCA § 309> There are some, I might say to the Senator, that are rel

[*15636] atively minor. We are not talking about the experience of the past. We are talking about what we can see coming by virtue of the changed circumstances that exist within this bill.

Mr. CHAFEE. <FWPCA § 309> Mr. President, I guess my difficulty is that the Senator seeks to change existing law that is in the bill and doing it with language that seems to be rather vague. In other words, there may well be a problem out there that the State is not taking action in, but we then get into the arguments over whether this is in good faith, how long it takes, how long we are going to give the States to get in there and take action. It seems to me that to give EPA the ability to do this, to keep EPA with this ability to do this makes sense and to deprive them of it does not seem to me the wisest move in the world, particularly when we have this rather vague language, as I say, about "in good faith" and "in reasonable relationship to the violation."

<FWPCA § 309> If we do not have a problem that the Senator can cite, Mr. President, it seems to me it would be better to go along with the existing law.

Mr. WALLOP. <FWPCA § 309> Mr. President, I might say to the Senator, if it would make him more happy, I could put a period after the words "or in court" and then take out that language which was meant to give a standard of reasonableness to this amendment. I might say the purpose of the amendment is clearly, not fuzzily stated. It says the administrator shall "refrain from pursuing any enforcement action relating to violation for which the administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

<FWPCA § 309> That seems to be rather clear to the Senator from Wyoming. What is clear is, when you have something underway, not to have an offender and a State, or the State, EPA and the offender, all in the three-ring circus. We ought to try to resolve this issue on this basis.

Mr. STAFFORD. Mr. President, will the able Senator yield to me very briefly?

Mr. WALLOP. I am happy to yield, Mr. President.

Mr. STAFFORD. <FWPCA § 309> In the area of some instances where there does appear to be a duplication of intent or penalties, in view of the language in the legislation which is in front of the Senate this afternoon, would the Senator consider giving the situation a trial period, then, if instances of conflict do develop, coming in at some later time on the bill rather than over an amendment this afternoon?

Mr. WALLOP. <FWPCA § 309> I suggest to my friend that one of the obligations of leadership is to try to anticipate events which experience in the rest of Government clearly demonstrates are a likelihood. That is what we are trying to do. We are not trying to eliminate or even lessen the authority of the EPA. There is no such intention in my amendment, nor in the statement which I make in support of it. It is really only that we are trying to say that once an enforcement proceeding has begun, there ought to be only one person to deal with. There is within the Clean Water Act the ability to remove the authority for States to act if they are either incompetent or act in bad faith. That is not a word of art that is invented by the Senator from Wyoming but the way the world goes and has gone in this.

<FWPCA § 309> I am suggesting that with the new penalties, which I approve, there is now in this world a real potential for conflict. I think any of us who have witnessed Government at work would say this is a totally credible argument. Why shouldn't we make the purpose of Congress clear in that our objective is clean water, not harassment.

Mr. STAFFORD. <FWPCA § 309> Mr. President, the Senator from Vermont feels much as the Senator from Rhode Island, that in the absence of indications there have been difficulties, it would be best not to intrude this additional amendment on the bill this afternoon.

I yield the floor.

Mr. CHAFEE. <FWPCA § 309> Mr. President, I recognize the concerns of the Senator from Wyoming. If we wanted some kind of legislative history as to the direction in which we wish this legislation to move, I think that makes sense; we are doing it right now in the form of a colloquy, and I would be glad to extend that to any degree that the Senator thought wise.

Mr. WALLOP. <FWPCA § 309> The Senator from Wyoming has yet to hear an argument against this except that it has not happened yet. It does not, in my estimation, eliminate or diminish the authority of the EPA to enforce clean water standards as approved by the Congress. It has no such intention, nor does the amendment state such a purpose. It strikes me absent that the Senate ought to have an opportunity to vote on this if nothing else. What we are literally trying to do is say to the people of America who are involved in enforcement actions that they are either going to be enforced by States with approved programs or by the Federal Government, but not both at the same time once an action has been undertaken.

<FWPCA § 309> If that can be found offensive, let us hear that argument. But to this moment it has yet to be offered.

Mr. CHAFEE. <FWPCA § 309> Mr. President, what is in the back of the minds of anybody who has wrestled with the Clean Water Act across the whole country and the Corps of Engineers and different problems we are encountering, the disappearance of the wetlands <FWPCA § 404>, clearly there is a concern that you could well have a situation where a State did not undertake these duties with such seriousness as is commensurate with the violation.

Mr. WALLOP. <FWPCA § 309> Is the Senator suggesting to the Senator from Wyoming that the power to do that is diminished by my amendment?

Mr. CHAFEE. <FWPCA § 309> Yes, it clearly is.

Mr. WALLOP. Where?

Mr. CHAFEE. It clearly is because the Senator's amendment says that where an action is started -- --

Mr. WALLOP. <FWPCA § 309> The Senator can read English as well as the Senator from Wyoming. It does not. It says "refrain from." It does not say "prohibit." It is a policy statement, is it not?

Mr. CHAFEE. <FWPCA § 309> No. No, it is far more than a policy statement. It is law. It becomes law if the amendment is adopted. The amendment says that they cannot pursue -- --

Mr. WALLOP. <FWPCA § 309> It does not say that. Will the Senator point out to the Senator from Wyoming where it says that?

Mr. CHAFEE. <FWPCA § 309> How else can you interpret the word "refrain"? Does the Senator mean you can go ahead and do it while the enforcement action is being pursued by the State? Clearly not.

Mr. WALLOP. <FWPCA § 309> Is it the position of the Senator that is the only controlling provision within the Clean Water Act and that the Administrator does not have the ability to remove from a State their approved program under the NPDES if they are not acting in good faith <FWPCA § 402> ? The point of the Senator from Wyoming is clearly that no person in the United States should have to confront two levels of Government at the same time under an enforcement action of the laws which the Congress of the United States has said the States that have approved programs are competent to administer.

Mr. CHAFEE. I think the issues have been stated.

Mr. MITCHELL. Does the Senator yield the floor?

Mr. WALLOP. Absolutely.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. <FWPCA § 309> Mr. President, there is an old saying that, when I came here, I thought originated in Maine, but since then it has been quoted by almost every Senator on this floor in a variety of ways. It is, "If it ain't broke, don't fix it."

<FWPCA § 309> I think that applies to this amendment. Not a single fact, not a shred of evidence has been offered to document or demonstrate that there has been duplication of this authority. The authority for the EPA to act in those States which have received delegation of enforcement of this program has existed for a substantial period of time. If there were evidence of dupli-

[*15637] cate actions by the EPA during that period, we can be certain that they would have been referred to today. They have not been because there is no such evidence, because in general the EPA has deferred to those States which have received the delegation of authority.

<FWPCA § 309> That does not mean they have been forced to do so, but they have, in the interest of common sense and preservation of their enforcement resources, the natural disinclination to subject an alleged violator to two separate actions. That is not to say it could not happen or that there might not be circumstances in which it would be justified if the State action, for example, were not vigorous or meaningful.

<FWPCA § 309> This amendment is intended to reduce litigation, but I submit it will spawn far more litigation than it is intended to reduce. How to decide whether or not an enforcement action brought by a State was or was not brought in good faith would clearly be the subject of extensive litigation, and how to determine after a penalty has been assessed in a particular case that the penalty was in reasonable relationship to the violation or not would itself be the subject of substantial litigation.

<FWPCA § 309> These are all subjective judgments. They are the products of enforcement actions brought in court in which both sides present their evidence and then a judge somewhere makes a determination.

<FWPCA § 309> Mr. President, in the absence of anything being wrong with the program, with the fact being that every one of the States which accepted authority from the EPA did so with the full public knowledge that the EPA retained the authority to bring an action where it deemed it appropriate, this amendment really is an answer in search of a problem. We do not have a problem. There has been no evidence of a problem.

<FWPCA § 309> In that event I think we ought to leave things as they are. If a problem does occur, if at some point duplicate actions are brought in a manner that are demonstrably harassing or do not serve any useful purpose to further the ends of the Clean Water Act, then I think we ought to hear that evidence and, if appropriate, act on it. But we have not reached that stage yet. Therefore, I urge my colleagues not to support this amendment.

Mr. WALLOP. Mr. President, I send to the desk an amendment to my amendment.

The PRESIDING OFFICER. The Chair informs the Senator from Wyoming that until he has lost the right to modify his amendment, he cannot amend his amendment.

Mr. WALLOP. Will the Chair restate that? I understood the Chair to say that until I have lost the right to amend my amendment, I cannot amend it.

The PRESIDING OFFICER. To modify his amendment.

Mr. BYRD. What the Chair is saying is that the Senator can modify his amendment. He cannot send to the desk an amendment to his own amendment unless some action has been taken.

Mr. WALLOP. I thank the minority leader.

Mr. President, I will restate it.

<FWPCA § 309> I send to the desk a modification of my amendment.

The PRESIDING OFFICER. The Senator has that right.

The clerk will state the modification.

<FWPCA § 309> The legislative clerk read as follows:

In the next-to-the-last line, after the word "court," insert a period and strike the balance of the amendment.

The modified amendment is as follows:

<FWPCA § 309> On page 29, after line 21, amend Section 309 of the Clean Water Act by adding to Section 109(d) of the bill the following new subsection:

"(8) The administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

Mr. WALLOP. <FWPCA § 309> Mr. President, this takes into account some of the things which the Senator from Maine and the Senator from Rhode Island have expressed.

<FWPCA § 309> The arguments raised against the amendment are really an absurdity. If one were to follow the reasoning laid down by the Senator from Maine, Congress would never do anything until a crisis had approached.

<FWPCA § 309> The obligation of leadership is to try to make those laws that we pass work to the extent we intend them to. One of the extents to which we expect a Clean Water Act to work is that the States which wish to and have the competence to administer their own programs be permitted to do so.

<FWPCA § 309> I understand that there is a position that would not have granted the States this authority at any time. There is also a position I have heard expressed here today that there is a general level of mistrust of these States. If that is the case, let us honestly take on the issue and say it.

<FWPCA § 309> Absent that, can anyone explain to me why any citizen of the United States, corporate or individual, should have the obligation to deal with two levels of government at the same time for the same offense? That is the only purpose of this amendment -- that when an action has been undertaken, you do not suddenly find yourself engaged on two fronts. That is not the purpose of this Clean Water Act. The purpose of the Clean Water Act is clean water, not some sort of bureaucratic harassment.

<FWPCA § 309> To say that it has not happened and a shred of evidence has not been offered, I can offer the Senate volumes of cases where it has happened in other administrative circumstances that the United States has on its books.

<FWPCA § 309> We have now a Clean Water Act, with new penalties and a new set of circumstances. Are we to be told that as Senators we cannot look into the future and anticipate problems? Are we to be told, once again, that we are not competent to lead the country as we are being asked to do?

<FWPCA § 309> This is a suggestion that we do not have dual enforcement imposed upon the citizens of the United States unless there is some compelling reason to do so, which would not be prohibited either under the act, or under my amendment.

Mr. MITCHELL. May I respond to the Senator?

The PRESIDING OFFICER (Mr. COHEN). The Senator form Maine.

Mr. MITCHELL. <FWPCA § 309> Mr. President, the Senator has suggested that no citizen of this country, individual or corporate, should be subjected to dual enforcement of the law, under any circumstances.

Mr. WALLOP. <FWPCA § 309> No, only under circumstances that concern the Senate on the Clean Water Act.

Mr. MITCHELL. <FWPCA § 309> Mr. President, every citizen of this country, including every person in this room, is subject in numerous circumstances to dual enforcement of the laws.

<FWPCA § 309> There are literally hundreds of actions which you, as an individual citizen, can take which would subject you to a prosecution under State law and under Federal law. They are all through the law books of this country. Dual prosecution, the jurisdiction of which is available to both Federal and States, exists in numerous examples. It is in the criminal law. If you rob a bank, you can be prosecuted by the State and the Federal Government. If you are engaged in any form of drug activity, you can be prosecuted by the State and the Federal Government. So on down an enormous list. This is nothing new.

<FWPCA § 309> Generally, State and Federal authorities cooperate to avoid duplicate prosecution. That is what has happened here. There is not any problem. No evidence of a problem of any kind has been suggested.

<FWPCA § 309> While the Senator suggests that it is leadership to anticipate problems and try to deal with them, it is also a form of leadership, I suggest, not to encumber the law books of this country with solutions to problems that do not exist. This is a problem that does not exist. There is absolutely no evidence of it, even though the dual authority has existed in law for some period of time.

[*15638] <FWPCA § 309> All we are talking about here is trying to solve a problem that does not exist. By striking out the last two lines, the Senator solved one problem and created another.

<FWPCA § 309> One reason for this dual authority, frankly, is that there might be circumstances under which a State agency, confronted with a violation of the act by some significant entity within that State, would be reluctant to act or to act in a manner that was not the most vigorous. Under those circumstances, the authority to act at the national level is preserved, for good reason. It has not been abused. There is no evidence that it has even been used.

<FWPCA § 309> Therefore, under the circumstances, I submit that the Senate should not adopt the amendment.

Mr. WALLOP. I say to my friend from Maine that the argument has gone so far afield from reality that I scarcely recognize the amendment.

<FWPCA § 309> There is nothing in this amendment which would prevent the EPA from acting after a State had acted, if they thought the case had not been pursued vigorously enough.

<FWPCA § 309> Why should corporate or individual citizens of America confront two administrative procedures at the same time when there is absolutely no reason to do so? There is nothing that prevents the EPA from going in after these things are done.

<FWPCA § 309> Look at what the amendment says: "refrain from pursuing any enforcement action ... if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court."

Mr. MITCHELL. That is exactly what it says.

Mr. WALLOP. <FWPCA § 309> Is there anything in this amendment to say that if it has not been done well enough, the EPA cannot go in?

Mr. MITCHELL. <FWPCA § 309> That is what it says.

Mr. WALLOP. <FWPCA § 309> It does not say any such thing, and the words cannot be made to say that.

<FWPCA § 309> Mr. President, it is an impossibility to argue on the basis of fighting ghosts. There is one English language we all speak, and this is the one we are speaking, and it does not prevent them from any such thing.

Mr. CHAFEE. <FWPCA § 309> Mr. President, let us agree that we are all using the English language. But the English language says that the Administrator shall refrain from pursuing -- in other words, he shall not be able to pursue -- any enforcement action if the State has commenced an enforcement action administratively or in court. So the State is not out to punish these people. It is going to tap them on the wrist, but not severely. The State starts an action, lets it lay there, and nothing happens. So what is left to be done for the EPA? They cannot do anything as long as that action is in court, because, according to the Wallop amendment, an action has been commenced; that is all.

<FWPCA § 309> He took out the last words. It is a classic case of trying to correct something but making it worse by attempting to do so.

<FWPCA § 309> The State does not have to pursue this. So what we are doing is abrogating the ability of the Federal Government in any way to become involved in enforcement actions under any circumstances. I think that to deprive the Federal Government of that power through the EPA does not make sense.

Mr. WALLOP. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WALLOP. <FWPCA § 309> Mr. President, it is amusing to the Senator from Wyoming to see the defenses thrown up against this rather simple statement of States rights.

In point of fact the Senator modified his amendment with a change in the language at the end because the Senator from Rhode Island and the Senator from Maine suggested it would involve the EPA in litigation. God knows we do not want them to do that.

<FWPCA § 309> The purpose of the amendment is clear. I have spoken to it. The arguments raised against it have not been on a substantive basis, but on the rather emotional one that somehow or another the States cannot be trusted. If that is the case, I suggest we deal with that problem more by removing the authority of States to have enforcement privileges under the NPDES and not say to the citizens who are the brunt of all these things that they have to confront two tigers in the same cage. One is generally plenty, especially when you take a look at how this act strengthens the enforcement provisions of the Clean Water Act by increasing civil penalties from $10,000 to $25,000 a day, and by increasing administrative penalties from $10,000 a day to a maximum of $125,000 per day.

<FWPCA § 309> There is plenty of reason why this amendment is offered. It is offered on the experience this Senator has had and witnessed in the procedures by which the United States sometimes seeks to place its hammer on the folks that it ostensibly serves. I would hope the Senate would say that we still are in the posture of trying to serve our public, not to quash it.

I yield.

Mr. CHAFEE. <FWPCA § 309> Mr. President, this is not a States rights vote. This is clearly an environmental vote.

<FWPCA § 309> What is being attempted here in this amendment is, as clearly stated, to deprive the EPA of having the power to move if the State commences an action administratively, or in the courts, and does nothing further. It does not have to have good faith. It does not have to press it to a reasonable degree, that the penalty has any reasonable relationship to the violation. Those words were taken out. The vagueness of them made it necessary to take them out. Therefore, there are not standards whatsoever.

<FWPCA § 309> So, Mr. President, we are up to really the first clear environmental vote on the Clean Water Act.

Mr. WALLOP. <FWPCA § 402> Mr. President, I ask unanimous consent that the list of the 36 States with approved NPDES programs be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

STATES WITH APPROVED NPDES PROGRAMS

Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa.

Kansas, Kentucky, Georgia, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana.

Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania.

Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

Mr. WALLOP. <FWPCA § 309> Mr. President, I have nothing further to offer by way of explanation of this amendment. I think the issue is clear. It is not an environmental vote. It does not seek to change the Clean Water Act. It is only the people of this country when confronted with the problems they have on it to confront one of them at a time.

Mr. CHAFEE. If the Senator has nothing further, I shall move to table.

Mr. MITCHELL. Will the Senator withhold that?

Mr. CHAFEE. I withhold.

Mr. MITCHELL. Mr. President, I wish to clarify just one point with the Senator.

Mr. WALLOP. I think the Senator from Rhode Island moved to table.

Mr. MITCHELL. No; he withheld the motion to table at my request.

<FWPCA § 309> This reads:

The Administrator shall refrain from pursuing any enforcement action relating to a violation for which the Administrator is authorized to assess a civil penalty if a State with an approved NPDES program has already commenced an enforcement action administratively, or in court.

<FWPCA § 309> I understand the situation to be, and I want to confirm the Senator's intention, that in many cases the Administrator can pursue an enforcement action and be authorized to assess both a civil and a criminal penalty, and, therefore, this amendment would affect the authority of the Administrator under any action which he is authorized to, not merely those that

[*15639] involve civil penalties since the authority exists in most cases to do both.

Mr. WALLOP. <FWPCA § 309> The Senator is absolutely correct. But it is for a period of time when an action has already been started administratively or in court by a State.

Mr. MITCHELL. Right.

Mr. WALLOP. <FWPCA § 309> And the word "refrain" was specifically chosen. It does not prohibit him forever. It talks about a time when these procedures are underway. I do not know who in this room rejoices in the idea that you have to have a new set of lawyers and a double-barrel set of defenses for the same event at the same moment in time.

<FWPCA § 309> All we are asking is that you do one battle at a time. If the EPA does not like what the State has done or wishes to assault that thing before the State has taken action, nothing in this amendment prohibits it.

Mr. MITCHELL. <FWPCA § 309> I understand that, and I thank the Senator. I merely wanted to clarify the other point that this applies to enforcement actions in which the EPA administrator is authorized to assess a civil penalty. In many such cases the administrator is also authorized to go to court and seek a criminal penalty. So this is not limited by this language. I did not know whether the Senator intended to limit it to civil penalty action.

Mr. WALLOP. The Senator did not.

Mr. MITCHELL. He did not.

Mr. WALLOP. The words are equal to the rights of the State-approved program as well as the Federal Government.

Mr. MITCHELL. I thank the Senator.

That is the point I wanted to clarify because reading the amendment some might conclude that it is limited to instances in which only a civil penalty can be assessed, but as the Senator has made clear and understands, in most of these cases there is a concurrent authority which could be utilized in other areas.

I thank the Senator for the clarification, and I merely say in summary and repeat that I believe this is an effort to solve the problem that does exist.

I urge Senators to support the motion to table I understand the Senator is making.

Mr. CHAFEE. Mr. President, if there is nothing further to be said on this amendment and the Senator from Wyoming has completed, I move to table the amendment of the Senator from Wyoming and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island to lay on the table the amendment of the Senator from Wyoming.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST], and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. BUMPERS], and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced -- yeas 70, nays 26, as follows:

[Rollcall Vote No. 125 Leg.]

YEAS -- 70

Andrews	Baucus	Bentsen
Biden	Bingaman	Boren
Boschwitz	Bradley	Burdick
Byrd	Chafee	Chiles
Cochran	Cohen	Cranston
D'Amato	Danforth	DeConcini
Denton	Dixon	Dodd
Dole	Durenberger	Eagleton
Evans	Exon	Ford
Glenn	Gore	Gorton
Grassley	Harkin	Hart
Hawkins	Heinz	Hollings
Humphrey	Inouye	Johnston
Kasten	Kennedy	Kerry
Lautenberg	Leahy	Levin
Lugar	Mathias	Matsunaga
Melcher	Metzenbaum	Mitchell
Moynihan	Packwood	Pell
Pressler	Proxmire	Pryor
Riegle	Rockefeller	Roth
Rudman	Sarbanes	Sasser
Simon	Specter	Stafford
Trible	Warner	Weicker
Zorinsky		

NAYS -- 26

Abdnor	Armstrong	Domenici
Garn	Goldwater	Gramm
Hatch	Hat field	Hecht
Heflin	Helms	Laxalt
Long	Mattingly	McClure
Mc Connell	Murkowski	Nickles
Nunn	Quayle	Simpson
Stevens	Symms	Thurmond
Wallop	Wilson	

NOT VOTING -- 4

Bumpers	East	Kassebaum
Stennis		

So the motion to lay on the table amendment No. 340, as modified, was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STAFFORD. Mr. President. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 341

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Texas [Mr. BENTSEN] for himself and Mr. Simpson proposes an amendment numbered 341.

On page 51, line 6, after "operations" insert "(including transmission pumping stations)".

On page 51, line 10, strike "above background levels".

Mr. BENTSEN. Mr. President, I offer this amendment on behalf of myself and Senator SIMPSON. I have discussed the amendment with the two managers and I believe it is acceptable to them. The amendment refers to page 51 of the bill and speaks to those things for which the administrator shall not require a permit.

The amendment clarifies that oil and gas transmission pumping stations are included within that section of the bill for which permits would not be required.

The term would apply to pumping and gas compressor stations for oil and gas transmission operations.

For example, compressor stations are located at intervals along a pipeline and they are designed to pump natural gas through those underground pipelines. These facilities are maintained in a manner comparable to what you would find in most residential properties.

These stations normally require about 5 acres, but in practice they will be buffered with 10 to 150 acres. Traditionally, they are buffered by grassland or timber. Consequently, storm water runoffs from such transmission operations result in no significant contribution of any contamination of the water. Therefore, it is my opinion that they ought to be included in that listing of eligible categories that are under that section. I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, the amendment is satisfactory to this side. I urge its adoption.

Mr. MITCHELL. Mr. President. I have no objection to the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 341) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 342

Mr. CHAFEE. Mr. President, on behalf of myself and Senators MITCHELL, STAFFORD, BENTSEN, DURENBERGER, and MOYNIHAN, I send to the desk a committee amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

[*15640] The Senator from Rhode Island [Mr. CHAFEE]. for himself, Mr. STAFFORD, Mr. DURENBERGER, Mr. BENTSEN, Mr. MOYNIHAN, and Mr. MITCHELL, proposes an amendment numbered 342.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 77, line 10, strike "paragraph" and insert in lieu thereof "paragraphs".

On page 77, after line 10, insert the following:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

State:	
Alabama	0.012442
Alaska	0.007321
Arizona	0.012442
Arkansas	0.000002
California	0.061966
Colorado	0.009785
Connecti cut	0.012442
Delaware	0.005001
District of Columbia	0.005958
Florida	0.044973
Georgia	0.014649
Hawaii	0.007440
Idaho	0.005958
Illinois	0.039186
Indiana	0.020881
Iowa	0.012614
Kansas	0.011041
Kentucky	0.014975
Louisiana	0.014314
Maine	0.009346
Maryland	0.020955
Massachusetts	0.036028
Michigan	0.037255
Minnesota	0.015925
Mississippi	0.012442
Missouri	0.025305
Montana	0.005411
Nebraska	0.006257
Nevada	0.005958
New Hampshire	0.012442
New Jersey	0.048642
New Mexico	0.005958
New York	0.096132
North Carolina	0.016094
North Dakota	0.004658
Ohio	0.048776
Oklahoma	0.009882
Oregon	0.011794
Pennsylvania	0.034320
Rhode Island	0.007428
South Carolina	0.013337
South Dakota	0.005958
Tennessee	0.016597

Texas	0.053634
Utah	0.006445
Vermont	0.005958
Virginia	0.017732
Washington	0.028533
West Virginia	0.013507
Wisconsin	0.023423
Wyoming	0.005359
American Samoa	0.000778
Northern Marinnas	0.000531
Puerto Rico	0.012582
Trust Territory	0.001403
Virgin Islands	0.000462

On page 77, line 11, strike "(3)" insert in lieu thereof "(4)".

On page 77, lines 12 and 13, strike "fiscal years 1986, 1987, 1988, 1989, and 1990" and insert in lieu thereof "fiscal years 1989 and 1990".

On page 83, line 10, strike "1 1/2 percentum" and insert in lieu thereof "1 percentum (during fiscal years 1986, 1987, and 1988) or 1 1/2 percentum (during fiscal years 1989 and 1990)".

On page 86, line 7, strike "Sums" and insert in lieu thereof "For fiscal years 1989 and 1990, sums".

Mr. CHAFEE. Mr. President, I ask unanimous consent that the distinguished Senator from Michigan, Senator LEVIN, be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, this is the allotment formula for the distribution of the construction grants. As the Chair knows, in the committee bill was an allotment formula. That aroused some problems. The allotment formula was a change from the 1981 law.

The changes came about for a variety of reasons.

One, there was a new need survey conducted in which the States were to set forth, with the help of EPA, their needs as of 1984.

Two, in 1981, the eligibility of certain items was revised. In other words, no longer were the collectors permitted to be included as in the needs formula.

No longer were the combined sewer overflow requirements permitted to be in the formula.

Thus, that changed the items that went into the formula and affected it.

One thing would have been to just accept current law, just go along with the law as it previously existed without considering these revisions that had taken place under the 1981 law, without considering the change in needs as being reported in from the States.

However, we did not think that was fair, so in the committee we revised the formula and presented it here. There were some objections, and those were understandable.

Some of the States took some precipitous drops.

We then arrived at a compromise with those who were principally objecting.

Under the compromise, the following items came into effort.

One, there was an 85-percent hold harmless for the so-called tier 1 States. That is what you call the larger States.

Two, there was a cap of 20 percent on the increases in the so-called tier 2 and tier 3 States, which are the smaller States. Although in some instances what they would have received under the formula would have been larger, there is a cap of 20 percent included there. We also provide that, although the allotment formula as it now is in the bill is for 5

years, through 1990, the compromise formula will only apply for 3 years. Then we shall go to the committee formula for the balance.

Mr. President, like all compromises, this does not make everybody happy, but I think it is a reasonable one in that, where some of the States had, as I mentioned earlier, taken dramatic cuts, those cuts were reduced to some degree. Let us look, for example, at New York. New York, under the committee formula, is currently receiving $230 million. Under the committee bill. They would have gone to $213 million. This puts them at $228 million. In other words, they go up some $15 million.

So it is for a variety of the other States, mostly in the New England States, most of which had the combined sewer and overflows, which were taken out in 1971.

There were some who thought we should to the so-called Durenberger formula. Indeed, in that instance, many of the so-called larger States would have gone up not from the original formula but from the committee formula. The trouble with that is that that formula would not have passed. It would have caused some States to drop precipitately. We are particularly referring to the smaller States.

Mr. President, in the smaller States, we did have, as is quite common in legislation of this sort, the one-half percent minimum. That is, no State went below or was entitled to less than one-half percent. This is rather a common basis to use in our formulas as we have used in others.

I see my good friend from Minnesota is up here to contest whether the Durenberger-Moynihan proposal would have passed or not. I indicated it would not. One of the problems with the Moynihan-Durenberger formula is that, as I mentioned earlier, if it had gone into effect, some States would have declined precipitately.

Let us take North Dakota. It would have gone from $11 million, which they are currently getting, down to $4 million. I might just casually point out Rhode Island would have dropped from $16 million to $7 million, which would not have been greeted with cheers.

As I have mentioned before, the distinguished chairman of the full committee, the distinguished ranking member of the full committee, the distinguished ranking member of the subcommittee, the Senator from Maine [Mr. MITCHELL], and myself, the chairman of the subcommittee, support this compromise.

Mr. DURENBERGER. Mr. President, in the year 1829 the nation of Canada began what many believe is its greatest engineering achievement. This project is called the Welland Ship Canal. It forms the navigable wa-

[*15641] terway between Lake Ontario and Lake Erie and is 26 miles long. These two lakes are also connected by the Niagara River, but to the delight of honeymooners for decades, navigation of the Niagara is not possible.

So we have the Welland Canal. It is an important part of the St. Lawrence Seaway system. It makes the city of Duluth, in my home State of Minnesota, an international seaport. The canal has been continuously improved, most recently in 1973. That project to straighten 8 miles of the ship channel cost $110 million. The Welland Canal is, then, a vital water resources project which has been of great benefit to the people of my State and the Great Lakes region.

But like so many manmade wonders of the world, the Welland has had other consequences. One of these was an environmental disaster of considerable proportion. Construction of the canal allowed a species of fish commonly called the lamprey eel to migrate into the Upper Great Lakes -- especially to Lake Huron and Lake Michigan.

The lamprey eel is one of the least developed of the class of animals called vertebrates. Vertebrates generally have backbones. Lampreys do not. They are long -- up to 30 inches -- needle-shaped creatures that attach themselves to their prey by a sucking mouth. Using their teeth, they cut into their prey and suck out the blood and bodily fluids. During a lifetime, one lamprey will consume up to 20 pounds of other fish.

Because it was not native to the Upper Great Lakes, the sudden infestation of lamprey eels greatly upset the biological balance in the lakes. The principal victim of the lamprey invasion was the lake trout. At one time, lake trout were almost completely destroyed in Lake Huron and Lake Michigan. I will quote briefly from an article published by the Conservation Foundation on this subject:

The speed of the decline is shown by the fact that, in 1943, 6.8 million pounds of trout were taken from (Lake) Michigan, whereas, in 1952, the catch was down to 4,000 pounds. It is difficult now to imagine the magnitude of the lamprey feeding frenzy. At peak abundance in Lake Michigan alone they destroyed 5 million pounds of fish annually. With lake trout gone the predators turned to burbot, chub, whitefish, lake herring, perch and walleyes.

As I said -- an environmental disaster of considerable proportion. The "frenzy" referred to in the article occurred when I was a young man, well before the environmental movement swept the country. But I remember the impression it made in the Great Lakes region. It was a striking sign that our human activities can drastically alter vast natural resources in fundamental ways.

Mr. President, I bring this bit of natural history to the attention of the Senate because I believe the bill before us is, in one respect at least, the moral equivalent of the lamprey eel. I speak, as my colleagues expect, of the new allocation formula for the Construction Grants Program which is contained in this legislation.

I believe this formula threatens a truly national resource -- a continental resource -- the Great Lakes -- with lasting environmental harm. The effect of adopting this formula would be to reduce sewage treatment construction expenditures in the eight Great Lakes States by nearly $200 million per year -- each and every year.

Because our Nation so highly values the Great Lakes, we have entered into treaties and agreements with Canada to protect the water quality in the lakes. The formula reported by the committee violates those treaties and agreements. In fact, Canada filed a note of diplomatic protest with the State Department at the time the bill was reported. The diplomatic note followed a letter written by Ambassador Gotlieb to the committee chairman at the time of markup.

Let me read the text of the Canadian diplomatic protest into the RECORD at this point:

The Embassy of Canada presents its compliments to the United States Department of State and has the honor to refer an amendment to the Clean Water Act passed by the United States Senate's Environment and Public Works Committee on May 1, 1985.

The Government of Canada is concerned that the amendment, which designates an allocation formula for funding municipal sewage facilities, would, if given full congressional approval, significantly diminish United States Federal contributions to projects in the Great Lakes Basin. This may have implications for the United States ability to meet its commitments under the Canada-United States Great Lakes Water Quality Agreement of 1978.

The Government of Canada wishes to point out that the latest report of the International Joint Commission's Great Lakes Water Quality Board indicates that the Great Lakes States will not be in compliance with the objectives of the Agreement for several years. The Agreement commits both Canada and the United States to provide "financial assistance to construct publicly owned waste treatment works" in the Great Lakes region. The Government of Canada is concerned that reduced funding for such works at this time could further delay compliance. In this context, the Embassy would be grateful to receive information on which Great Lakes facilities would be affected by the amendment.

In view of the concerns set out above, the Embassy requests the Department of State to draw to the attention of the Congressional Committees dealing with reauthorization of the Clean Water Act, the potential implications for the Canada-United States Great Lakes Water Quality Agreement of the Senate Committee amendment of the waste water treatment funding formula. The Embassy further requests that the text of this note be made available to these Committees.

The Embassy of Canada avails itself of this opportunity to renew to the United States Department of State the assurances of its highest consideration.

Mr. President, this note was initialed by the Ambassador of Canada and dated May 14, 1985.

Mr. President, I ask unanimous consent that the letter from Ambassador Gotlieb to the distinguished chairman of the Committee on Environment and Public Works, dated April 30, 1985, also be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CANADIAN EMBASSY,

Washington, DC, April 30, 1985.

Hon. ROBERT T. STAFFORD,

Chairman, Committee on Environment and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: We have just learned that an amendment to the Clean Water Act having potentially adverse implications for Great Lakes water quality will be considered in your committee on May 1, 1985.

It is our understanding that the amendment would designate an allocation formula for funding municipal sewerage facilities which would substantially diminish federal contributions to projects in the Great Lakes basin. This could jeopardize the United States ability to meet its commitments under the 1978 Canada-USA Great Lakes Water Quality Agreement.

According to the latest report of the International Joint Commission's Great Lakes Water Quality Board, the Great Lakes states are still a few years away from compliance with the objectives of the Agreement.

As I am sure you know, under the Great Lakes Water Quality Agreement, both countries made a commitment to provide "financial assistance to construct publicly owned waste treatment works" in the Great Lakes region.

I would therefore be most grateful if you would take into consideration the concerns noted above should any measure be proposed which could have a negative impact on United States obligations arising from the Agreement.

Yours sincerely,

ALLAN GOTLIEB,

Ambassador.

Mr. DURENBERGER. Mr. President, I think we must ask ourselves why the Environment Committee of the U.S. Senate would change the formula for sewer grants to the point that a national treasure like the Great Lakes is threatened and our dearest friend in the community of nations is filing diplomatic protests?

We all know and have deep regard for the record of environmental protection and resource conservation established by the distinguished chairman of the committee, the Senator from Vermont [Mr. STAFFORD]. The same can be said for the managers of this bill, the Senators from Rhode Island and Maine [Mr. CHAFEE and Mr. MITCHELL], always reliable and unselfish defenders of natural resources. The Senate knows them as such. We hold each of these friends and col-

[*15642] leagues in the highest regard. And hailing as they do from New England, they are all close neighbors of Canada and the Great Lakes region.

So why are they proposing that we change the formula? That's the first question that should be asked. The committee is proposing that the formula be changed. And before we go on to consider alternatives -- other formulas -- we ought to examine the reasons that the committee gives to justify the changes it proposes.

For instance, if the committee were proposing these changes because it believed that the changes were necessary to improve water quality on a national basis, then there might be good reason to support the committee bill. The purpose of the Clean Water Act is to improve water quality. The Senate relies on the expertise of the committee to design programs that will achieve that objective. So if the committee came to the Senate and said we need this formula to improve water quality we would owe them some deference. We would want to defer to their judgment as is the custom in the Senate.

But is that, in fact, what the committee is saying? No. The committee freely admits that the changes they are proposing have nothing to do with improving water quality. Let me quote the committee report on this point:

The 1981 amendments directed the preparation of a needs survey in which the allotment of sewage treatment construction funds could be related to water quality improvements, rather than merely to the estimated dollar costs of proposed treatment facilities. The 1984 needs survey does contain a water quality assessment, but information was not available in sufficient detail on which to base state-by-state allotments.

So the formula changes proposed by the committee are not intended to advance the fundamental purpose of the Clean Water Act, improvements in water quality. And we owe the committee and the committee formula no deference on that count.

If the committee were proposing some major restructuring of the construction grants program to make sure that it better reflects national needs and budgetary resources, then a change in the formula might be necessary. We might need to tighten up the program and we would want to defer to the committee's judgment on how to do that.

Is the committee proposing such changes? No. A restructuring of the program was made by the 1981 amendments. Funding levels were cut drastically. Certain types of sewer projects were dropped from the list of those eligible for Fed-

eral funds. The National Government quit subsidizing growth. And the formula was changed. But no such restructuring is being proposed this year. The committee does not attempt to justify its proposed reallocation by arguing that there is a new program which requires a change in the distribution of funds. So we owe the committee no deference on that count.

Sometimes formulas designed here in the Congress turn out to be fatally flawed when put into practice out in the field. I think of the general revenue sharing formula, for instance. Because of a quirk in that statistical model many small cities in New Jersey have changed their form of government to townships so that they would receive more Federal funds. Flaws like that should be fixed.

But is anyone here claiming that the current formula for the construction grants program is in some way so badly flawed that it needs correction? No. In fact, the committee received a letter from the association of State and Interstate Water Pollution Control Administrators -- an organization representing all 50 States and the territories -- which indicated that it was their judgment that the formula should not be changed at all -- that the current formula worked just fine. So we owe the committee no deference on that count.

Mr. President, I ask unanimous consent that the letter from ASIWPCA be printed at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ASSOCIATION OF STATE AND

INTERSTATE WATER POLLUTION

CONTROL ADMINISTRATORS,

Washington, DC, April 5, 1985.

Hon. ROBERT T. STAFFORD,

U.S. Senate,

Washington, DC.

DEAR SENATOR STAFFORD: This is in response to your recent request for information relating to the general sense and the perspectives of the Association of State and Interstate Water Pollution Control Administrators membership concerning the revision of the existing allocation formula and federal cost share (55%) for the municipal sewage treatment facilities grant program.

Let me emphasize from the outset that while these subjects were not discussed as a part of the ASIWPCA priorities for the reauthorization of the Clean Water Act (copy attached), it is clearly the sense of the ASIWPCA Board of Direction and majority of the States attending ASIWPCA's mid-winter membership meeting, that the existing formula and cost share are adequate and need not be addressed as a part of the Congressional reauthorization process. This is emphasized by several State Directors after examining the President's FY 86 Budget and the concept of a four year phase out of the construction grants program.

While not every State concurs with the above, a majority of ASIWPCA membership can agree to stay with the status quo for the allocation and federal cost share for construction grants in the hope of moving expeditiously to reauthorize the Clean Water Act.

If further information is desirable please feel free to contact me at 202-624-7782.

Most sincerely,

RABBI J. SAVAGE.

Mr. DURENBERGER. Mr. President, some may argue today that this change in allocation is necessary to update the needs assessment. The Senator from Texas made much of this point during committee markup.

Every 2 years, the Environmental Protection Agency goes out and surveys the States to determine their needs for sewer construction funds. This so-called needs assessment simply totals up all the costs of all the proposed projects which are eligible for Federal assistance. It is updated every 2 years. The allocations reported by the committee use data

from the 1984 needs assessment which is newer data -- more relevant data, I suppose -- than the data that was used to craft the formula in 1981.

If all the committee proposed was to adjust the allocations to reflect this new data, and provided that we could agree that the methodology of the 1984 needs assessment made sense, the committee might have a strong case for its proposed changes.

But is it simply an update of the needs assessment which has caused the committee to change the allocations and which has resulted in a large shift of funds from some States to others? No. The allocation is a two-part process. One part raw data called the needs assessment, and a second part which is the underlying mathematical model -- the computer, if you will, through which the data is processed.

The committee is proposing fundamental changes not only in the raw data, but to that underlying model as well. There were no tiers in the old formula. There were no logarithms in the old formula. There was no need under the old formula to guarantee five very medium, very average States 1 1/4 percent of the national pie. Whatever the actual need as measured by the EPA study, it is those changes to the underlying model -- especially the overallocation of dollars to tiers II and III -- and not an update of the needs assessment which is causing the great shift of fortunes among the States.

The alternative formulas that will be considered later today will also use the 1984 needs assessment. So we owe the committee no deference for the reason that its data is now better than it had been or is better than ours.

Well, what justification does the committee give for its proposed changes in the formula? There is only one short statement issued by the committee that could in any sense be called a justification. It appears on page 57 of the committee report and I read it to the Senate:

Those States with very small remaining needs were identified. These are the States which need somewhat more than an allotment strictly on their share of needs, in order to have a manageable program of sufficient size to make meaningful investments

[*15643] in sewage treatment facilities. Also, especially for those among these States whose share would be dropping substantially because of changes in needs and allotment formulas, a larger share is needed to assure program momentum and avoid disruption.

The committee goes on to say:

In allotment formulas adopted by the Congress in the past, these purposes have been served by a flat minimum allotment per State of one-half of one percent. This is somewhat arbitrary, and diverts a larger share of the total to smaller States than would result from their raw needs. Because the number of such States is growing, as the construction grants program nears its objectives, a mechanism was sought for assuring adequate program size for smaller States. This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

That's the committee's justification for the changes that it proposes in the allocation formula, Mr. President.

That would be an interesting statement if it were true. But it's not. The committee says, and again I quote that section:

This approach is more reflective of needs and less arbitrary than the minimum allocation approach.

That's a falsehood, Mr. President. That's the committee's sole justification of its proposed change in the allocation formula. And it is not a true statement.

The committee creates three tiers of States under its formula. The tier of smallest States -- tier III -- contains 13 States. All have less than one-half of 1 percent of the actual national need. In total, those 13 States would get 3.7 percent of the pot, if the allocation were done solely on the basis of actual needs as measured by the EPA needs assessment survey.

If, on the other hand, we used the guaranteed one-half of 1 percent minimum in current law, those 13 States would get 6.5 percent of the national total.

Is the committee assignment more reflective of actual need than the current formula as is claimed by the committee report? No. The committee assigns those 13 States 8.5 percent of the total available for construction grants. The minimum of 6.5 percent as guaranteed by current law was not enough for the committee, which includes members from 8 of

the 13 States in tier III. They went for even more. They had to have 8.5 percent of the total. More than double their percentage of the actual national needs.

On top of that, the committee formula creates a second tier of eight States which also get an arbitrary guarantee of grant dollars over and above the allocation they would receive on a needs basis.

So, Mr. President, the single reason the committee offers to explain the fundamental changes in the formula that it proposes turns out not even to be true. And we certainly owe the committee no deference for statements that aren't supported by the facts.

Why is the Committee on Environment and Public Works of the U.S. Senate proposing a change in the Construction Grants Program -- changes that according the to the Government of Canada violate international treaties and agreements designed to protect the water quality of the Great Lakes?

There is only one answer to that question. Politics. Pure and simple politics. The sole intent of the changes that the committee is proposing is to put more dollars into the hands of the smaller States that are overrepresented on the Environment and Public Works Committee than they get under the current formula. I have read the committee report, I have searched the record, I have discussed the matter with the members of the committee, I have looked closely to see if there is some good reason for this formula and always the bottom line is the same. They always end up saying, "Well, look how much more I'm going to get."

There is no doubt that the committee has spent a great deal of time designing this formula. It is complex in its detail, beyond the understanding of most Members of the Senate. The staff of the committee proudly boasts that it spent 4 months putting this formula together. Thirty-two States are better off than under current law, just enough to assure the 60 votes needed for cloture. In addition to 13 members of the Environment Committee, the majority leader and the majority whip benefit from the changes proposed, always a help in getting a bill scheduled on the Senate floor.

So it is a carefully designed formula, but designed with only one purpose in mind, that purpose was not to improve water quality, the purpose was not to protect important national resources like the Great Lakes, that purpose was not to meet United States obligations under international treaties and agreements, we are not asked to correct a flaw in the formula, or restructure, the program, or save money, or match grant dollars to needs as assessed in the most recent survey, or prevent disruption in the programs of some little States.

We are asked by the committee to make these changes for the sole purpose of satisfying the desire of the members of the committee for more dollars for their States. And the Senate has no obligation to defer to the formula politics of this committee or any other.

Mr. President, I think it would be helpful if at this point in the discussion we had a simple explanation of the workings of the committee formula. I shall endeavor now to provide the Senate with a step-by-step explanation of the mathematical model that the committee has designed.

It all begins with a needs assessment performed by the Environmental Protection Agency. As I said earlier this assessment is done every 2 years and the results are sent to the Congress in a report.

Essentially, EPA hires contractors which go to each State and work with the State's pollution control agency to determine how many dollars of planned sewage treatment construction grants are eligible for Federal funding.

Until 1981 there were seven categories eligible for Federal grant dollars. Those seven categories were: secondary treatment, advanced treatment, infiltration/inflow, replacement and rehabilitation, new collector sewers, new interceptor sewers, and combined sewer overflow. As part of the 1981 amendments three of those categories eligible for funding were dropped. Sewer rehabilitation, new collector sewers, and combined sewer overflow are no longer fully eligible for Federal funds. That has worked to the disadvantage of some States. Those States which are growing very rapidly, like Texas and Florida and which have a need for new systems can no longer count on their planned collector sewers. And States in the Northeast and Midwest which have large combined sewer overflow problems and a need to rehabilitate existing systems don't get to count those needs, either. Governors have the option to use up to 20 percent of their funds for projects in these three categories. But since they are no longer fully eligible for Federal dollars, needs in these three categories are not counted in the new committee formula.

So we start with the raw State needs -- as determined by EPA -- for secondary and advanced sewage treatment, for the correction of sewer infiltration problems and for new interceptor sewers.

The next step in the committee formula is to divide the States into three tiers based on their share of these needs. Tier III is a group of the 13 States with the smallest needs. They each have less than one, half of one percent of the national need as measured by EPA. These 13 States are: Alaska, Nebraska, Hawaii, Rhode Island, Idaho, New Mexico, Nevada, Vermont, South Dakota, Delaware, Montana, Wyoming and North Dakota.

The second tier -- tier II -- is a group of eight States and the District of Columbia which have between one-half of 1 percent and 1 percent of the national need as measured by the EPA survey. These States are: Utah, Kansas, Oklahoma, Oregon, Arkansas, Colorado and Maine.

[*15644] The final tier -- tier I -- includes the 30 States with the greatest need. They each have 1 percent or more of the national needs in the four categories fully eligible for Federal funding.

The next step in the process of designing the committee formula is to allocate the $2.4 billion authorization among the various tiers. It is at this point that all the trouble arises. Rather than give each tier of States dollars according to its needs, the committee chose to greatly over-allocate dollars to the smaller States.

The 13 States in tier III have altogether only 3.7 percent of the total national needs. But the committee chose to give these 13 States 8.5 percent of the national dollars, more than twice the amount they should have gotten.

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The 13 States in tier III have altogether only 3.7 percent of the total national needs. But the committee chose to give these 13 States 8.5 percent of the national dollars, more than twice the amount they should have gotten.

The eight States and the District of Columbia in tier II have among them a total of 6 percent of the fully eligible national needs. But the committee chose to give tier II 9 percent of the national dollars -- 50 percent more than they should have gotten according to the EPA survey.

Since tier II and tier III were given more dollars than their measured needs justified, that can only mean that the 30 States in tier I were short-changed. In fact, those 30 States have 90.3 percent of the national need but are allocated only 82.5 percent of the dollars for construction grants authorized by this legislation.

Now, in percentages that under-allocation may not seem like much to Senators. But the 7.8 percent of funds shifted out of tier I amounts to approximately $187.2 million or on the average a loss of $6 million in construction grants to each State in tier I. That's a sizable loss when considered from the perspective of the many small communities which have been waiting for construction grant dollars for years.

The final step in the committee allocation process is the division of dollars among States within each tier. It is at this point that the logarithms and the logarithms cubed enter the picture. The committee also provided a guarantee of not less than 1.25 percent to each State in tier I and modified the allocation for several tier I States to assure that they would receive not less than 80 percent of the dollars they receive under current law. Although each of these suballocations further distort the needs as measured by EPA, the distortions in this step are only minor compared to the fundamental decision by the committee to over-allocate $187 million to the 20 States with the smallest needs.

Let me share with the Senate some the very great distortions that result from the committee's formula. On yesterday afternoon, the Senator from Michigan, Senator LEVIN, presented several comparisons of a similar kind. I have prepared a table which I ask unanimous consent be printed at this point in the RECORD which shows the per capita -- that is per person -- allotment for each State under the committee's formula. It ranges from a low of $5.83 per capita for California to $8.69 per capita for Minnesota to $30.45 per capita for Vermont, $32.12 per capita for New Hampshire, and $44.56 per capita for Alaska.

Another comparison. On a per capita basis Ohio -- a tier I State -- and Vermont -- a tier III State -- have very similar needs. Ohio has a per capita need of $245.80 while the Vermont need is $250 per capita. Nevertheless, Vermont gets an allotment of $30.45 per capita under the committee formula while Ohio gets only $10.05. Vermont gets 3 times the dollars per capita as Ohio, while their actual needs are equivalent.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

PER CAPITA ALLOTMENTS

Amount

Alabama	$7.59
Alaska	44.56
Arizona	10.87
Arkansas	12.11
California	5.83
Colorado	8.59
Connecticut	9.51
Delaware	23.08
D.C.	33.98
Florida	10.95
Georgia	6.30
Hawaii	18.22
Idaho	18.21
Illinois	7.63
Indiana	8.46
Iowa	10.04
Kansas	12.34
Kentucky	15.05
Louisiana	8.08
Maine	20.55
Maryland	11.06
Massachusetts	14.91
Michigan	8.95
Minnesota	8.69
Mississippi	11.72
Missouri	12.22
Montana	16.27
Nebraska	11.25
Nevada	20.11
New Hampshire	32.12
New Jersey	15.69
New Mexico	12.37
New York	12.18
North Carolina	6.49
North Dakota	16.89
Ohio	10.05
Oklahoma	9.55
Oregon	10.59
Pennsylvania	6.44
Rhode Island	18.54
South Carolina	10.15
South Dakota	21.93
Tennessee	8.59
Texas	8.95
Utah	20.20
Vermont	30.45
Virginia	7.38
Washington	16.40
West Virginia	15.42
Wisconsin	6.96
Wyoming	27.01

Mr. DURENBERGER. Mr. President, the widest -- almost unbelievable -- disparity is between Texas and Wyoming. Texas has a raw need in the four eligible categories of $239 per capita. Wyoming's need per capita is less than half of that at $110 per capita. But Wyoming out does Texas in grant dollars by a factor of 3. Texas is at $8.95 and Wyoming is at $27.01. Combining the disparity in needs with the reverse disparity in grants. Texas suffers a sixfold

discrimination simply because it is a big tier I State. I do not know how a Senator from Texas can stand that kind of discrimination when the committee substantive justification for the formula it proposes.

Mr. President, Senator MOYNIHAN and I will be offering an amendment which modifies the committee formula. The nature of the modification we make is easy to explain. We simply take the 7.8 percent of the authorization -- the $187 million -- that was over-allocated to tier II and tier III States by the committee and give it back to the 30 States in tier I. With these dollars we are able to increase the tier I hold harmless to 90 percent. The remainder of the dollars are assigned to the other tier I States according to their percentage of the national need. The chart which results from these minor alterations in the committee's mathematics is the substance of the amendment and it has been widely circulated.

Mr. President, I ask unanimous consent that a table comparing the Durenberger-Moynihan amendment with the formula in S. 1128 be printed at this point in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NOTE: This table has been divided into three parts, and additional information on a particular entry may appear on more than one screen.

	Funding share	
	Committee formula	Proposed amendment
Alabama	0.012500	0.013211
Alaska	.007563	.003271
Arizona	.012500	.013041
Arkansas	.011714	.007893
California	.058321	.065611
Colorado	.010503	.007077
Connecticut	.012500	.013226
Delaware	.005801	.002509
District of Columbia	.009172	.006180
Florida	.045181	.048260
Georgia	.014570	.015563
Hawaii	.007440	.003217
Idaho	.007272	.003145
Illinois	.036881	.041491
Indiana	.019653	.22109
Iowa	.012672	.013536
Kansas	.012337	.008312
Kentucky	.015044	.016069
Louisiana	.014380	.015359
Maine	.009772	.006584
Maryland	.019722	.022188
Massachusetts	.036195	.038662
Michigan	.035063	.039446
Minnesota	.014988	.016862
Mississippi	.012500	.013010
Missouri	.025422	.027154
Montana	.005411	.002340
Nebraska	.007467	.003229
Nevada	.006805	.002943
New Hampshire	.012500	.012983
New Jersey	.048867	.052197
New Mexico	.006814	.002947
New York	.090478	.101787
North Carolina	.016168	.017269
North Dakota	.004658	.002014
Ohio	.045906	.051645
Oklahoma	.012223	.008235

	Funding share	
	Committee formula	Proposed amendment
Oregon	.011794	.007946
Pennsylvania	.032302	.036339
Rhode Island	.007428	.003212
South Carolina	.013399	.014312
South Dakota	.006400	.002768
Tennessee	.016674	.017810
Texas	.053882	.057553
Utah	.12486	.008413
Vermont	.006581	.002846
Virginia	.016689	.018775
Washington	.028665	.030618
West Virginia	.012712	.014301
Wisconsin	.022322	.024801
Wyoming	.005359	.002318
Samoa	.000732	.000761
Guam	.000567	.000601
Mariana Islands	.000533	.000565
Puerto Rico	.012640	.013502
Trust Territory	.001409	.001494
Virgin Islands	.000464	.000492

	Share of year 2000 eligible needs
Alabama	0.013162
Alaska	.004964
Arizona	.011131
Arkansas	.008104
California	.068122
Colorado	.006525
Connecticut	.013350
Delaware	.001354
District of Columbia	.005039
Florida	.053700
Georgia	.017317
Hawaii	.004531
Idaho	.004005
Illinois	.027339
Indiana	.011996
Iowa	.015061
Kansas	.009006
Kentucky	.017881
Louisiana	.017092
Maine	.005678
Maryland	.020871
Massachusetts	.043020
Michigan	.041460
Minnesota	.016490
Mississippi	.010755
Missouri	.030216
Montana	.001015
Nebraska	.004625
Nevada	.002839

Funding share

	Committee formula	Proposed amendment
New Hampshire	.010435	
New Jersey	.058081	
New Mexico	.002859	
New York	.091512	
North Carolina	.019216	
North Dakota	.000583	
Ohio	.049902	
Oklahoma	.008837	
Oregon	.008217	
Pennsylvania	.036477	
Rhode Island	.004494	
South Carolina	.015926	
South Dakota	.002106	
Tennessee	.019818	
Texas	.064042	
Utah	.009232	
Vermont	.002407	
Virginia	.017186	
Washington	.034070	
West Virginia	.011545	
Wisconsin	.026531	
Wyoming	.000978	
Samoa	.000620	
Guam	.000620	
Mariana Islands	.000583	
Puerto Rico	.015023	
Trust Territory	.001542	
Virgin Islands	.000500	

Funding (dollars in thousands)

	Committee formula	Proposed amendment
Alabama	$29,550	$31,231
Alaska	17,879	7,733
Arizona	29,550	30,829
Arkansas	27,692	18,659
California	137,870	155,104
Colorado	24,828	16,730
Connecticut	29,550	31,266
Delaware	13,713	5,931
District of Columbia	21,681	14,610
Florida	106,807	114,087
Georgia	34,443	36,791
Hawaii	17,587	7,605
Idaho	17,190	7,435
Illinois	87,186	98,085
Indiana	46,459	52,266
Iowa	29,955	31,999
Kansas	29,163	19,650
Kentucky	35,565	37,987
Louisiana	33,994	36,309
Maine	23,101	15,565
Maryland	46,623	52,452

	Funding share	
	Committee formula	Proposed amendment
Massachusetts	85,565	91,397
Michigan	82,889	93,250
Minnesota	35,431	39,862
Mississippi	29,550	30,756
Missouri	60,098	64,192
Montana	12,790	5,532
Nebraska	17,652	7,633
Nevada	16,087	6,957
New Hampshire	29,550	30,692
New Jersey	1,115,521	123,394
New Mexico	16,109	6,967
New York	213,889	240,624
North Carolina	38,220	40,824
North Dakota	11,011	4,761
Ohio	108,522	122,089
Oklahoma	28,895	19,468
Oregon	27,881	18,784
Pennsylvania	76,360	85,905
Rhode Island	17,560	7,593
South Carolina	31,675	33,834
South Dakota	15,129	6,544
Tennessee	39,417	42,103
Texas	127,376	136,055
Utah	29,515	19,888
Vermont	15,558	6,728
Virginia	39,452	44,384
Washington	67,764	72,381
West Virginia	30,051	33,808
Wisconsin	52,768	58,630
Wyoming	12,669	5,480
Samoa	1,730	1,799
Guam	1,340	1,421
Mariana Islands	1,259	1,336
Puerto Rico	29,880	31,919
Trust Territory	3,331	3,532
Virgin Islands	1,096	1,163

[*15645] Mr. DURENBERGER. It is unfortunate that these changes greatly disadvantage some small States as compared to the one-half of 1 percent guarantee they were given under current law. Many of us involved in this debate would have been happier had the committee never opened this topic for discussion. We recognize a need for a minimum allocation to the smallest States. But the committee chose to drop the concept of a minimum.

We could have lived with current law. We did not create the tiers or the logarithms or the hold-harmless requirements in the design of the committee formula. We are simply insisting that the allocation between those tiers and within the structure of the committee formula be fair in its fundamentals, that each of the three tiers be given a basic allocation according to its need.

Mr. President, all of this mathematical complexity has taken me far from the note I started on when I opened this little talk. That subject was the impact of this formula on the water quality of the Great Lakes States.

To return to that topic let me read from testimony given by Mr. Robert Sugarman before the Committee on Governmental Affairs recently. Mr. Sugarman is the immediate past co-chairman of the International Joint Commission which is charged with implementing the Boundary Waters Treaty between the United States and Canada. He was the U.S. representative on the IJC.

<FWPCA § 118> The occasion of the hearing was consideration of the legislation sponsored by the Senator from Wisconsin to provide funds for water quality research on the Great Lakes. Senator KASTEN will be offering a portion of his bill as an amendment to this legislation today.

Let me now read from Mr. Sugarman's testimony:

As a former co-chairman of the International Joint Commission of the United States and Canada, I had the opportunity to become familiar with the progress and problems of the United States and Canada in addressing the ongoing pollution problems in the Great Lakes.

During the 1970s, dramatic progress was made in reducing phosphorus inputs into the Lakes, which were clearly identified as the primary source of eutrophication. This has led to substantial improvement in the Great Lakes Ecosystem and for its useability for recreation and fishing.

However, it became recognized, during the 1970s, that the effort that was then being made would not be sufficient, and the International Joint Commission, after several years of study, reported to the governments of the United States and Canada that additional efforts in the order of 10,000 or more tons per year of phosphorus reduction would be required in order to retrieve the eutrophication and eliminate the eutrophication problem in the Lakes.

In 1981, therefore, the IJC recommended that substantial additional reductions be accomplished by such methods as alternative forms of sewage treatment such as land application, which achieved substantial better results, and by additional add-on treatment at conventional sewage treatment plants.

Secondly, at the same time, during the 1970s, the toxic problems emerged as a serious potential disaster for the Lakes. Senator Kasten has already referred to the scope and delineation of the problem. I would only add that I concur completely with the judgment that we run the risk of losing the Great Lakes as a public resource if we do not address that problem.

Instead of adequately addressing that problem, we have allowed it to become worse by continuing the inputs of toxics into the Lakes where, of course, they build up because the Lakes have long retention periods and are not adequately treating either industrial or municipal wastes to remove toxics.

What I would like to bring to the committee's attention is that these needs of the Great Lakes are not merely a matter of public policy and desirable objectives, but represent an international obligation on the part of the United States.

Pursuant to Article 4 of the Boundary Waters Treaty of 1909, neither country (that is Canada or the United States) may pollute the boundary water to the injury of health or property in the other state. While difficulties abound in drawing cause and effect relationships between toxics and phosphorus inputs on the one hand and cross-boundary impacts on the other, it is clear that such effects have been and are and will continue to occur and, indeed, will become more serious and severe if not properly addressed.

While the treaty itself does not define appropriate levels of pollution, and indeed, implies that the only appropriate response is the elimination of the pollution, the two countries, by executive agreement, have designed a structure for coordinating programs to reduce pollution of the Lakes. This executive agreement, the Great Lakes Water Quality Agreement of 1978, draws its legal standing from the Boundary Waters Treaty and domestically within the United States from the executive powers of the agency such as EPA to adopt regulations as necessary to implement their programs.

However, because of the proliferation of pollutants in the Lakes and the inadequate treatment that has been afforded to them, the United States is simply failing to adhere to the similar mandate of the 1909 Boundary Water Treaty, and more specifically, is failing to meet its obligation of the 1978 Water Quality Agreement which implements that treaty.

This includes the United States' undertaking to monitor, to achieve phosphorus reduction and to make toxics substantially absent from the lakes, all of which are requirements of the 1978 agreement.

Examination of the achievements to date and examination of the results of surveillance and monitoring on the Lakes make it clear that the level of funding in the committee formula simply will not achieve United States compliance with its international obligations.

I conclude that an increase, not a decrease, in funding is required to maintain adequate progress towards meeting our international commitment.

I know from my experience that the people of the Great Lakes Basin, both in the United States and Canada, will derive extremely significant benefits from proper management of the Great Lakes.

In addition, the United States will be in a position of meeting its international obligations under the treaty and the 1978 Water Quality Agreement.

Mr. President, I might also read into the RECORD at this point a letter from the eight Governors of the Great Lakes States which is dated June 7, 1985:

We are writing in strong opposition to the recent action by the Environment and Public Works Committee to alter the Wastewater Treatment Grant allocation formula contained in the Clean Water Act reauthorization. The Committee's proposed formula cuts $175 million in essential grant funds from the Great Lakes Region in 1986 alone.

The water of the Great Lakes not only provide 1 in 10 Americans with drinking water, but also represent an international resource. The Great Lakes Water Quality Agreement of 1978 between the United States and Canada recognizes our joint responsibility for proper stewardship of this water resource.

Through a combined effort with Canada, water quality in the Great Lakes basin has improved significantly. Today's wastewater treatment facilities form the centerpiece of that effort. Fulfillment of these reforms relies significantly upon federal responsibilities for wastewater treatment standards and construction as outlined in the Water Quality Agreement.

The Committee's proposed formula jeopardizes this vital resource. The proposed formula change will not affect the federal

[*15646] deficit. Rather, it is an attempt to reallocate funds which would sorely strain the federal commitment and support for the Great Lakes watershed and exacerbate the imbalance on the return of the federal tax dollar to this region of the country. We oppose this proposed formula in the strongest possible terms.

Mr. President, in conclusion let me say again there is no mystery about what is happening here today. Small States have been finding ways to use their equal representation in the Senate to advantage since the Connecticut compromise was offered at the Constitutional Convention. I do not know that the Founding Fathers would have understood the logarithm of interceptor sewer needs cubed any better than we do. But they would not be surprised to see Rhode Island, Vermont, and Maine ganging up on New York at a proceeding like this one.

However, Mr. President, there is more at stake here than the politics of allocation formulas. This formula is political. But it is also pernicious. It threatens a national treasure. And breakes a solemn promise to our northern neighbor.

The Great Lakes are the heart of our continent. Over the last 200 years they have been the focal point for development of two great nations. They have been the source of food and drinking water. Today, 26 million Americans drink water from the Great Lakes. They are a mode of transportation. They are a reservoir of power and a vast resource for recreation and wildlife; 63 million Americans visit a park on the shores of the lakes each year.

All of these demands have taken their toll. The water quality of the lakes has declined sharply. Unfortunately, the natural unity of the lakes has been overlaid by a fragmentation of State and local governments that have been unable to organize people to protect what nature has provided.

In 1972 and again in 1978, the United States and Canada signed Great Lakes water quality agreements. These agreements require the United States and Canada to provide adequate wastewater treatment facilities for the sewered population on both sides of the border. Canada has met this requirement for 99 percent of its population. At last count, the United States was less than two-thirds of the way there. And as part of the agreement, the Government of the United States committed to provide financial assistance to the local governments on the U.S. side to assure that this agreement was fulfilled at the earliest possible date.

In one sense, the question we face today is the same question we face so often. How are we going to fix that formula so the folks back home get more next year than they got last year? That debate has been a constant fact of life for 200 years in this institution. But occasionally we are called on to look out beyond the borders of our individual States to our responsibilities as Senators for the whole Nation. Such an occasion occurs this morning.

The Great Lakes are not a Minnesota resource or a New York resource. They are not just mine, PAT MOYNIHAN'S, AL D'AMATO'S, or CARL LEVIN'S. They are a national resource. They are yours as much as mine. Each of us has the same responsibility for protection. The committee's formula will most assuredly have a negative impact in the

water quality of the Great Lakes. And it will break our promise to Canada made by treaty in 1909 and confirmed in agreements over the last decade.

Mr. President, I did not complete the story of the lamprey eel at the beginning of this statement. The ending is upbeat by the standards of the debate we have been conducting today.

The Great Lakes States took steps to combat the lamprey infestation. First, electric fences were built across streams to prevent the lampreys from moving upstream to spawn. Later a more effective control method by chemical treatment of spawning beds was discovered.

As a result this lowest of all vertebrates is no longer a major predator on the Upper Great Lakes. The lakes are being restocked with lake trout and new species -- the Coho salmon has been introduced with great success.

I only wish I could be as hopeful about the outcome of the process we are going through here today. The committee at my urging and that of others of our colleagues is now offering a new formula as an amendment to S. 1128. It restores some of the funds that were taken from the Great Lakes States. I will support the committee amendment as the most that was possible under these circumstances. But I do not think it is necessarily right. And I will continue to make every effort in this Chamber to make sure that we as a Nation fulfill our commitment to protect the water quality of the Great Lakes.

Mr. President, I would draw the attention of the Senate to a part of this amendment that limits the life of this new formula and to the colloquy between the Senator from Michigan and the managers of the bill. The point is that the compromise we have struck here this afternoon does not extend beyond 1990, that a new formula will be required at that time and that the compromise at 85 percent held harmless with three tiers shall not be considered a precedent for designing a new formula for the revolving fund grants in the coming decade.

Thank you, Mr. President.

Mr. President, I shall conclude briefly. I thank my colleague from Rhode Island for the characterization of my amendment. He may well be correct. When it came up for a vote in the Environment and Public Works Committee, we had 2 votes and the other side had 13. It is quite possible that that gap would have existed on the floor; I do not think so. The point is when you get into the numbers game, as I trust our colleague from Missouri will soon illustrate for us because he has done this so well on so many occasions over the last 6 1/2 years, it is very, very difficult to play winners and losers on the floor of the Senate.

Over the last 24 hours, however, those of us who do not necessarily represent large States but represent States that have in them or adjacent to them some of the Nation's most treasured water resources such as the Great Lakes and the Chesapeake, have been carrying on a dialog with those members of the Environment and Public Works Committee who constructed this new three-tiered logarithmic approach to responding to the Nation's needs for sewage treatment. We came to the conclusion about noon today -- and I must mention my colleagues, Senator MOYNIHAN and Senator D'AMATO of New York, Senator CRANSTON of California, and especially Senator LEVIN from Michigan, who is not on the committee but became enraged the very first time he saw the committee formula and went to work on his own on the issue. I thank them for the effort that they put in on trying to negotiate with the committee what hopefully moves in the direction of some greater sense of national priority and national reality.

I would say on behalf of the 13 votes on the committee, despite the fact that a casual look at their own States would show them benefiting, I think it is difficult for my colleagues on the committee to try to deal with a limited amount of dollars for a very large problem. I think Senator BENTSEN has reflected this in his concern for his State, Senator CHAFEE has done the same thing with regard to Rhode Island.

The cutback in this program several years ago made it extremely difficult to do a good job of prioritizing these needs. So I say to my colleagues who may be in a majority on this issue that I do believe they are trying to do the best with the few rather precious Federal dollars committed to this problem. In that spirit, I have withdrawn my intention to offer an amendment with my colleague from New York which would get us closer to equity on behalf of national resources such as the Great Lakes. I have done so for several reasons, one because the change which the committee agreed to in hold harmless moves in the direction that it ought to move.

I have done so also on the commitment of the committee to engage in a colloquy with my colleague from Michigan on the matter of future

[*15647] precedent and also on the commitment of the committee to clarify language which is currently report language accompanying the bill relative to the application of their proposed new formula to the State grants program.

With that, I recommend to my colleagues that they join with the Senator from Rhode Island and the Senator from Maine, who obviously also has done a great deal to try to work something out here that can be supported by a majority of us, to join them in the amendment which is before us now of which I am a cosponsor.

Mr. MOYNIHAN. Mr. President, I rise in support of the committee amendment modifying the sewage treatment grant allocation formula. Yesterday I discussed a number of objections to the formula approved on May 14, by the Environment and Public Works Committee. That formula would have shortchanged large, urban States, many of which are in the Northeast and Midwest. It would have drastically reduced Federal funding of sewage treatment in the Great Lakes and Chesapeake Bay basins, threatening to retard progress in cleaning up these major water resources.

I am pleased that my colleagues on the Environment and Public Works -- Senators STAFFORD, BENTSEN, CHAFEE, and MITCHELL -- discussed these concerns with Senator DURENBERGER, Senator D'AMATO, and me. Today's proposal would reduce the unfair losses in funding our States would have had. It does not go as far as we would have liked, but it is a compromise that will enable us to proceed with the Clean Water Act Amendments of 1985, a vital piece of legislation.

This bill is especially important to my State of New York, because New York's need for sewage treatment grants is greater than the need of any other State. According to the 1984 EPA needs survey, it will cost $53 billion nationwide to construct the sewage treatment plants and other basic facilities necessary to achieve the goals of the Clean Water Act. Over 9 percent of this need -- almost $5 billion -- is in one State, New York. Additional funds will be needed to correct combined sewer overflows, a major cause of water quality degradation in old cities, where stormwater and sewage are conveyed by the same conduits.

It is obvious that Federal construction grants cannot come close to meeting these needs. It is therefore important that scarce Federal funds be allocated among the States in an equitable manner. As a Nation's population grows and shifts from region to region, it is inevitable that the needs of particular States will change with time. Expanding cities in Florida, Texas, Arizona, and other growing areas will need to accommodate the waste generated by new residents and industry. However, all regions of the United States have pressing needs.

The committee amendment would, in comparison to the reported bill, increase the shares of those States that would have suffered large losses. New York's annual share of the grants would rise from $214 to $228 million per year. The amendment would take effect for fiscal years 1986 through 1988, resulting in an overall increase for New York of $44 million. These extra dollars will ultimately help to improve water quality in the Hudson River, Lakes Erie and Ontario, and many smaller rivers and lakes throughout the State. In 1989 and 1990, New York's share will drop to $214 million. However, Congress will have to study this issue again in 5 years and, in determining a formula for the years after 1990, take into account changes in population and other factors affecting the needs.

This is a relatively modest increase that will fall short of my State's needs. Yet the amendment is a significant improvement, and I hope the Senate will approve it, along with the entire bill.

Mr. President, in the briefest terms, I would like to join in supporting the concept so far. I like particularly the fact that the chairman of the committee presided over the rather lengthy negotiations that brought forth once again a measure of comity and I think unanimity in the committee which we value. May I make a particular point, when we ask ourselves about the particular allocations of this resource, that it is very much to the credit of the Senator from Rhode Island and the Senator from Maine that there is a resource to allocate. It was proposed that this program cease. This bill authorizes $18 billion over the next 9 years and it marks a continued commitment of our committee and, we trust, this body to the Clean Water Act.

AMENDMENT NO. 343
(Purpose: To fund wastewater treatment grants on the basis of need)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] for himself and Mr. GRASSLEY proposes an amendment numbered 343.

On page 1, line 9, strike all through the figure after "Virgin Islands" on page 2 and insert:

Alabama	0.013162
Alaska	.004964
Arizona	.011131
Arkansas	.008104
California	.068122
Colorado	.006525
Connecticut	.013350
Delaware	.001354
District of Columbia	.005039
Florida	.053700
Georgia	.017317
Hawaii	.004531
Idaho	.004005
Illinois	.027339
Indiana	.011996
Iowa	.015061
Kansas	.009006
Kentucky	.017881
Louisiana	.017092
Maine	.005678
Maryland	.020871
Massachusetts	.043020
Michigan	.041460
Minnesota	.016490
Mississippi	.010755
Missouri	.030216
Montana	.001015
Nebraska	.004625
Nevada	.002839
New Hampshire	.010435
New Jersey	.058081
New Mexico	.002859
New York	.091512
North Carolina	.019216
North Dakota	.000583
Ohio	.049902
Oklahoma	.008837
Oregon	.008217
Pennsylvania	.036477
Rhode Island	.004494
South Carolina	.015926
South Dakota	.002106
Tennessee	.019818
Texas	.064042
Utah	.009232
Vermont	.002407
Virginia	.017186
Washington	.034070
West Virginia	.011545
Wisconsin	.026531
Wyoming	.000978

Samoa	.000620
Guam	.000620
Mariana Islands	.000583
Puerto Rico	.015023
Trust Territory	.001542
Virgin Islands	.000500

Mr. DANFORTH. Mr. President, this amendment is offered on behalf of myself and Senator GRASSLEY, and it substitutes a different allocation formula from the one which has now been put forth as the so-called compromise proposal. The allocation formula that Senator GRASSLEY and I have suggested in this amendment is the 1984 EPA need survey.

Now, Mr. President, the Environmental Protection Agency conducts a need survey, which survey is supposed to provide the basis for a determination as to how the funds under this program are to be allocated. That is my understanding of the reason for having the need survey. The reason for having the need survey is not to provide employment for people who are going to sit around and do useless work but, rather, to provide some rational basis for Congress to make a determination as to how to allocate the funds.

I read from the statement that was made yesterday on the floor of the Senate by the Senator from Rhode Island. He described the EPA need survey in the following words:

[*15648] This survey, conducted by the Environmental Protection Agency, with the cooperation of the States, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the Act.

Now, Mr. President, the theory of this amendment is very simple. If the need survey is in fact the most current, complete, and accurate determination available of the needs for publicly owned treatment works which can be assisted under titles II and VI of the act, why not follow the survey? Why have the survey in the first place if we are not going to follow it?

Now, that is somewhat of a rhetorical question, and I am about to provide the answer to the question. The reason for not following the survey provided by the experts, the reason for not following the most current, complete, and accurate determination available is politics. The reason is, Mr. President, that a majority of the members of the Environment and Public Works Committee are not benefited by the Environmental Protection Agency's need survey, so they had to doctor the figures. And then when some Senators began to get exercised about the doctoring of the figures, they tried to moderate their position, at least somewhat, in order to provide some cover from a brouhaha on the floor of the Senate.

Now, Mr. President, it is well known by anybody who has been in the Senate any length of time at all that the one way to start a fight on the floor of the Senate is to have some States trying to rip off other States, and that is precisely what has happened here -- some States trying to rip off other States for their own benefits by doctoring the needs formula which, according to the Senator from Rhode Island, is the most current, complete, and accurate determination available of the needs for publicly owned treatment works.

Now, Mr. President, let us look at the States represented on the Environment and Public Works Committee and find out how they fared in this bill under the so-called compromise that is now before us. Let us learn how they fared compared to the EPA need survey.

Beginning with Vermont, Vermont would receive 245 percent of the figure that the need survey suggests -- two and-a-half times roughly for Vermont what the experts say that Vermont should receive; Rhode Island, 168 percent of the need survey; Wyoming, also represented on the committee, 589 percent of the EPA need survey amount -- not 3, 4, or 5 times what the EPA survey suggests; South Dakota, 281 percent; Idaho, 148 percent; New Hampshire, 119 percent; New Mexico, 211 percent; North Dakota, 920 percent of the EPA need survey; Colorado, 149 percent, New York, 105 percent; Maine, 166 percent; Montana, 540 percent. Only three States represented on that committee do worse than the need survey, and they are Minnesota, Texas, and New Jersey.

Now, Mr. President, the amount involved in this I suppose is not a whole lot. If my State of Missouri received what it is entitled to according to the EPA's analysis, it would receive $72 million. It is going to receive $60 million. That is not a whole lot by congressional standards but it certainly is a whole lot in the eyes of the communities that are going to be affected. The Missouri Department of Natural Resources has done an analysis as to what would happen on the basis of this formula. What would happen is that two-thirds of a page single-spaced of projects in Missouri would be dropped

altogether -- Alma, MO, Ashland, Camdenton, Kansas City, Kennett, Macon, Marceline, Odessa, St. Louis, Saint Peters, Sarcoxie, Stotts City, to name a few, dropped, dropped, clean water projects, sewage treatment projects in those communities dropped altogether. Why dropped? Because Missouri was not represented on the Environmental and Public Works Committee where this pie was cut up.

Mr. President, we in the Congress of the United States have been in the process of trying to deal with a budget deficit. We have been fighting this battle now ever since the first of the year. We have had dramatic votes here on the floor of the Senate, late one night when Senator WILSON was wheeled into the back of the door with IV's in his hand. And now the battle rages on and on in the conference committee. We have cast tough votes in the Senate. We will have to cast tough votes in the future in order to get the deficit under control. It is possible to do it, Mr. President. It is possible to bite the bullet, as we say. It is possible to do that, to cast the tough votes over and over again, provided there is a sense of equity in what we are doing, provided there is a sense of fairness in what we are doing, provided the burden of budget cutting is spread evenly. But at a time when we are making tough decisions, it is unconscionable to change allocation formulas to sweeten the pot for some States that happen to be represented on the Environment and Public Works Committee at the expense of other States. That is unconscionable. It is unconscionable to say to the people of Arcadia, MO, or Carl Junction, Doniphan, or Ellington, it is unconscionable to say to them, "I'm sorry, but you can't have your project. You can't have your project because somehow we have got to scrounge up enough money to pay North Dakota 920 percent of its EPA needs, 0 or to pay Wyoming 589 percent of its EPA needs, or to pay Colorado 149 percent of its EPA needs.

"Oh, I'm sorry, you can't have the sewage treatment project. We don't care about you. Your State is not represented on this committee."

It is not fair, and it is not right.

Over the next 5 years, the State of Missouri will not receive $358 million, which is the appropriate level it should receive under the EPA needs survey. No, it will receive $300 million -- of the target by $58 million. How many more communities are going to be affected over the next 3 years?

Mr. President, that is the issue I put before the Senate. We are departing from current law. Current law does not follow the EPA survey. But if we are going to depart from current law, let us do it in the direction of fairness, not unfairness. Let us do so in the direction of equity, not inequity. Let us meet needs on the basis of informed technical analysis, not political needs.

Mr. CHAFEE. Mr. President. as always, the distinguished Senator from Missouri gave a very fine speech.

I remind him that the formula which we have adopted here is not unique. I think just about every formula we see go through this body has a floor, a 1 1/2-percent minimum for the smaller States. If he wants to suggest changing that, so be it, and I presume that his amendment does away with any safeguard for the smaller States.

Why do you have a floor for the smaller States? You have a floor because you have to have some kind of program; and if you get these amounts down too small, the capabilities of having a decent program and an effective one are vastly reduced.

If we were really to meet the needs, we would bust the budget. We stuck with the $2.4 billion ceiling that was agreed to in 1981 when we had this program. We had all kinds of pressures, and in the House they go above that. Originally, they went way above it. I think they are some half billion dollars above the $2.4 billion. But we decided to stick with that.

Trying to keep various States happy under any kind of formula, as we all know, is extremely difficult. We revised this, and I see that Missouri picked up some more dollars as a result of that -- not great, but something.

The key thing, it seems to us on the committee, is to have a bill. That is what we have been told by the representatives who deal with the Clean Water Act in Missouri -- have a bill.

The amounts that are changed around in this because of the caps and the growth, because of the caps on the decline -- in other words, the maximum cut of 20 percent -- the dislocations are not that great for any State.

Missouri was not affected that dramatically -- about an 11-percent decline, I would say. Other States had a decline of about 20 percent.

[*15649] These vast percentage increases over the needs of some of the smaller States have been pointed out. That is true. However, at the same time, we are not talking about a great deal of money.

For example, North Dakota was cited. North Dakota's difference between being perhaps under some needs test and what they would have received is about $6 million or $7 million. So we are not talking about the dramatic dollars that might be suggested in some of the larger States.

Mr. President, we have to be realists around here. Should we change the formula and attempt to take into account some of the changes that have occurred?

The Senator from Missouri quoted from my remarks yesterday about the needs survey. We have attempted to accommodate that needs survey, taking into account both the one-half percent minimum and the safe harbor of the 15-percent maximum cut. Whether that is the best formula or not, I do not know. It is the best we could work out. In dealing with these things, we are dealing with 100 Senators, all of whom are vigilant, as is the Senator from Missouri, in protecting the interests of their States.

I believe we have arrived at a good formula. If the Senator has a better one, let us hear it. But I do not think he has.

Therefore, Mr. President, I urge support for the formula as sent forward by this committee.

Mr. MITCHELL. Mr. President, I think a few general points should be made about the formula, and then a specific point about the very strong statement made by the Senator from Missouri.

He tells us that we have an EPA needs formula and we ought to follow that to the letter. Not to do so, he says, is unconscionable. Not once unconscionable. not twice or thrice unconscionable, but several times unconscionable. He points to individual members of the Senate Committee on Environment and Public Works as evidence of that unconscionableness by saying, "Look, they're getting more under this formula that they would have gotten if we followed the needs survey to the letter."

As the Senator knows, this program is 13 years old. There have been several needs surveys and there have been several formulas, and not once in those 13 years has the formula precisely followed the needs survey -- for good reasons, which I will point out in a moment.

The most recent formula, in 1981, did not do so. It produced the circumstance which the Senator has here described over and over again as unconscionable because some States got more money under that formula than they would have received had the needs survey been followed to the letter. Yet, in 1981 we did not hear from the Senator from Missouri how unconscionable that formula was. We did not hear how unfair it was. We did not near how bad it was that some States received more than the needs formula. We heard only -- silence.

And why was there silence from the Senator from Missouri about the 1981 formula? There was silence because under the 1981 formula the State of Missouri got more money than it would have gotten had we followed the needs survey to the letter.

Was that unconscionable? And if it was, why was that point not made on the floor of the Senate in 1981? And was it unconscionable for the State of Missouri to accept millions of dollars over the past 4 years over and above what they would have gotten under the needs survey while other States, with their long list of towns comparable to but not identical to Arcadia, MO, and all of the others, could not get their money under the formula?

The fact of the matter is, as I said earlier, that the needs survey is a starting point for the allocation of funds under this program and always has been. It has never been used without deviation for valid reason.

And this year we are not using the needs survey exclusively but rather as a starting point for several reasons.

The first is that in order to have a meaningful continuing program the committee and Congress have recognized that there has to be a relative degree of continuity in each State's program, that it would be truly unconscionable to have a precipitous decline in the program of any one State especially when we all recognize that the national needs are far greater than the resources available to meet them.

And so we have adopted this time, as we have in previous years, a method of modifying the reduction for those States whose circumstances change as reflected in the needs survey, a so-called hold-harmless formula, that says no matter what the needs survey identifies, no State will lose more than 15 percent of its previous allocation. So no State will encounter the prospect of at some future time seeing their program completely dissipated.

Was there objection previously to that? I did not hear it.

Does it make sense? I believe so. So do the members of the committee. So has a majority of this Senate and the House of Representatives in every year since we have taken this program up 13 years ago.

If the Senator suggests that we should abandon that concept and pursue strictly the needs survey, then he is saying to some States you cannot count on a viable program in the future because you might encounter a 50- or 60-percent decline. That is the first change we made.

A second point recognized in this formula as in virtually every other allocation formula distributing large amounts of Federal funds is that there must be a minimum level of funding for some States to operate a program at all and that some of the very smaller States require a floor of some kind; otherwise, they simply cannot have a manageable program. Some States could not even fund a single project in their State if we followed the needs survey exclusively.

So every time we have adopted a formula, it has included a floor of some kind, and so this formula does that. It says notwithstanding the needs survey, we are going to make certain that every State can have a clean water program, and so we are going to provide some minimum level of funding for the smaller States. That is a leveling effect, just as the hold harmless is, which prevents the larger States from suffering a precipitous decline.

We introduced this year a third leveling effect, again to try to have some continuity in the program, and that was that any of the smaller States, the so-called tiers 2 or 3 States which make up 20 of the 50 States that experience an increase in their allotment, could not under any circumstances have an increase greater than 20 percent over their last allocation. That, again, was to try to prevent wide swings in the program.

So what it says is that if you go down under the needs formula we are going to modify the decline by saying you will not go down over 15 percent; if you go up under the needs formula, we are going to modify the increase so you do not go up over 20 percent, to try to make the funds available to accomplish the formula.

Now are those unconscionable motives? Are those ignoble motives? They are open. They are public. There is nothing secret about them. They have been followed by Congress for 13 years in implementing this program.

But what happens is that when the result turns out unfavorably for some not getting as much money as they like, they come in and impugn the motives of those who are getting more and that would be fine if there were consistency in that. If we had heard protestations in 1981 about the unfairness of that formula, it might ring a little more true today. But we did not and they do not.

This is not a perfect formula. The Senator says politics is involved. Indeed it is. This is a political institution. This is a very complicated difficult area trying to deal with an enormous national need which far exceeds the ability of our resources to meet them with a fixed sum of money, $2.4 billion. I personally favored more. I was opposed to the administration

[*15650] policy of reducing it. But that is the level that we have.

So we struggled weeks to come up with a formula that reflected as best we could with all of our failings and imperfections, some reasonable degree of fairness, equity, and maintain continuity in the program.

This is what we have come up with. You will not hear from me any suggestion this is perfect. It is far from that.

But I will say this: If the needs survey represents the illusion of perfection, it is not, because this was compiled by human beings with just the same weaknesses and fallibilities that the people here have, and if we were to adopt the policy of applying this needs survey without the application of any judgment of our own, then what we are saying is we are not going to continue this program in several States, we are going to permit wide variations, with the tremendous disruption, of the program. Missouri will not get quite as much as it will have, but it will still be able to continue the program. If we just went to the needs survey, some States would have no program. I do not think that we should do that.

I think we have a reasonable compromise under all of the circumstances imperfect, but one that advances as best we can the objective of the act which, after all, is what the one thing we can all agree on that we really do want to clean up our Nation's waters, to continue the tremendous effort that has been made and to reflect the overwhelming commitment of the American people to clean water. We do not want to slip back. We want to move forward.

This committee compromise amendment offers the best opportunity to do that, and I urge the Members of the Senate to oppose the amendment of the Senator from Missouri.

Mr. LEVIN. Mr. President, yesterday I came to the floor, as the Senator from Missouri came to the floor today, extremely unhappy with the committee allocation which provided tiers to give to smaller States, about 20 of them, disproportionate benefits under this bill. The committee not only had tier III, which is the traditional guarantee of one-half of 1 percent, as my friend from Rhode Island said, but the committee also created a new tier called tier II, which guaranteed the folks between one-half and 1 percent of the national need that they would also have a minimum floor under their particular allocation.

Under the original committee formula, in tier III, there were 13 States, representing 3.7 percent of the national needs as determined by the EPA but guaranteed 8.5 percent of the authorization. In tier II, there were 7 States representing about 6.1 percent of the national needs determined by the EPA but allocated 9 percent of the authorization for reasons which my friends from Rhode Island and Maine have indicated.

I am, frankly, just as unhappy and continue to be just as unhappy about this kind of special treatment for smaller States in this body as my friend from Missouri is.

We fought hard yesterday on the motion to proceed. We did something rather unusual. We not only came and protested, as the formula should be protested, but went beyond that and debated at length the motion to proceed to signal to our friends who benefit disproportionately that we are so unhappy with this arbitrary positioning of the smaller States that we intended to debate this at length. Senator DURENBERGER and Senator MOYNIHAN indicated that their amendment would be forthcoming if we got to the bill and we counted votes. We not only looked at the equities, which are critical, but we also counted votes. At least my count was that we had no chance of prevailing on what we viewed to be a clearly equitable position, which would have avoided the new creation of a second tier of smaller States and doing something which we had never done before that I know of -- creating a floor for the people who are at onehalf of 1 percent to 1 percent of the national need, but guaranteeing them in excess of their EPA assessed needs.

In counting the votes, we decided that we did not have them and so we decided to negotiate with the floor managers of the bill and the chairman of the committee to see if we could not move toward a fairer allocation. We have moved toward a fairer allocation. We have moved about $195 million closer to a fairer allocation, so that the tier I States gain, in the committee amendment which has been proposed now, $195 million, which is taken away from the tier II and tier III States.

My friend from Rhode Island has said that to do this some States will decline precipitously in what they get. I think what he means, and he would acknowledge what he means, is that they decline precipitously from the tremendous increases in the committee bill, not current law. And, in fact, there are a number of States which lose from their current position under the committee proposal. Not much in many cases; somewhat in other cases.

Most of us that benefit from this new proposal benefit very moderately. About all you can say about the committee proposal as it is now being offered is that those of us which were disproportionately hurt under the committee proposal are hurt somewhat less under the version which is now on the floor.

So the proposal now being offered is better than what the committee originally offered, from our perspective. Whether or not we are right that we did not have the votes to carry a Durenberger-Moynihan proposal, we will know fairly soon when there is a vote on the amendment of my friend from Missouri.

I totally share the concerns that he has expressed about the superpositioning of smaller States in this body and on this bill. I am also very much worried about the precedent which might be set by this particular bill.

I have told my friends, the floor managers and the chairman of the committee, that I would like to ask them about that point. Would they agree that it is not intended that this formula as offered, or if amended, it is not intended to create a precedent for other bills or for later formulas under this particular act?

Mr. CHAFEE. I can speak with no equivocation that if the amended proposal of the Senator from Missouri were adopted, that would set no precedent whatsoever for us. I can also assure my good friend from Michigan that this formula that we have suggested here, the so-called compromise formula, is not going to set any precedent for the future.

First of all, when we get to the next round, it may well be there will be a whole group of different Senators dealing with this matter, so we cannot lock them in in any way. Second, there will be a new needs survey before us at that time. Third, we are not sure what amounts of the funds we will have.

Of course, the funds would not be affected by the percentages in the formula the percentages would not be affected by the total amounts. But I can assure my colleague that, no, this sets no precedent that is in stone for the future.

Mr. LEVIN. I realize, of course, as we all do, that we cannot bind future Congresses. That is not my question. We know different Senators will vote on other formulas in other bills and indeed on later formulas in this bill. I am talking about the percentages, not the needs formula, but the percentages which are allocated. My question is, basically, will you, both the floor managers and the chairman, will you be citing this formula, however we end up amending it, as precedent for other bills or for later formulas under this act?

Mr. STAFFORD. I can respond to my good friend from Michigan, if he will yield for that purpose, by saying, speaking personally and as the present chairman of the committee, I would not be using this as a precedent for other laws or consider it any precedent in any future changes or proposed changes in the formula under this program.

Mr. LEVIN. I thank my friend. I am wondering if I could also ask my friend from Maine whether or not he would also indicate that it is not his intention

[*15651] to argue this formula as a precedent for other bills or for later formulas under this act.

Mr. MITCHELL. Mr. President, as the Senator understands from the exchange we have had in the last few days, the precise mechanics of the formula are intended to represent certain principles that we attempted to establish. I believe in those principles and will, of course, be pursuing them at any future time. But it is not my intention to suggest at any time that, because we have adopted this formula now, it somehow is a precedent for future action.

Now I want to say that if, 5 years from now, I or anyone else concludes, after looking at the needs and looking at the principles, that this or some other formula is the best way to proceed, we can do that on the basis of the merits at that time. I do not want to foreclose myself from ever again supporting this formula.

But my concern is with the principles. So I think I can assure the Senator that any attempt to apply a formula, this or others, at any future time should be based upon the circumstances at that time and not upon the fact that this was used at a previous time.

Mr. LEVIN. I thank my friends for those assurances. Again, I wanted to indicate that at great length we have battled on this issue because of the reasons set forth by my friend from Missouri. I happen to share his beliefs in terms of the superpositioning of the smaller States under this bill. It is becauseI share those beliefs, and a number of others of us share those beliefs, that we did yesterday debate at great length the motion to proceed.

Because of that we negotiated an improvement. We know it is an improvement over the committee bill. If the basis for that negotiation is correct -- we did not think we had the votes on the Durenberger-Moynihan approach -- we will find soon enough whether that basis was correct, and we can then move to what is an improvement over the committee position as a result of the amendment which has just been offered. I want to thank my friends from Maine, Rhode Island, and Vermont, the chairman of the committee, for their cooperation in trying to meet some of the needs which have been expressed on this floor, and to achieve a fair version of this when it first came to the floor.

Mr. RIEGLE addressed the Chair.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The senior Senator from Washington.

Mr. GORTON. Mr. President, I rise in support of the compromise amendment which would establish a new allotment formula for distributing construction grant funds and State revolving fund capitalization grants among States for the fiscal years 1986 through 1990.

I am particularly pleased to note that, under the revised allotment formula contained in the compromise, the State of Washington would receive almost $68 million. That would be a $25 million increase over the construction grant funds received by Washington State in the current fiscal year, the second largest increase of any State.

The allotment formula is based fairly on each State's needs for sewage treatment facilities, as expressed in the 1984 needs survey, with only minor modifications. This survey, conducted by the Environmental Protection Agency, accurately determined the needs for publicly owned treatment works in the State of Washington. And the needs are staggering.

Within the last year, over 25 publicly owned treatment facilities located on Puget Sound in Washington State received orders to proceed with implementing secondary treatment at a cost of over $750 million. The State of Washing-

ton is firmly committed to implementing secondary treatment as expiditiously as possible, and the allotment formula contained in the compromise will go along way toward assisting the State in reaching this goal.

I am delighted with the work of the distinguished floor leaders on this subject, and with the justice of the revised formula.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Mr. President, I think the main difference between the Senate and the House is proportional representation. In the House, there is a Member of Congress for roughly every 525,000 people in the country. So in the aggregate of 435 Members, you get a composite view and voting strength expressed for the country that reflects that proportional representation. Here in the Senate we have quite a different aggregate. We have two Senators from each State without regard to population, and so the aggregate strength of the large population States is much, much less here in the Senate by the very engineering design of the institution.

So we often find that even though a majority of the national population may be in a small number of States that are affected a certain way by national formula, the greater voting strength of a larger number of smaller States with their same two Senate votes as the larger States enables them to have a bearing on the outcome of composite decisions in a way that increases their strength very markedly. It is just a fact of the way this body is put together. So it does limit, I think, the ability for needs assessments, however they are done, to necessarily be agreed to on the basis of how they actually fall by population, density, or even for that matter by the size of States or regions.

Having said that, I very much appreciate the good-faith effort that went on yesterday and today in attempting to negotiate a compromise on this difficult issue. I think we have made some progress. When a formula is under discussion here in the Senate, we all feel obligated to protect the interests of our own States. But as I and my colleague from Michigan have pointed out, we also have a responsibility to take a broader look at what is fair, what is just on a coast-to-coast basis, and what in the end constitutes sound national policy.

I also think we have to give very particular consideration to the impact of these kinds of decisions on unique and irreplaceable natural resources, such as the Great Lakes, which constitute over 95 percent of the surface fresh water resources of our country. While the compromise that has been worked out over the last 2 days marks a gain for Michigan and the other Great Lakes States, as I think it properly should when related to need, I have to also say that I am disappointed because the compromise that has been developed today does not go even further in putting our resources where they are really needed. In that sense, I have some sympathy for the amendment, and the initiative of the Senator from Missouri. That amendment would on the face of it be more beneficial to my State. But I think it comes at a time and in a form where it does not promise a successful way forward for us.

I think the best we are able to do with what we have achieved over the 2 days from where we started is about all that can be accomplished here unless we are able to accomplish more in the Senate-House conference, which I would be delighted to see.

So while I appreciate and would like to see the Senate in a position to approve the formula arrangement that would produce the results the Senator from Missouri is asking for insofar as it would affect my State, I do not think it is in the cards for the reason that I have described. I do not think it is something that we ought to be diverted by at this particular time, however attractive it may be.

I think it is important that despite whatever reservations any of us have we not delay the Clean Water Act any longer. This legislation is essential for continuing the progress that has been made in improving water quality across the country. We also have an obligation to the people of our country who want strong and effective clean water laws to take action against toxic discharges and to begin to tackle the problem of nonpoint pollution sources, which the bill wisely does. I also

[*15652] strongly support the Great Lakes title in this bill which I discussed at some length yesterday. This section will strengthen efforts to study and protect this important resource.

I commend this initiative. In particular, this provision will take important steps to reduce nutrient loading of lakes and to study whether toxic sediments can successfully be removed from lake bottoms. I am especially pleased that the committee has acknowledged the importance of the Great Lakes to our country, and has been willing to help us bring attention to their problems by including this provision in the bill.

In conclusion, although I still have reservations about the formula for the construction grants program, and hope that the committee will continue to take our concerns into consideration, I am prepared to support this legislation this afternoon. I believe the debate yesterday and today, the work over the past 2 days, made important improvements in the bill.

I yield the floor, Mr. President.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I have been carefully listening to the debate trying my best in a sense of understanding and desiring to see the best in the other side's argument, and to understand exactly what that argument is. As I understand the argument that was put forth by the Senator from Maine, it is that maybe the system is unfair. but life is unfair. It has always been unfair. There is a precedent of unfairness, and the precedent of unfairness creates an inertia of unfairness, and that inertia cannot be changed. Furthermore, there are small States, as I understand both the Senator from Rhode Island and the Senator from Maine, that could not operate on the basis of the EPA formula. Therefore, we cannot cut back to the EPA formula and keep programs going in those States.

Sitting here listening to those arguments, I wonder why do we have an EPA. Why do we have a survey of need? Why waste the time if the decision is going to be political? I do not know. Maybe when we are analyzing how to cut waste out of Government, we could consider cutting out a whole part of an agency making the study which is going to be summarily ignored by the Congress of the United States. I will not suggest that. I would suggest following the recommendations of professionals, of those who have made the environmental analysis. If you ask them what to do and they tell you what to do, do it. Do not ignore it.

But the issue is raised, and the point is made by the Senator from Rhode Island and the Senator from Maine that, well, you have to have a kind of critical mass -- it is my understanding of the argument -- in the program for the small States, and that is why you have to doctor the formula.

Mr. President, if that argument is correct -- if sewage treatment needs are not measured by population are not measured by need, but are measured solely by the geographical boundaries of States, and if in fact that is the argument for doctoring the EPA formula -- then that is an argument for continuing the status quo of the doctored formula, not doctoring it yet further.

That is an argument for current law, not for this bill.

If current law, going back, as the Senator from Maine has argued, for 12 years or so has never provided that the EPA formula is followed, then that is an argument for continuing the same doctrine that we have now, but sweetening the pot yet further.

The so-called compromise that is before the Senate now is not a continuation of the status quo. It is not the principle of inertia built up in presently existing unfairness.

Rather, it is a further change of the formula, and it turns out that the further change of the formula benefits the States of 12 members of the Environment and Public Works Committee and disadvantages the States of 3 members of the Environment and Public Works Committee.

Mr. President, we are dealing with a frozen program. The money spent under this program is frozen. It is not going to be increased. The pie is the same. What the committee is proposing in this so-called compromise is not an expanded pie but the same pie, and they want to recut it. They want to recut the pie, not to maintain the status quo, as unfair as it may be, on some theory that geographical boundaries should be the basis rather than where people live and where plants are, and so on.

Their theory is small States have to have this critical mass, but that is an argument for the law as it now exists, not for the law as it has been changed.

Mr. President, the Senator from Rhode Island said if I had a better idea I should propose it. I do have a better idea and I proposed it.

The better idea is the EPA survey. Does the EPA survey make more sense than the formula that has been used by the committee?

Let me read a part of the formula that is used by the committee and ask what sense it is. This is from the speech of the Senator from Rhode Island yesterday:

The allotment among States in this second group is based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithms of the actual needs of all the States in that group.

Senator LEVIN asked, is this going to be a model for the future?

The Senator from Maine said that he agrees in principle with this. As a matter of principle, he agrees, that the allocation formula should be based on the cube of the logarithm of the actual needs of a State as a fraction of the sum of the cubes of the logarithm of the actual needs of States in that group.

That is a new principle.

No; it is not. It is not new. It is an old principle. It is the principle of winning votes, winning votes by concocting some bizarre Rube Goldberg formula in order to come up with figures in order to please a majority of the members of the committee and then a majority of the Members of the Senate. And that is what they have done.

I repeat, it is inequitable and it is unconscionable.

Senator MITCHELL asked why did I not complain in the past. In the immortal words of RUSSELL LONG, I am against any combine of which I am not a member.

Mr. President, I think Senator RIEGLE made a very good point. The clean water bill has to be passed, as unfair as the formula is, and it is grossly unfair. Delay is not to the advantage of anybody.

One thing about these allocation formulas is when they have finally done the job, as broad as they are, as inequitable as they are, they are done in a way which has a majority of the Members of the Senate behind them. So I have no doubt at all that if this were put to a rollcall vote, I would lose. And even if people stumbled in here and not knowing what they were doing voted for my allocation formula rather than the committee's, I am not a member of the conference. I am sure Senator STAFFORD. Senator CHAFEE, and Senator MITCHELL are members of the conference. So I have no illusion about the future of my proposal as a legislative strategy.

Therefore, Mr. President, I am willing to submit this to the Senate for a voice vote.

CLEAN WATER ACT SEWER GRANTS

Mrs. HAWKINS. Mr. President, I would like to express my appreciation to the Public Works Committee for their revision of the sewer grant allocation formula. Existing law was terribly unfair to Florida and other high-growth States -- we only received 64 percent of the funds needed to meet our share of the national need, while States with declining populations received up to 850 percent of their actual need.

The committee has revised that formula significantly. Although there is still inequity, Florida will now receive funds for 84 percent of our needs. This represents an increase, including the

[*15653] increase provided under the compromise formula, of $25,517.539 annually. There is a tremendous backlog of sewage projects in Florida, and this will add tremendously to our ability to deal with the situation.

Florida is the fastest growing State in the Nation. Over 20,000 people a month are moving into Florida. This is straining our ability to provide utilities to the breaking point. We desperately need help in meeting these needs.

The Census Bureau recently reported that Florida had 6 of the 11 fastest growing metropolitan areas in the country. Ocala's population increased 27 percent in the past 4 years, a gain of over 22,000 people; Fort Myers has grown 23 percent, or 58,000 people; Naples has grown 29 percent, or 32,000 people; Melbourne has grown 21 percent, or nearly 70,000 people; Fort Pierce is up 26 percent, or 49,000 people; and West Palm Beach has grown 20 percent, an increase of more than 138,000 people.

And again, this is in just the last 4 years. All of these areas, and most of the rest of the State, was largely rural only 10 to 15 years ago. Many areas, including growth areas, are still installing septic tanks to accommodate the growth.

Florida still does not get its fair share of the funds. And while I understand the political and practical imperatives that prevent an overnight shift from the archaic present funding formula into one that fairly reflects the Nation's current needs, I want to serve notice that I fully intend to be here in 1990 seeking a needs-based funding formula.

Mr. BENTSEN. <FWPCA § 307> Mr. President, I would like to discuss several concerns regarding the pretreatment program in the Clean Water Act with the manager of the bill. It is my understanding that one of the purposes of the pretreatment provisions of the act is to require pretreatment of industrial waste discharges to a POTW in order to prevent the discharge of wastes which would adversely affect the treatment processes or the pass-through of specific waste products which the treatment processes are not designed to remove.

Mr. CHAFEE. <FWPCA § 307> The Senator from Texas is correct. You have accurately described one of the primary purposes of this section of the Clean Water Act. Because industrial wastewater is mixed with large volumes of domestic sewage in typical municipal POTW's, general pretreatment requirements are included in the act to assure that industrial discharges into POTW's are treated prior to dilution by the domestic sewage.

Mr. BENTSEN. It is my understanding that privately owned industrial wastewater treatment facilities that directly discharge to a receiving body instead of through a POTW are not subject to categorical pretreatment requirements <FWPCA § 307>. Instead, the national pollutant discharge elimination system permitting process is designed to protect our waterways by imposing BAT discharge limits on these direct discharge industrial plants to specifically regulate their pollutants <FWPCA § 402> <FWPCA § 301>. These privately owned plants must be designed and operated to meet their permit requirement, but the owner of the plant determines what mix of treatment requirements it needs to meet the permit. Such a requirement could result in the construction of expensive, yet redundant, physical facilities with no attendant benefit to the environment.

Mr. CHAFEE. The Senator is correct; pretreatment is not required for privately owned, direct discharge industrial wastewater treatment plants <FWPCA § 307>. It is the permitting process and effluent limitation guidelines that controls these dischargers <FWPCA § 402> <FWPCA § 301>.

Mr. BENTSEN. In Texas we have regional industrial wastewater treatment plants which treat the industrial wastewaters they receive and are regulated by industrial-type permits. These facilities only treat the industrial and attendant nonindustrial wastewater from indirect discharges; however, they are owned by a public authority. Despite the fact that they only receive attendant nonindustrial sewage from the plants that discharge into their system, they are considered POTW's. Because of the uniqueness of the industrial wastewater treatment system I have described, would the Senator agree that EPA should consider them in a different context than a typical municipal POTW which may perhaps require different action consistent with what it would require from privately owned facility?

Mr. CHAFEE. The Senator from Texas makes a good point. EPA should use discretion in its application of pretreatment requirements, particularly removal credits, to the very limited number of POTW's which solely serve industrial dischargers <FWPCA § 307>.

EPA has available the option of creating a subcategory to address these relatively unique operations and could explore that option in this type of case.

CONSTRUCTION GRANT FORMULA

Mr. MATHIAS. Mr. President, the construction grant program of the Clean Water Act, since its enactment in 1972, has made a significant contribution to controlling the volume and pollutant levels of wastewater entering our Nation's streams, rivers, lakes, and estuaries. Pollutants discharged by municipal wastewater treatment plants built by this program are estimated to have decreased 46 percent since 1972.

A total of $42.7 billion has been appropriated under the Clean Water Act since its inception for constructing and upgrading plants and improving the treatment of wastewater flowing through them; in correcting leaking sewer pipes; constructing new interceptor sewers to connect to treatment plants; rehabilitating old main sewer systems; correcting combined sewer overflows; and constructing collector sewers to serve new growth.

This is a large number, but then, so is the current need -- estimated to be $108 billion. Of that amount, $40.6 billion is eligible for Federal funding under the construction grant program.

Now it doesn't take a mathematical genius to figure out that the current $40.6 billion need will be barely touched by this authorization of $2.4 billion for construction grants, the same level of funding as the past 4 years. Even when the significant shift in cost-sharing to the States, which now carry 45 percent of the cost of these projects, is taken into account, it is clear that we have a long way to go as a nation in meeting our goal of "fishable, swimmable" waters.

In my own State of Maryland, for example, the Governor has recommended to the legislature a total of $263 million in cost-sharing for the next 6 fiscal years to complement the Federal share. And yet the committee formula for the next 5 fiscal years -- which is all that is authorized -- assuming the maximum appropriation, would provide only $185.6

million to Maryland. That's $50.4 million less than Maryland's commitment and 1 year less of funding. So the States are doing their share in this concerted effort to assure that our Nation's waters are clean enough in which to swim and fish.

Our Nation's waters are cleaner and more protected from pollution thanks to this landmark environmental legislation.

Significantly, the American public supports this expenditure and they support strict adherence to clean water and clean air standards in order to assure a safe environment. A November 1983 Louis Harris Associates poll found that 91 percent of Americans wanted the Clean Water Act maintained or strengthened and 70 percent even expressed a willingness to pay an additional $100 per capita to ensure that the water quality of our Nation's waters is maintained. Mr. Harris, in testifying before the Senate Subcommittee on Environmental Pollution, also reported his findings that 74 percent of Americans believe that curbing water pollution is as important as generating economic growth.

So the weight of public opinion clearly is on the side of reauthorizing a Clean Water Act with continuing strong water quality goals and standards and with programs to meet our Nation's most serious water pollution

[*15654] problems. Accordingly, I commend the Committee on Environment and Public Works for bringing this reauthorization before the full Senate.

I do take exception, however, to the proposed formula for allocation of construction grant moneys. I am one who believes as the proverbial New England farmer said, "If it ain't broke, don't fix it."

The committee has not provided us with an explanation of what is wrong with the construction grant formula in current law. As far as I have been able to determine, the committee bowed to pressure from certain States with relatively small needs in order to give them more than their "fair share." In addition, the committee has devised a class system of States and invented a new term of art -- the "tier." Those States which, under current law, are assured a certain minimum level of funding through a "hold harmless" provision are divided into tier II and tier III. The remaining 38 States with more than 90 percent of the total aggregate need are now called tier I.

Pursuant to the 1984 EPA needs assessment, the tier II and tier III States have a total of 9.6 percent of the construction grant needs. Yet the Durenberger/Chafee formulation before us would provide them with more than that needs percentage. The remaining States have 90.3 percent of the need, but a number of them would receive less than their needs percentage. This is neither fair nor representative of wise public policy from a clean water standpoint.

The problem of deteriorating water quality is a national one and will continue to be so for the foreseeable future. Watersheds know no State boundaries and the vast majority of our water quality problems are of an interstate, regional nature <FWPCA § 208>.

It is only because the needs are so great, and the program to meet those needs so small in comparison, that we find ourselves groveling over the Federal share each State will receive. It is only because the needs are so great, and the program to meet those needs so small in comparison, that we have to resort to hold harmless provisions and logarithms in funding formulas.

<FWPCA § 117> There is a need to continue the Federal commitment to the States cooperating in the EPA Chesapeake Bay Program. This program is recognized nationally as a model of intergovernmental cooperation in attacking water pollution problems of an interstate watershed.

The States of Pennsylvania, Maryland, and Virginia, and the District of Columbia have worked diligently to develop appropriate pollution abatement measures for both point and nonpoint source pollution that is degrading the water quality of Chesapeake Bay. These measures are intended to go hand-in-hand with the construction grant program. A reduction in such funds because of a change in the distribution formula at this critical juncture would abrogate the Federal commitment to the bay program, which the President himself has lauded in his State of the Union Address. EPA Administrators in this and previous administrations have recognized the value of the bay program's scientific data and the emerging strategies of the States to meet identified problems. A sharp reduction in funds would threaten to undo the delicate interstate agreement and working relationships between and among the bay States.

I believe the construction grant formula should provide for a fair distribution directly related to needs, imposing an element of shared sacrifice for all of the States, while moving us as a nation toward our national clean water goals.

Mr. GRASSLEY. Mr. President, I rise as the cosponsor of the amendment offered by Senator DANFORTH to replace the allocation formula in this bill with one that is fair and equitable. All my colleagues are aware that the alloca-

tion formula created by the Environment and Public Works Committee is skewed to benefit the States represented on that committee, at the expense of those not so fortunate. This amendment, however, changes the formula to reflect the most accurate and complete measure available to evaluate the wastewater treatment needs of States -- the 1984 EPA needs survey.

I agree with my colleague from Missouri that this needs survey provides a more rational basis for Congress to make a determination on how to use these funds, rather than the political, parochial efforts of the committee. It would not result in the gross inequities created by the committee formula where States receive up to five times their estimated percentage of national needs. It would put Federal funds where the funds are needed. Where Iowa's needs, for instance, would represent 0.015061 percent of the national need. Iowa's percentage of total funding would be the same.

Mr. President, I am greatly disappointed by the committee formula which is so blatantly constructed to benefit small States and which short-changes many States with greater needs. The State of Iowa itself loses $3 million through this formula. Yet if this amendment were adopted funds would be allocated on true need, not politics, and Iowa would experience a $3 million increase.

But more importantly, we would be using fairness as our basis for allocating funds and not a cleverly crafted plan to benefit a majority of States in both the committee and on the Senate floor. In these days of limited resources, we must not fall prey to unconscionable tinkering with numbers to benefit select States over others. I recognize that the formula that Senator DANFORTH and I offer doesn't benefit as many States as that offered by the committee, and I am sure that my colleagues will vote their pocketbooks rather than for a plan that treats all States equitably and fairly. I do urge them, however, to support this more responsible alternative formula for allocating funds under the Clean Water Act.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 343) was rejected.

Mr. GRASSLEY. <WQA87 § 515> Mr. President, I would like to bring to the attention of the committee and my colleagues an unusual situation with respect to the Des Moines metropolitan area wastewater treatment project.

For the past 13 years, the city of Des Moines and 11 other local jurisdictions have moved forward on the planning and preliminary work for an area-wide sewage project. These communities comprise the only metropolitan area in the State of Iowa required to conform to the requirements of a section 208 <FWPCA § 208> planning study. During this study period, the jurisdictions have spent over $30 million and the overall project cost has doubled. We now have a project that is the State of Iowa's highest pollution priority, but one that is so large that it would completely disrupt any funding for the State's other 200 cities with over $500 million in needs. Additionally, the State of Iowa has imposed a cap on State funds which will contribute to an estimated extension of the project completion to 14 years.

Mr. CHAFEE. <WQA87 § 515> May I interrupt my colleague from Iowa to say that I am aware of the Des Moines area wastewater treatment project situation and the strain that this costly project puts on other communities in the State seeking to comply with clean water standards.

Mr. GRASSLEY. <WQA87 § 515> The House of Representatives has included in its Clean Water Act reauthorization bill a direct authorization not to exceed $85 million for construction of the central sewage treatment plant component of the Des Moines metropolitan area project. I recognize that the Senate's reauthorization bill includes no categorical authorizations for specific wastewater treatment projects. I would hope, however, that when this measure goes to conference committee, the Senate will look seriously at the inclusion of this authorization for the Des Moines area in the final bill.

Mr. HARKIN. <WQA87 § 515> I would like to associate myself with the comments of my colleagues from Iowa. We want to ensure that the Des Moines metropolitan area sewer project stays on sched-

[*15655] ule without affecting funding for other Iowa communities building wastewater treatment facilities to meet EPA standards. With this authorization, we could complete this project in 9 years rather than 14 years and continue to provide funding for other State needs. Delaying this project due to lack of funding will not only add additional cost to this project, but will also increase to an unreasonable level the user rates for residential sewer charges. It is my hope, as well, that the Senate will consider our request for maintaining this House provision in the final version of a clean water reauthorization bill.

Mr. CHAFEE. <WQA87 § 515> I thank the two Senators from Iowa for bringing this matter to the attention of this body. I assure you that the Senate conferees will take a close look at the Des Moines area sewer project and will give its authorization every consideration.

Mr. GRASSLEY. I thank the chairman for his consideration.

Mr. HARKIN. I also want to thank the distinguished committee chairman.

Mr. CHAFEE. Mr. President, if there is no further debate on the compromise formula as proposed by the committee, I ask for its adoption by a voice vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 342) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEVIN. Mr. President, yesterday on the Senate floor I argued that fairness was not present in the construction grant formula in S. 1128 as reported by the Environment and Public Works Committee.

It was my feeling that, in a very arbitrary manner. States with large needs received too little and States with small needs received too much under the committee formula.

The amendment which we are now considering is fairer than the committee bill. The amendment is fairer because it caps the arbitrary increase for small States at 20 percent but does not eliminate it. The result is that the larger States still pay for the arbitrary increase but their payment is $195 million less over 3 years because of this amendment.

The committee report states that the allotment formula in this bill is based on each State's needs for sewage treatment facilities as expressed in the 1984 needs survey. But while the committee says that the EPA needs survey is the basis, the bill itself skews the allocation with a number of floors and guarantees that benefit certain States. In particular, the smallest half of our States with 25 percent of our population do better than they should solely because of their size. That is wrong. The other half of the States with 75 percent of our population pay for this inequity. It has crept into many of our formulas because of the fact that the Senate is based on two votes per State. We cannot totally correct the arbitrary nature of the committee bill in this amendment. We can only partially correct it. The votes do not exist to totally correct it on the Senate floor. This amendment which partially corrects it is the far better alternative to nothing. It is also important that the chairman and the floor managers have assured me that they will not argue the small State formula in this bill as a precedent for other bills or for later formulas under this act. I thank them for working with us to alleviate at least some of the problems that the committee bill originally created. I cannot say I hope the Senate prevails in conference since I obviously hope it will not. But I do say that because of this amendment it is more likely that the conference will reach an equitable solution for all States and that is why I support this amendment.

Mr. President, I want to thank the floor managers of the bill and state the following: I want to thank my friend from Rhode Island, my friend from Maine, and my friend from Vermont for working with us to try to ameliorate some of the problems which we saw in this amendment, and to say that while the Senator from Missouri, as I indicated, I felt had the basic points that I obviously shared, I would have voted against that amendment and would have voted with the compromise of the committee, had that amendment been put to a rollcall vote because I do feel that the compromise of the committee has, in fact, reflected at least to some extend the concerns that many of us have reached. I want to thank the chairman and the floor managers for their work on this bill.

Mr. MITCHELL. Mr. President, if I may, I want to commend the Senator from Michigan for the very diligent and vigorous manner in which he has pursued his points of view, representing very carefully the interests of his constituents, along with the Senator from New York [Mr. MOYNIHAN], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from California [Mr. CRANSTON]. They were vigorous advocates of their position. We are pleased that the matter has been resolved. While it may not be wholly to their satisfaction, I believe it does represent a significant step forward in our goal of cleaning the Nation's waters.

Mr. CHAFEE. Mr. President, we are waiting for the junior Senator from Wyoming.

Mr. STAFFORD. Mr. President, in the interim, I wonder if the able Senator from Rhode Island will yield to me very briefly.

Mr. President, we are getting near the end of the consideration of the Clean Water Act Amendments of 1985. While we are waiting for possibly one additional matter to be disposed of in connection with the legislation, I should like to take this opportunity as chairman of the full committee to express my appreciation to the two members of the committee who have so ably managed the bill on the floor of the Senate and who conducted the hearings that developed the bill with care and distinction. I am grateful to them for all that they have done to bring us successfully to this point. I offer my thanks to Senator CHAFEE and Senator MITCHELL for an extraordinary job, and to members of the staff on both sides of the aisle who have contributed mightily to getting this bill to this point.

Mr. CHAFEE. Mr. President, I express our appreciation to the distinguished chairman of the full committee. Although he was not directly involved with this particular subject, when we arrived at difficulties we all turned to him to mediate, to compromise, to come up with a solution. He inevitably did that with skill and satisfaction to those involved. So we are very, very grateful to the distinguished Senator from Vermont, and also the ranking member of the committee, Senator BENTSEN of Texas, who was always helpful, always available for his advice and did an excellent job.

I also join in thanks to the staffs of both sides for the work they did. Without their deep knowledge of this program, which is incredibly complicated, we could not have arrived at the solution that seems inevitable. We are not home yet, but we are getting there.

Finally, I thank my colleague, the distinguished Senator from Maine, who was so effective in not only resolving some of these problems but advocating them. I once heard somebody say in describing an articulate spokesman that he could "talk a dog off a meat wagon." Well, I feel that Senator MITCHELL of Maine falls in that category. He is very, very persuasive, as we saw in his actions today. I am grateful to him for the constant assistance, constructive suggestions, and strong advocacy which he has given to this bill.

Mr. MITCHELL. I thank the Senator, Mr. President, for his remarks, inelegant as the example may have been. I associate myself with the remarks of the Senator from Vermont

[*15656] and the Senator from Rhode Island regarding the work of the staffs on both sides. I commend the two chairman of the full committee and subcommittee, as well as the ranking member, Senator BENTSEN of Texas, for their outstanding leadership in helping to move this important legislation forward.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DENTON). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 344

(Purpose: To exempt pollution subject to the Colorado River Basic Salinity Control Act from the interstate dispute resolution provisions)

Mr. WALLOP. Mr. President, on behalf of myself, Mr. HATCH, Mr. ARMSTRONG, Mr. WILSON, Mr. HART, and Mr. SIMPSON, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP], for himself and others, proposes an amendment numbered 344.

Mr. WALLOP. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 60, line 2, after "nor" insert "shall this subsection or section 402(d)(2)(B) or section 402(b)(1)(E) apply".

On page 60, line 2 and 3, strike out "Colorado River Salinity Control Act of 1974" and insert in lieu thereof "Colorado River Basin Salinity Control Act".

Mr. WALLOP. Mr. President, by this amendment to section 511(e), pollution which is subject to the Colorado River Basin Salinity Control Act of 1974 (Public Law 93-320) is fully exempted from the interstate dispute resolution provisions of the 1985 clean water amendments, section 117 of the bill. Is is a technical amendment.

This exemption is appropriate and necessary because salinity in the Colorado River Basin is being addressed basin-wide through a State/Federal process which the Congress has acknowledged and fostered since passage of the 1974 Salinity Control Act.

Under titles I and II of that act, the United States is proceeding with a number of salinity control projects, which are a part of the Colorado River Water Quality Improvement Program of the Secretary of Interior. The Colorado River Basin salinity control forum, composed of the seven Colorado River Basin States -- Wyoming, Utah, Colorado, New Mexico, Arizona, Nevada, and California -- meets frequently to discuss and formulate measures to address point and nonpoint sources of salinity. The forum was specifically established as the mechanism for airing and resolving interstate differences regarding salinity control in the Colorado River Basin, should differences arise. In 1978, 1981, and 1984 the forum reviewed and approved Colorado River water quality standards for salinity, including numeric criteria and plans of implementation for salinity control, in conformity with section 303 of the Clean Water Act. The forum works closely with the Secretary of the Interior and EPA administrator. The seven Colorado River Basin States, through their duly established water quality control agencies, have consistently adopted the forum's plans and recommendations, and these have been accepted by EPA over the years.

The 1974 Salinity Control Act, the efforts of the Secretary of Interior and EPA administrator, and the salinity control forum have together formed the model for interstate dispute resolution. Since an explicit mechanism exists to address both point and nonpoint sources of salinity pollution in the Colorado River Basin, this amendment is meant to ratify the cooperative work of the Secretary of the Interior, the EPA administrator, and the forum and to provide a specific exemption from the interstate dispute provisions of the 1985 Clean Water Act amendments, section 117 of the Senate bill, in the interests of continued interstate and State/Federal cooperation in Colorado River Basin salinity control.

Mr. CHAFEE. Mr. President, this amendment by the distinguished Senator from Wyoming has been discussed with the Members of the majority, and we think it is a fine amendment and urge its adoption.

Mr. MITCHELL. Mr. President, we have no objection to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 344) was agreed to.

Mr. WALLOP. Mr. President, I thank the managers.

I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 345

Mr. MATTINGLY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY], for himself, Mr. WALLOP, and Mr. NUNN, proposes an amendment numbered 345.

Mr. MATTINGLY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

<FWPCA § 402> At the end of the bill, insert the following:

SEC. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(m)(1) Following the date of enactment of the Clean Water Act Amendments of 1985 and prior to October 1, 1992, the Administrator or the State (in the case of a State with a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater, other than (A) those associated with industrial activity or a municipal separate storm sewer, or (B) those for which the Administrator or the State determines that the stormwater discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Prior to October 1, 1988, the Administrator, in consultation with States with a permit program approved under section 402 of this Act, shall submit to the Congress the report of a study (1) to identify stormwater discharges or classes of stormwater discharges for which permits were not required pursuant to paragraph (1) of this subsection, and (ii) to determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. Prior to October 1, 1989, the Administrator, in consultation with States with a permit program approved pursuant to section 402 of this Act, shall submit to the Congress the report of a study setting forth procedures and methods to control stormwater discharges to the extent necessary to attain and maintain water quality standards.

Mr. MATTINGLY. Mr. President, I offer this amendment on behalf of myself, Senator WALLOP, and Senator NUNN.

<FWPCA § 402> Mr. President, the amendment which I have sent to the desk deals with a subject upon which there is a great deal of agreement. But, as we all know, it is sometimes more difficult to deal in arriving at the precise language which will implement the agreement in principle. That has been the case with this effort, but I am glad to say that we appear to have finally reached that point of agreement. For that I wish to thank the distinguished Chairman of the Subcommittee, Senator CHAFEE, and Chairman STAFFORD of the full Committee. I also commend the other committee members who have helped craft the final wording for this amendment and extend to them my personal thanks.

<FWPCA § 402> This amendment deals with how we are going to treat stormwater runoffs which are not in any way contributing to the degradation of water quality standards. Most sensible persons would say that if the runoff is not impairing a water quality designation or significantly contributing to water pollution, then we should not waste time and scarce financial resources requir-

[*15657] ing these sources to be permitted along with those sources which do contain significant levels of pollutants. Frankly, to do so would seriously threaten our efforts to attain and maintain water quality standards because the regulators would be literally swamped under a mountain of paperwork. They would thus be prevented from focusing their full attentions on those discharge sources which really need regulation and treatment.

<FWPCA § 402> The amendment does not exempt from permitting any rainwater or snowfall precipitation which is directly associated with and contaminated by an industrial activity. It applies only to the runoffs which by their very nature do not violate water quality standards or which do not comprise a significant source of pollution to the waters of the United States. It is indeed a giant step forward in the progress of the original intent of the Clean Water Act because it will enhance our ability to deal with the true sources of pollution.

<FWPCA § 402> This amendment will be effective through 1992 -- the time when we must reauthorize again the act. During that time, the amendment mandates that a thorough study be conducted by EPA. In conjunction with the States to more fully determine any of the additional sources which should be controlled and to what extent. In the instances where permits have already been issued to a facility which would be exempted under the conditions of this amendment, such permits will simply not require renewal upon their expiration.

Again, Mr. President, I congratulate the managers of the bill on their expertise and for their efforts to resolve this important issue. I would now ask the Senator from Rhode Island if he is prepared to accept the amendment.

Mr. CHAFEE. Mr. President, I wish to congratulate the Senator from Georgia who has worked diligently on this and been persistent in pressing his amendment.

<FWPCA § 402> I do think it is important to note that industrial site includes the plant or plant-associated areas to conform to EPA regulations.

<FWPCA § 402> A municipal separate storm sewer does not include combined sewer overflows, which are considered publicly owned treatment works under the Construction Grants Program.

<FWPCA § 402> Finally, in determining what is a significant contributor of pollutants, the Administrator need not prove a violation of water quality standards or requirements. In making the determination, he may consider discharges in other permitted categories, the location of such discharges, the quantity and nature of pollutants reaching the water, and other relevant factors. However, he need not show a cause and effect relationship between the storm water discharges and water quality.

We find the amendment of the distinguished Senator from Georgia acceptable and would urge its passage from this side.

Mr. WALLOP. <FWPCA § 402> Mr. President, I would like to say that I share the views of my friend and colleague, Senator MATTINGLY, about the potential harm that overregulation can do. Although it is important that EPA do a good job in regulating the Nation's waters, I personally don't think we need a stormwater discharge permit for every parking lot, gas station, store, business, industry or home in America.

<FWPCA § 402> That is why I am so concerned about the regulations EPA has recently promulgated. They can be interpreted to require everyone who has a device to divert, gather, or collect stormwater runoff and snowmelt to get a permit from EPA as a point source. That is absurd.

<FWPCA § 402> One of the chief purposes of the Clean Water Act is to regulate the discharge of harmful pollutants from industrial processes. However, the act only regulates discharges from "point sources", which are generally defined as "discrete conveyances" such as pipes, or conduits and similar collectors. The act does not, for example, authorize EPA to regulate diffuse storm runoff or snowmelt running across an industrial facility. Nevertheless, EPA's stormwater runoff regulations interprets the term "point source" to include devices which gather, collect, or otherwise divert stormwater runoff or snowmelt. This is overbroad in its reach. As a consequence, facilities that would otherwise have no obligation to treat diffuse stormwater runoff or snowmelt, but which have constructed diversion structure to prevent this runoff from contacting process areas, or from flooding roads or lands, may be required to obtain an NPDES permit requiring them to treat stormwater runoff.

<FWPCA § 402> Requiring a permit for these kinds of stormwater runoff conveyance systems would be an administrative nightmare. It would also be prohibitively expensive to administer, not just from an agency's perspective, but from the point of view of compliance, as well. We should be encouraging States to administer NPDES permits, not chase them away.

<FWPCA § 402> Although the compromise which has been worked out is not what I would have preferred, nevertheless it is preferrable to going to conference with the only exemption in the bill being for oil and gas field operations. Oil and gas are important industries in my State. However, so is mining, and so are all the mom and pop stores across the Nation who are simply trying to earn an honest living.

<FWPCA § 402> I believe an honest effort has been made to work out a fair amendment that will curb needless regulation, and I would like to commend my colleagues from Rhode Island and Georgia for their hard work. It certainly is a step in the right direction.

Mr. FORD. Mr. President, I have not seen this amendment. I am very much interested in it. Would the Senator give me just a few minutes to look at his amendment before we go forward?

Mr. MATTINGLY. Yes.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I have no objection to the amendment of the Senator from Georgia.

Mr. CHAFEE. <FWPCA § 402> Mr. President, I wish to state that this is not intended to affect the validity or enforceability of existing storm water permits.

Mr. President, there being no objection to the Mattingly amendment, I move its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia [Mr. MATTINGLY].

<FWPCA § 402> The amendment (No. 345) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. MATTINGLY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

AMENDMENT NO 346

Mr. SIMPSON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for himself, Mr. STEVENS, and Mr. MURKOWSKI, proposes an amendment numbered 346.

Mr. SIMPSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

[*15658] <FWPCA § 309> On page 20, lines 5-6, delete "or the Secretary of the Army.".

On page 29, after line 21, insert the following new subsection:

<WQA87 § 314> "() The Secretary shall prepare and submit a report to the Congress, not later than December 1, 1987, which shall examine and analyze various enforcement, mechanisms for use by the Secretary, including an administrative civil penalty mechanism. Such report shall also examine, in consultation with the Comptroller General, the efficacy of the Secretary's existing enforcement authorities and shall make recommendations for improvements in their operation."

<FWPCA § 309> On page 20, line 11, add the following new sentence: "In addition to any other relief provided, whenever on the basis of any information available the Secretary of the Army finds that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary of the Army, the Secretary may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000."

(4) <FWPCA § 309> Insert "or the Secretary of the Army" immediately after "Administrator" on page 20, lines 15 and 18, on page 21, lines 1, 13 and 21, on page 22, lines 4, 7 and 9, on page 23, lines 1, 13 and 14, and on page 24, lines 4, 5 and 12.

(5) <FWPCA § 309> Insert "or Secretary's" immediately after "Administrator's" on page 20, line 19, on page 22, line 5, and on page 23, lines 19 and 22.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the opening statements of yesterday, at least my opening statement, appear in the permanent RECORD of today immediately after the motion to proceed with S. 1128, the Clean Water Act Amendments of 1985. I do not know who else had opening statements. I know the distinguished minority floor leader had a statement, but he can speak for himself. But for others who had opening statements, I ask

unanimous consent that they also be included in the permanent RECORD of today, although they were delivered yesterday.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that my statement appear in the permanent RECORD immediately following that of the distinguished manager of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I believe we have made substantial progress of the Clean Water Act reauthorization but I do have a remaining concern. That is -- I feel the bill as reported by the committee is overreaching with regard to enforcement of the section 404 <FWPCA § 404> program.

<FWPCA § 309> The committee bill would specify that EPA has authority to enforce section 404 <FWPCA § 404> of the act, even though this is a Corps of Engineers Program. There is simply no precedent for this dual authority.

<FWPCA § 309> The Justice Department released a letter yesterday, voicing opposition to this language. It simply makes no sense from the standpoint of orderly enforcement of a permit program. It is unreasonable to have duplicate enforcement authority regarding permit violations and I trust this will become ever more obvious to all Members of Congress.

<FWPCA § 309> The Department of Justice has taken exception to the language as well, and the White House has problems with the language.

I do not want to be obstructive, but it would seem that the language could be fixed by the deletion and inclusion of a few words.

I would point out -- for the clarification of other Senators and staff -- that the amendment is not the amendment I had originally intended to offer.

After receiving a letter from the Justice Department about problems with the committee bill and after consulting with other Senators, I have decided to offer new language.

<WQA87 § 314> The proposed amendment would add a new subsection designed to cause the Army Corps of Engineers to reevaluate the current enforcement program in order to derive a more effective way to deal with section 404 <FWPCA § 404> violations.

<FWPCA § 309> <FWPCA § 404> The language now in S. 1128 would allow the EPA administration to assess civil penalties for violations of permit terms or conditions under Section 404 which are issued and administered by the Army Corps of Engineers.

<FWPCA § 309> The amendment would not give EPA authority over violations of the permit itself.

<FWPCA § 309> EPA was not granted authority over the permit violations because it is simply unreasonable to have one Federal agency administratively enforce violations of another Federal agency's permit program. This is why the Department of Justice reports that "we are aware of no precedent for such an approach."

<WQA87 § 314> Under my amendment the Secretary of the Army is required to prepare and submit a report to the Congress, which will examine potential additional enforcement mechanisms, including an administrative civil penalty mechanism.

<WQA87 § 314> That report, due by December 1, 1987, will also carefully examine the corps' existing enforcement authorities. Working with the General Accounting Office, the corps shall also examine their existing enforcement authorities and develop new ways to improve them.

<FWPCA § 309> I believe revisions in the committee language are necessary because there are geographical variations with regard to wetlands. Wetlands in the East are very different from "prairie potholes" in Texas, or highland marshes in Wyoming.

<FWPCA § 309> Congress and Federal officials must be aware of these geographic differences in order to formulate workable laws and regulations. It is impossible to formulate "generic" environmental regulations that will apply equally to the real world that contains tremendous variability.

<FWPCA § 309> I believe this amendment will have the Corps of Engineers enforcing only the programs that the corps issues its permits for. The corps has had a great deal of experience with various types of wetlands, and by enforcement of the 404 <FWPCA § 404> program solely within the corps I believe the public will be better served.

Finally, Mr. President, I would like to acknowledge the contributions made to the formulation of this amendment by all the fine staff involved. This amendment would not have been possible without the ability, patience -- and persistence -- of Brent Erickson of my fine personal staff. I would also like to thank all of the staff of the Environment and Public Works Committee, and most especially to Jim Strock, a very bright and able counsel who has been of invaluable assistance.

Mr. President, the principals, the four managers of the bill, have agreed with the sponsors of this amendment as to the content of the amendment. I want to tell them that I deeply appreciate their assistance and their patience while we have worked through this rather intriguing issue.

<FWPCA § 309> I think the progress on the Clean Water Act reauthorization has been extraordinary. I commend Senator CHAFEE. Senator MITCHELL, and our good chairman, Senator STAFFORD, and also the ranking member, Senator BENTSEN. The essence of this amendment is to provide simply that under the permitting process of section 404 <FWPCA § 404>, instead of having a duality where we have a permit issued and then another agency enforcing the permit by administrative remedies, the purpose of the amendment is to state the Corps of Engineers will do the permitting, and they will also be involved in the administrative remedies and civil penalty mechanism.

<FWPCA § 309> That is the essence of the amendment. The authority and the procedures to the Corps of Engineers are the same as they are in the act with the EPA.

It does provide the same language as to the 5-year sunset provision.

With that, Mr. President, I move adoption of the amendment.

Mr. WALLOP. <FWPCA § 309> Mr. President, section 109(d) of the bill provides the EPA administrator with authority to levy administrative penalties. The committee's version of the bill allows such penalties to be imposed by the Administrator for violation of section 404 <FWPCA § 404> dredged or fill permits.

<FWPCA § 404> Under the Clean Water Act, section 404 permits are issued by the Army Corps of Engineers. Consistent therewith, section 404 places enforcement

[*15659] powers in the Secretary of the Army for violations of such permits. In the past, section 404 has been effectively enforced through the Secretary of Army's authority under the act.

<FWPCA § 309> <FWPCA § 404> In S. 53 we have increased the civil and criminal penalties available for enforcement of section 404 in court. There is no demonstrable need to add administrative penalty power in order to enforce section 404. The addition of administrative penalties would be a step in the wrong direction. Potential abuse of section 404 through administrative implementation of the program has been of great concern, particularly in the semi-arid States of the West where water project development is an ongoing necessity. The new administrative penalty authority of the EPA administrator is not properly applicable to permits which are issued by another agency.

<FWPCA § 309> The amendment crafted by Senator SIMPSON, CHAFEE, and STEVENS represents a middle that should remain workable in the real world and I would like to add my name as a cosponsor.

Mr. MURKOWSKI. <FWPCA § 309> Mr. President, I rise in support of the amendment by Senator SIMPSON that would prevent the EPA from assessing civil penalties for alleged violations of Corps of Engineer permits issued under section 404 <FWPCA § 404>.

<FWPCA § 309> Senator SIMPSON'S amendment would modify an astoundingly misguided provision of the committee's bill. This provision, added at the insistence of the EPA, has been vigorously opposed by the Corps of Engineers, and by the Department of Justice. The corps and the Department of Justice now have enforcement responsibility over section 404 <FWPCA § 404> permits. The EPA, however, is attempting to assert itself in the 404 <FWPCA § 404> enforcement process by suggesting that it be allowed to assess civil penalties.

As the Department of Justice asserts:

<FWPCA § 309> It simply makes no sense from the stand-point of orderly enforcement of an administrative permit program for one federal agency to administratively enforce violations of another federal agency's permit program. We

are aware of no precedent for such an approach, and we strongly urge that the Senate narrow the scope of EPA's administrative authority under section 404 <FWPCA § 404> by deleting the words "or the Secretary of the Army" from proposed section 309(g)(1) of the Act.

<WQA87 § 407> Mr. President, the Senate recently adopted an amendment offered by Senator STEVENS and myself that would force the EPA and the corps to agree to end needless duplication and time delays in obtaining 404 <FWPCA § 404> and 402 <FWPCA § 402> permits for log transfer facilities. As my senior colleague from Alaska so clearly stated in his statements in support of our amendment, the logging industry in Alaska consists typically of small businesspersons who simply cannot withstand the needless regulatory burdens placed on their operations by the EPA. They cannot waste their time and money traveling to Seattle to constantly work paper regulations through an agency that seems to have as its purpose adding more and more requirements on small logging operators.

<WQA87 § 407> Our amendment today addressed this concern, and mandates a needed change.

<FWPCA § 309> Now, however, Mr. President, we are seeing once again an attempt by the EPA to enter another agency's enforcement territory. EPA, against the expressed opposition by the corps and the Department of Justice, wants to assess penalties for 404 <FWPCA § 404> permit violations. This makes no sense from an enforcement standpoint, as the Department of Justice says, and it gives further reason why this Senate must rein in an agency that seems to be operating on its own.

<FWPCA § 309> In objecting to the EPA's attempt to take enforcement authority, the corps has written:

...the Army is charged with administering the (404 <FWPCA § 404>) program. This provision will seriously affect our ability to do so in an efficient, effective manner. It is very bad management practice to fragment any program. Fragmentation virtually always results in duplication, overlap, contradiction, and loss of morale and quality of work.

<FWPCA § 309> Mr. President, how could the Senate support the EPA's attempt to fragment an existing enforcement program? What purpose would be served? I am convinced that the EPA has enough difficulty adequately managing its own programs -- and I will simply not support its attempt to meddle where it does not belong.

<FWPCA § 309> Mr. President, I strongly object to allowing the EPA to assess civil penalties under the 404 <FWPCA § 404> program. I ask my colleagues to support Senator SIMPSON'S amendment.

Mr. CHAFEE. Mr. President, we find the amendment of the Senator from Wyoming acceptable on this side.

Mr. MITCHELL. Mr. President, there are no objections to the amendment.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

<FWPCA § 309> <WQA87 § 314> The amendment (No. 346) was agreed to.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHAFEE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON. Mr. President, I ask unanimous consent that Senator Wallop be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, today the Senate is considering one of the most important pieces of environmental legislation that will come before the Congress this session. The bill before us, S. 1128, the Clean Water Act Amendments of 1985, as reported by the Committee on Environment and Public Works, is an excellent bill that deserves the strong support of all Senators. That we are taking up this important matter at such a relatively early point in the legislative session is a tribute to the outstanding leadership of Senator CHAFEE, the bill's sponsor, Senator STAFFORD, the chairman of the full Environment and Public Works Committee, as well as the distinguished leaders on the Democratic side.

The bill before us makes much needed changes to the regulatory program of the act which is the basis for advancing our national goals for clean water. It is clear from the substantial progress that has been made over the years since 1972, that the premises which form the foundation for the Clean Water Act are fundamentally sound. Despite the progress that has been made, more needs to be done. In this regard, it is particularly troubling to observe that pervasive toxic pollutants pose a serious threat to water quality. By enhancing and extending the technology based approach of the

original act through the application of best available technology [BAT], this bill directly addresses the key water quality issues facing us today <FWPCA § 301>.

<FWPCA § 319> In addition to the reaffirmation of the BAT guidelines, this bill also makes other important changes to existing law. Of particular importance is the establishment of a Nonpoint Source Pollution Program. Nonpoint source pollution is runoff pollution, and is the source of more than half of the conventional pollutants entering our streams. Urban runoff from roofs and paved areas, return flows from irrigated agricultural lands, runoff from lands disturbed by construction, forestry operations or agricultural practices, and uncollected runoff and seepage from mining areas all contribute to the nonpoint source pollution problem. This bill, which encourages States to develop effective management programs to reduce nonpoint sources of pollution, represents a major step forward in efforts to address this ubiquitous threat to our Nation's waterways.

<FWPCA § 402> I am also pleased that the committee took action to retain the present permit period of 5 years under the national pollution discharge elimination system [NPDES]. By maintaining the present permit length at 5 years, we will be assured the continued availability of one of our most effective mechanisms for ensuring water quality.

Additionally, the bill before us reaffirms our national commitment to maintain a strong and viable construction grants program. Though there has been a strong Federal presence in this program for many years, begin-

[*15660] ning in 1977 the Congress began to shift the focus of the program away from Washington to the States and local communities <FWPCA § 207>. The proposal incorporated in S. 1128, which continues the present grant formula for 3 years and then helps States to establish water pollution revolving loan funds <FWPCA § 602>, provides a workable means to establish local responsibility and self-sufficiency, while ensuring adequate resources to meet national water quality goals.

<WQA87 § 215> Finally, I must add that the legislation now before us resolves the question of the Hampton, NH, ad valorem tax and permits the town to continue using this tax to pay for the operation and maintenance of its treatment works, thus clearing up an administrative question of long standing, and establishing that Hampton is and has in fact been in compliance with the law. The Environmental Protection Agency [EPA] should not attempt to recover costs from Hampton for the development of the alternative user fee system. Hampton was clearly caught in a bureaucratic dispute over this issue and should not have been required by EPA to develop an actual use system in the first place.

Mr. President, this is a good package. Our national goals for clean water are strongly reaffirmed by this legislation <FWPCA § 101>. The authorities and resources contained in this bill reflect an enduring commitment to protecting a resource so essential to the people of this Nation. I urge adoption of the bill.

Mr. PELL. Mr. President, I intend to vote in support of S. 1128, the Clean Water Act Amendments of 1985 despite some reservations about the wisdom of continuing to shift the burden of wastewater treatment construction costs from the Federal Government to State and local governments.

I commend the members of the Senate Environment and Public Works Committee, including the members of the Environmental Pollution Subcommittee, who have labored long and hard to fashion a measure that should be acceptable to the administration. This measure also makes several changes that should enhance our ability to combat water pollution.

<FWPCA § 319> These changes include the addition of a new section to the Clean Water Act designed to reduce pollution from so-called nonpoint sources, such as runoff from agricultural land and the pollutants-washed by the rain from cur city streets into our streams and rivers.

<FWPCA § 304> They also include the creation of a program for cleaning up toxic hot spots -- where water quality goals will not be met even after polluters have installed the best available cleanup technologies required under existing law.

Other important changes in the Clean Water Act, as reported by the committee, include measures to restrict exemptions and tighten standards. One such measure, for example, will tightly restrict the conditions under which industrial polluters may obtain waivers from national toxic pollutant standards.

The bill, by and large, is an improvement and represents a concerted effort to address our Nation's water pollution problems. I must emphasize, however, that those pollution problems have not been resolved and are not going to just fade away without a continuing national effort to address them.

Although the committee bill, as reported, contained an increase of about $1 million for Rhode Island under the proposed Wastewater Treatment Construction Grants Program, several Rhode Island communities have complained bitterly to me about the gradual shift from Federal to State and local funding of wastewater treatment construction costs.

A letter from one irate local official distilled volumes of bitterness into one brief statement: "The Federal Government has reneged on its commitments given in the past and is promoting the abolishment of this program in the immediate future. Years of effort are in danger of being wasted and future generations are being sold down the river."

The criticism may be a bit harsh, but it is not entirely undeserved. We set the national standard of "fishable, swimable water" and we made the commitment to put Federal taxpayers dollars to work on a long-range, costly, national effort to meet those standards. Communities that believed us then are finding themselves stuck with the bill now.

We should not lower our standards and we should not stick state and local communities with the total bill. We must not lower our sights to lesser goals by reducing the national standard. Likewise, we should not try to shift the enormous burden of wastewater treatment construction costs to the State and local governments.

Not too long ago, before Congress cut the authorization for these important construction grants in half to the present $2.4 billion, I protested at a hearing of the Environmental Pollution Subcommittee. I also protested about the phased reduction of federal assistance that has since transpired.

Under other circumstances, I might oppose this bill because it continues the recent trend of abandoning the State and local governments. It requires them to spend more and more of their own funds to address water pollution problems and to meet a national standard set by us in the Clean Water Act.

My colleague, the distinguished junior Senator from Rhode Island [Mr. CHAFEE] has devoted his considerable skill and knowledge to fashioning a measure that should be acceptable to a majority of the Senate and to the administration. I believe this bill is the best we can hope for in the Senate.

When we first passed the Clean Water Act, along with other landmark environmental laws, we made it clear that the Federal Government has a definite role in setting national environmental standards and an equally important role in helping to meet those standards. We must not abandon either of those vital roles.

I believe that the funding authorized by this extension of the Clean Water Act is as much as we are likely to win. It is not, however, as much as we need. I hope, when the economic climate improves, we will review and renew our national commitment to the long-range goals and high standards set by the Clean Water Act.

Mr. BINGAMAN. Mr. President, I rise in support of S. 1128, the Clean Water Act Amendments of 1985. I am pleased to be a cosponsor of this important piece of legislation. Every citizen has a personal stake in the quality of the Nation's waters. We need water that is safe to drink, habitable for aquatic life, and usable for agriculture and industry. Health, jobs, and the quality of our lives are affected in many ways by water quality. This is especially true in the arid West where water is such a precious commodity. Unfortunately, we too often take the quality of our water for granted.

Water pollution, with its many sources, is a complex problem to which there is no simple solution, no cheap technological fix. If we keep hazardous waste out of our water, it must then be disposed of elsewhere -- on land, at sea or by incineration. Similarly, conventional sewage treatment can leave behind huge volumes of sludge that must be used or disposed of, while alternative forms of wastewater treatment that recycle or reclaim pollutants have been slow to be implemented. Additionally, every time it rains, water moving over the surface of the land picks up sediment, toxic substances, and other contaminants and carries them to the nearest body of water. More and more often, our ground water supplies are being contaminated in this way.

A Federal program to address some of these problems in a comprehensive fashion was established in 1972 with the enactment of the Federal Water Pollution Control Act Amendments. This law was the product of long experience with generally ineffective State and Federal pollution control programs. In 1977 the law underwent a series of midcourse corrections and its name was changed to the Clean Water Act. The act expired in 1982 and must now be reauthorized. Though water

[*15661] quality problems persist, progress has been made. This is evidence that the act is working. It has prevented further deterioration of water quality during a decade of economic and population growth.

Specifically, provisions in the Clean Water Act Amendments of 1985 would: Add a new section to the Clean Water Act aimed at reducing pollution from nonpoint sources <FWPCA § 319>, such as runoff from farmland and city streets,

establish a program for cleaning up toxic "hot sports" -- waters which will not meet water quality goals even after polluters have installed the best available cleanup technologies required under existing law <FWPCA § 304>, restrict tightly the conditions under which industrial polluters may obtain waivers -- known as fundamentally different factors variances -- from national toxic pollutant standards <FWPCA § 301>, add provisions to prevent the lowering of discharge limits when a pollution discharge permit is revised or renewed <FWPCA § 303> <FWPCA § 402>, and amends title II of the act to include Indian tribal participation <FWPCA § 518>. Specifically, a 1-year study of sewage treatment needs of Indian lands will be conducted jointly by the EPA and the Indian Health Service; tribes will become eligible in fiscal year 1987 for direct EPA construction grants to address needs identified in the study; and Indian tribes may be treated as States, within the discretion of the EPA Administrator, to the degree necessary to allot funds for tribal sewage treatment needs.

Continued improvement in our Nation's water quality is not possible unless Congress renews its commitment to restore and strengthen the Clean Water Act. The bill before us today provides that encouragement and commitment. I urge my colleagues to support the bill.

LIMITATION OF RAW SEWAGE DISCHARGES BY NEW YORK CITY

Mr. MOYNIHAN. <WQA87 § 511> Mr. President, I would like to speak to section 120 of S. 1128, the provision that would limit the discharge of raw sewage by New York City. It is certainly imperative that such discharges near New York City -- and near more than 200 other locations across the United States -- end as soon as possible. New York City is making a major effort to do so; two sewage treatment plants now are under construction -- North River and Red Hook -- and soon will eliminate continuous raw discharges to the Hudson River and New York Harbor.

The larger of the two plants, North River, is an engineering marvel. Perched on a huge concrete slab over the Hudson, it will collect, pump, and treat up to 200 million gallons of sewage every day. A thousand workers are at work on the site, and the plant is expected to be complete by November 1985. I would note that a consent agreement among New York City, New York State, and the Environmental Protection Agency does not require its completion until 6 months later. The second plant, Red Hook is similarly ahead of schedule and will be treating waste by December 1986.

<WQA87 § 511> In view of New York City's aggressive program to eliminate the discharge of raw sewage, I see no need for this provision. This legislation will not hasten completion of the two treatment facilities, where work is already proceeding as rapidly as possible, I also believe that any strategy to improve water quality should be applied nationwide. The Environmental Protection Agency has identified 242 locations in the United States where sewage is not treated. Yet this provision would affect only New York City's discharges.

<WQA87 § 511> Although section 120 is unnecessary, I will not oppose it because it now includes safeguards against the imposition of undue sanctions on New York. The EPA Administrator is required to waive the sewage discharge limitations if a violation is caused by excessive rainfall, random or seasonal variation in flow, or an interruption in plant operation caused by factors beyond the city's control. If a violation of the cap is associated with random or seasonal variations or rainfall, the Administrator must grant a waiver unless he or she shows, on the basis of information above sewer hookups, that the cap would not have been exceeded but for such hookups. The responsibility for monitoring discharges of raw sewage, both for establishing the numerical level of the cap and determining whether a violation has occurred, lies with the EPA. Similarly, the deadline must be extended if completion of one of the plants is delayed by a natural disaster, strike, or other event beyond the city's control.

<WQA87 § 511> Finally, section 120 states the sense of the Congress that EPA should not agree to modifications of the consent agreement with respect to the schedule for advanced preliminary treatment. For example, delays, if not due to circumstances beyond the city's reasonable control, would not be desirable.

CONTINUATION OF THE CHESAPEAKE BAY PROGRAM

Mr. MATHIAS. <FWPCA § 117> Mr. President, I should like to point out to my colleagues a provision in the Clean Water Act Amendments of 1985 that is a source of both pride and hope for the people of my State and the region. It is a measure to continue the effort to clean up our Nation's largest and most productive estuary, the Chesapeake Bay, and I wish to thank Senators CHAFEE and STAFFORD, who have both been instrumental in this undertaking. They have been two of the Chesapeake Bay's longest standing and best friends, and they have again demonstrated their support by including this provision in the amendments to the Clean Water Act.

<FWPCA § 117> This provision is a focus of pride for those who know and love the Chesapeake because it recognizes how far we have come in our effort to save the bay. Thirteen years ago, I took a boat tour of the bay. At that time, we were only beginning to understand the full extent of the bay's decline. To the watermen who worked its waters or the sportsmen and vacationers who wandered its shores, the bay appeared much as it had for centuries. But under its surface the long years of neglect and pollution had begun to choke its once-abundant marine and plant life. The bay was in trouble.

Two years later, in 1975, Congress, at my request, authorized a thorough study to identify the sources of these environmental problems and to recommend solutions. That 7-year study was released in 1983 and in the 2 years since, we have made great strides toward restoration of the bay. In that short time, the three States bordering the bay -- Virginia, Maryland, and Pennsylvania -- have initiated comprehensive cleanup programs and President Reagan made a strong commitment to the effort in his State of the Union Address last year. In fact, the Federal-State partnership in the Chesapeake Bay cleanup has become a model for similar environmental projects across the Nation.

The three bay States, once fierce rivals, have joined forces to attack the pollution threatening the bay and revitalize the bay's beleaguered marine species.

<FWPCA § 117> The Federal Government has pulled together and devised a strategy to complement the States' programs. Last November, in an act of coordination, perhaps unprecedented, the heads of five Federal agencies involved in the cleanup -- the U.S. Fish and Wildlife Service, the Soil Conservation Service, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, and the Army Corps of Engineers -- met to sign memorandums of understanding with the lead Federal agency, the Environmental Protection Agency, spelling out exactly what role each agency will play in that effort.

<FWPCA § 117> The Clean Water Act amendments that we consider today are a major boost to our efforts. The bay provision in this bill would provide $39 million over the next 3 years to continue the progress we have made. Thirty million dollars of that sum will be available to Virginia, Maryland, and Pennsylvania over that 3-year period to allow them to accelerate the cleanup. The remaining $9 million would help to sustain EPA's vital research effort through its Chesapeake Bay field office tracking pollution trends and identifying ways to reverse them.

[*15662] <FWPCA § 117> This bill would move us measurably closer to our goal of a clean and thriving Chesapeake Bay and I urge my colleagues to join me in its support.

Mr. SIMPSON. Mr. President, the Clean Water Act has been the one item of environmental legislation most directly responsible for making so much of this Nation's waters fishable and swimmable by reducing water borne pollution of all types. It is important that Congress complete action on the Clean Water Act this year and that the President sign this reauthorization into law.

The Senate has taken measures to provide for Federal grants of over $18 billion over the fiscal years 1986 through 1994. However, the Senate clearly recognizes the need to reduce the Federal deficit and intends to phase out direct construction grant funding by changing the program to a State revolving loan fund program <FWPCA § 601>. This is a vital change in the way we do our business with the States and municipalities that are responsible for constructing sewage treatment facilities. The benefits of a phaseout of direct aid are twofold -- the Nation's waters will continue toward cleanup, and the Federal deficit will be chopped.

Title II of the Senate bill contains provisions for various permit requirements that industries must meet. The Senate bill generally tightens and expands water pollution control efforts across the board. For the first time we are authorizing a new nonpoint source pollution control program which was meant to reduce water degradation caused by different types of agricultural runoff and soil erosion <FWPCA § 319>. The Senate has chosen not to make a mandatory program. Instead this new nonpoint program will be a demonstration-in-grant program that will assist the agricultural community in its efforts to develop more efficient farming methods that will have the secondary benefit of protecting our Nation's waters.

<FWPCA § 304> The Senate bill also established a program for cleaning up toxic hot spots which are areas that have waters that will not meet quality standards even after polluters have installed the best available technologies [BAT] required under the law.

I believe that the clean water bill that the Senate Environment Committee has reported this year is far superior to the legislation that was reported earlier. The Environment and Public Works Committee has worked closely with the administration and with all interest groups to craft language that represents a balanced approach to controlling water

pollution. Much of the Western United States have pristine waters that have never been degraded by manmade pollution. With the reauthorization of the Clean Water Act, we can rest assured that these waters will continue to remain unspoiled. We may also be assured that those who must comply with the terms of the Clean Water Act will have some straightforward and predictable regulations to deal with.

Senator DOLE and I remain committed to doing everything we can to stimulate the Senate to consideration and approval of environmental legislation this year. The Senate has already taken swift action on the Safe Drinking Water Act and will likely finish up consideration of Superfund by late summer. I am pleased that through the vigorous efforts of my fine friend, the chairman, BOB STAFFORD, the Environment and Public Works Committee is on schedule and that members of the Senate are devoting proper attention to these important environmental statutes. Environmental issues are truly bipartisan in nature and I trust that this will be a productive year where environmental legislation is thoughtfully and fully considered. I look forward to our continued progress.

Mr. MATHIAS. Mr. President, I notice that the committee bill provides Federal support of State and local abatement efforts of nonpoint pollution. I would like clarification from the distinguished chairman of the Subcommittee on Environmental Pollution, Mr. CHAFEE, on three provisions of the bill addressing nonpoint source pollution.

<FWPCA § 205> First, I refer to the proposed new section 205(j)(5) of the Clean Water Act. This new language requires the EPA Administrator to reserve 1 percent of a State's allocation under section 205(c) or $100,000, whichever is greater, for approved State nonpoint pollution control programs. The State may decide to use all but $100,000 of the amount reserved by the Administrator for wastewater treatment construction grant projects.

<FWPCA § 319> Elsewhere in the bill, in section 319, another nonpoint source pollution control program is authorized beginning at $70 million in the first year.

<FWPCA § 319> <FWPCA § 205> What is the difference between these two provisions?

Mr. CHAFEE. <FWPCA § 205> The States have indicated that most of them would not be able to achieve the water quality goals of the Clean Water Act if they do not abate nonpoint sources of water pollution. Many States have in place existing nonpoint source implementation programs to address the problem. Our intent here is to assure that they have at least $100,000 a year of support from the Federal Government in implementing their programs. We want to go on record as lending the support of the Federal Government to these implementation programs. The $100,000 minimum is the same as the existing provision in section 205(j), which has been used to support various water quality planning and program support functions. The purpose is to ensure that every State has available at least a minimum level of Federal support.

<FWPCA § 205> <FWPCA § 319> To illustrate how the set-aside provision works, I can describe how it would affect your own State, which has been a leader in the development of programs to control nonpoint source pollution. Assuming the allotment formula proposed in S. 1128, approximately $460,000 would be reserved by the new section 205(j)(5) for support of the section 319 nonpoint program. Of this amount, $100,000 is dedicated solely to this purpose; that is, if it is not used for the nonpoint program it will be reallotted to other States. The balance of $360,000 is available for the nonpoint program but the State may, if it chooses, use it for traditional construction grant purposes. The effect is that your State is assured Federal support for its nonpoint program, but at the same time it is accorded considerable flexibility in determining the exact amount of that support -- in this case, within the range of $100,000 to $360,000.

<FWPCA § 205> I want to emphasize that these funds are intended to supplement the funds authorized by section 319 <FWPCA § 319>, not to replace them.

Mr. MATHIAS. I thank the Senator from Rhode Island for that clarification.

<FWPCA § 319> I also have a question with respect to the provisions of section 319. That section provides that funds may be used for approved State implementation programs to control nonpoint source pollution. Two-thirds of the funds is to be allocated according to the formula in the committee report and one-third is to be allocated at the discretion of the Administrator. The bill goes on to indicate that, although the funds may not routinely be used for implementation of best management practices [BMP's], they can be used for demonstration projects of BMP's.

<FWPCA § 319> Will the Senator from Rhode Island clarify the types of activities for which section 319 funds can be used?

Mr. CHAFEE. <FWPCA § 319> It is our intent that the section 319 funds be available to the States for the implementation by the State of its approved nonpoint source control program. By this, we do include, for example, adminis-

trative costs, educational material, technical assistance in the field at the project or land parcel level, and environmental monitoring. We do not want these funds to be used for the basic type of planning work that the Federal Government paid for previously with grants to States and areawide planning agencies to prepare nonpoint source programs pursuant to the provisions of section 208 <FWPCA § 208>. We are beyond that stage now. If States have not prepared those programs, then they may

[*15663] use either section 205(j)(2) <FWPCA § 205> or section 106 <FWPCA § 106> funds for program development, but that is not the intended use for section 319 funds <FWPCA § 319>. This is not a planning program. This is an implementation program.

<FWPCA § 319> On the subject of cost-sharing, these funds shall not be utilized for individual landowners to implement best management practices on their land <FWPCA § 208>. Many States require BMP's through a regulatory process, such as for sediment, control, stormwater management, or mining. BMP's for other sources such as agriculture are predominantly implemented through a voluntary program. We expect the existing Federal programs such as the ACP Program, the Rural Clean Water Program, the Surface Mining Reclamation Program, and the Clean Water Program, to be the vehicles through which the Federal contribution is made to these cost-sharing efforts. Of course, State and local governments are not precluded from using their own sources for cost-sharing and many of them are doing so. Some States are using general obligation bonds. Others are using sale taxes. Others are using special bond issues. There are a variety of funding alternatives which States may use to secure revenue to pay for cost-sharing.

<FWPCA § 319> The exception to this general policy, which we have provided for in the bill, is for demonstration projects. We also want to encourage the States to develop innovative best management practices, as yet unproven in terms of their effectiveness in reducing pollution.

Mr. MATHIAS. I thank the distinguished Senator. The final question I have relates to the proposed new title VI of the Clean Water Act, "Grants for Water Pollution Control Revolving Funds." Section 603 <FWPCA § 603> of that title authorizes State revolving funds to be used for nonpoint source abatement, for the implementation of a national estuary program, and for the conventional wastewater treatment projects.

Is that a priority among the three uses of such revolving fund?

Mr. CHAFEE. This provision is intended to build in some flexibility in the way a State may use its revolving loan fund to combat pollution <FWPCA § 603>. In the near term, the revolving loan funds must be used to assure maintenance of progress in the completion of publicly owned treatment works needed to meet the enforceable deadline and requirements of the act <FWPCA § 602>. Once this is accomplished, the State is free, at its discretion, to use its revolving loan fund to make loans to individuals for the implementation of best management practices <FWPCA § 208> and for the implementation of the national estuary program pursuant to section 320 <FWPCA § 320> of the act. In other words, we do not want to limit for all time the use of State revolving loan funds to traditional construction of treatment plants. As time goes on, States may want to use these funds more effectively to make loans to combat nonpoint source pollution. This section does not have the restriction of use only for demonstration projects that is built into section 319 <FWPCA § 319> funds. All loans of course must be paid back to the loan fund in accordance with the requirements of title VI <FWPCA § 603>.

In summary, these three provisions -- the section 319 authorization <FWPCA § 319>, the 1-percent set aside <FWPCA § 205>, and flexible use of State revolving loan funds <FWPCA § 603> -- are designed to assure the opportunity for continued support for a State's nonpoint efforts, and they are designed as well to accord more flexibility to the State as time goes on. Thus, the responsibility will be on the States to submit their nonpoint programs to EPA and then to use the variety of funding mechanisms established in this bill.

Mr. MATHIAS. I thank the distinguished Senator for his explanation of these provisions. I am pleased to see them in the bill.

As many of my colleagues know, my own State of Maryland is a national leader in the development of an estuarine protection program for the Chesapeake Bay and of measures to abate nonpoint pollution to its waters. Efforts underway, such as the definition of critical areas along the bay's shoreline, aid in protecting and nuturing fragile wetlands and important breeding and spawning areas.

Much of this effort results directly from the earlier EPA Chesapeake Bay Program, which explored the dynamics of the bay as an ecosystem, defined its most critical pollutants and many of their sources, and established a data baseline

against which trends can be monitored. The Chesapeake Bay Program brought together the States affecting the bay -- Pennsylvania, Maryland, Virginia, and the District of Columbia -- in cooperation with several Federal agencies.

<FWPCA § 117> The program is a national model for other States as they attack their own regional water quality problems. Indeed, the National Estuary Program, established by section 320 <FWPCA § 320> of the bill, is a direct result of our experiences with the Bay Program in Maryland.

We in Maryland know how vital the control of nonpoint source pollution is. More than 400 million pounds of toxic industrial chemicals are discharged into our Nation's waters each year. No matter how much money we spend on sewage treatment plants, we still are confronted with water pollution problems from sources that are not easily identified or localized. For example, one of the key findings of the EPA Chesapeake Bay Program was that a significant portion of the nitrogen entering the bay was coming from upstream farming practices. Heavy metals were entering the bay in the storm and rainwater runoff from our cities. Yet, current programs are not designed to address these nonpoint source pollution problems. I am pleased to see these amendments to the Clean Water Act provide a beginning for cleanup strategies for such problems.

Mr. DOLE. Mr. President, I rise today in support of S. 1128, the Clean Water Act Amendments of 1985 and encourage the Senate to act expeditiously on this important environmental legislation.

Mr. President, during the 13-year history of the Clean Water Act our Nation has made considerable progress toward improving the quality of the Nation's water. The regulatory framework established to implement control of pollutant discharges has largely been successful. The legislation before the Senate will continue and strengthen the existing program in a way that is acceptable to a broad range of diverse interests. The chairman of the committee, Mr. STAFFORD, the chairman of the subcommittee, Mr. CHAFEE, and the ranking members, Mr. BENTSEN and Mr. MITCHELL, should be commended for their diligent efforts in bringing this legislation to the floor.

NONPOINT SOURCE POLLUTION

I am particularly pleased that the controversial issue of nonpoint source pollution has been addressed in a manner that meets our environmental needs without crippling the agricultural segment of our economy. Runoff from agricultural and mining areas, construction sites, and urban areas present a serious pollution problem. Obviously these problems vary widely between the States. This legislation encourages the States to implement management programs that will target critical areas, identify nonpoint sources and set timetables for program implementation.

<WQA87 § 407> I am also pleased that resolution was reached with respect to the amendment offered by the distinguished Senators from Alaska, Senators STEVENS and MURKOWSKI. Both the EPA and the Corps of Engineers must be encouraged to resolve their differences over the management and enforcement of the section 404 <FWPCA § 404> and 402 <FWPCA § 402> permits. The amendment offered and the colloquy entered into on this subject make clear our intentions to pursue this matter until it is settled.

CONSTRUCTION GRANTS

<FWPCA § 205> Mr. President there is a great deal of controversy surrounding the allotment formula for distributing construction grant funds and State revolving fund capitalization grants. That is not surprising when there is $2.4 billion per year that will be allocated to the States.

<FWPCA § 205> Starting from current law, any change in the allotment formula will produce winners and losers. As this

[*15664] Senator would expect, most Senators have lined up behind the formula that provides the greatest benefit to their State.

In my view, the compromise formula that has been worked out is a fair proposal. While providing for formula reform, it addresses the concerns of those who felt that certain States were being discriminated against and stood to lose considerable amounts. The Senators involved in resolving this difficult issue, including Senators DURENBERGER, D'AMATO, LEVIN, CHAFEE, STAFFORD, MOYNIHAN, and MITCHELL, are to be commended for their willingness to work out an acceptable agreement.

CONCLUSION

The distinguished chairman and ranking member of the committee. Senators STAFFORD and BENTSEN, along with the distinguished subcommittee chairman and ranking member, Senators CHAFEE and MITCHELL, are to be commended for their efforts in resolving the issues surrounding this bill. What we have is an agreement that strikes a balance between those concerned with overregulation and an inequitable distribution of funds and those concerned with

protecting a precious natural resource and insuring that funds are disbursed in a rational fashion to meet the needs of the various States.

Mr. CHAFEE. Mr. President, we are prepared to move to third reading. I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE. Mr. President, on this side we are prepared to vote.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, following action on this proposal, we will take up the Nuclear Regulatory Commission. I understand that has been worked out. I cannot guarantee there will not be a vote. If we can do that, it would be my intention, if we can get an agreement on another bill for Monday, not to have a session of the Senate on tomorrow. We will not know about that agreement until sometime after this vote.

The PRESIDING OFFICER (Mr. SYMMS). The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. EAST] and the Senator from Kansas [Mrs. KASSEBAUM] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. BUMPERS], the Senator from Illinois [Mr. DIXON], the Senator from Missouri [Mr. EAGLETON], and the Senator from Massachusetts [Mr. KERRY] are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts [Mr. KERRY] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced -- yeas 94, nays 0, as follows:

[Rollcall Vote No. 126 Leg.]

YEAS -- 94

Abdnor	Andrews	Armstrong
Baucus	Bentsen	Biden
Bingaman	Boren	Boschwitz
Bradley	Burdick	Byrd
Chafee	Chiles	Cochran
Cohen	Cranston	D'Amato
Danforth	DeConcini	Denton
Dodd	Dole	Domenici
Durenberger	Evans	Exon
Ford	Garn	Glenn
Goldwater	Gore	Gorton
Gramm	Grassley	Harkin
Hart	Hatch	Hatfield
Hawkins	Hecht	Heflin
Heinz	Helms	Hollings
Humphrey	Inouye	Johnston
Kasten	Kennedy	Lautenberg
Laxalt	Leahy	Levin
Long	Lugar	Mathias

[Rollcall Vote No. 126 Leg.]

Matsunaga	Mattingly	McClure
McConnell	Melcher	Metzenbaum
Mitchell	Moynihan	Murkowski
Nickles	Nunn	Packwood
Pell	Pressler	Proxmire
Pryor	Quayle	Riegle
Rockefeller	Roth	Rudman
Sarbanes	Sasser	Simon
Simpson	Specter	Stafford
Stennis	Stevens	Symms
Thurmond	Trible	Wallop
Warner	Weicker	Wilson
Zorinsky		

NOT VOTING -- 6

Bumpers	Dixon	Eagleton
East	Kassebaum	Kerry

So the bill (S. 1128), as amended, was passed, as follows:

S. 1128

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Clean Water Act Amendments of 1985".

TITLE I -- REGULATORY AMENDMENTS

AUTHORIZATION

[**101] SEC. 101. (a) <FWPCA § 104> Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(b) <FWPCA § 104> Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(c) <FWPCA § 104> Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(d) <FWPCA § 106> Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1986, 1987, 1988, and 1989" immediately following "1982".

(e) <FWPCA § 112> Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

(f) <FWPCA § 314> Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1986, 1987, 1988, and 1989".

(g) <FWPCA § 517> Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989".

SMALL FLOWS CLEARINGHOUSE

[**102] SEC. 102 <FWPCA § 104>. Section 104(q) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Notwithstanding section 205(d) of this Act, from funds that are set aside by States under section 205(i) of this Act and not obligated by the end of the twenty-four month period provided under section 205(d), the Administrator shall

award a grant under this section in the amount of $1,000,000 or such unobligated amount, whichever is less, in each year, to support a National Clearinghouse to collect and disseminate information on small flows and innovative or alternative technologies, consistent with paragraph (3).".

COMPLIANCE DATES

[**103] SEC. 103 <FWPCA § 301>. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988".

(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988, compliance with".

(c) Section 301(b)(2)(F) of the Clean Water Act is amended by striking "not" after "subparagraph (A) of this paragraph" and inserting in lieu thereof "as expeditiously as practicable but in no case", and by striking "or not later than July 1, 1984," through the end of the sentence and inserting in lieu thereof "and in no case later than July 1, 1988".

(d) Section 301(b) of the Clean Water Act is amended by adding the following new paragraph:

"(3)(A) for effluent limitations under paragraph (1)(A)(1) of this subsection promulgated after January 1, 1982, and requir-

[*15665] ing a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than July 1, 1988; and

"(B) for any effluent limitation in accordance with paragraph (1)(A)(1), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1985, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1988.".

OCEAN WAIVER

[**104] SEC. 104 <FWPCA § 301>. (a) Section 301(h)(5) of the Clean Water Act is amended to read as follows:

"(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);".

(b) Section 301(h) of the Clean Water Act is amended by --

(1) in paragraph (7), striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.

(2) adding immediately after paragraph (7) the following new paragraph:

(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 per centum of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.";

(3) in that portion of subsection (h) following new paragraph (8) as added by this Act.

(A) adding immediately after the first sentence thereof the following new sentence: "Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works."; and

(B) adding at the end thereof the following: "No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below

applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.".

(c) Section 301(j)(1)(A) of the Clean Water Act is amended by inserting before the semicolon the following:", except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification under subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1985".

MODIFICATION FOR NONCONVENTIONAL POLLUTANTS

[**105] SEC. 105. (a) <FWPCA § 301> Section 301(g)(1) of the Clean Water Act is amended by striking all preceding "upon a showing by the owner or operator" and inserting in lieu thereof "The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, or total phenols (4AAP) (when determined by the Administrator to be a nonconventional pollutant under this Act)".

(b) Section 301(g) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) The Administrator may evaluate pollutants subject to this subsection prior to the enactment of the Clean Water Act Amendments of 1985, and if the Administrator determines that for one or more pollutants satisfactory test methods and data are available to make the determination required by paragraph (1), may recommend to the Congress the inclusion of such pollutants under this subsection.

"(4) Any request for a modification under this subsection shall be deemed to have been denied, if not approved by final agency action within one year after submission to the Administrator.

"(5) <FWPCA § 301> The amendment made to this subsection by the Clean Water Act Amendments of 1985 shall apply to all modification requests under this subsection pending on the date of enactment of the Clean Water Act Amendments of 1985. Such amendment to this subsection shall not have the effect of extending or reopening the deadline established in section 301(j)(1)(B).".

(c) <FWPCA § 301> Section 301(j)(2) of the Clean Water Act is amended by inserting after the first sentence thereof the following: "An application for a modification under subsection (g) shall not stay the applicant's obligation to comply with effluent limitations for all pollutants not the subject of an application for modification, and nothing in this section shall preclude the Administrator (or the State as appropriate) from issuing a permit containing effluent limitations for all pollutants not subject to a stay under this subsection pending a final decision on the request for a modification.".

(d) Section 301(g)(1) is amended by inserting "(1)" immediately after "subsection (b)(2)(A)".

FUNDAMENTALLY DIFFERENT FACTORS

[**106] SEC. 106. (a) Section 301 of the Clean Water Act is amended by adding the following new subsections:

"(n)(1) <FWPCA § 301> The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 307(b) for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that --

"(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 304(b) or (g) and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

"(B) the application is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility;

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

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

"(2)(A) <FWPCA § 301> an application for an alternative requirement under this subsection shall be submitted to the Administrator not later than one hundred twenty days after the publication of the final effluent limitation guideline or categorical pretreatment standard in the Federal Register. The Administrator shall deny any application that is not complete, without providing an opportunity for reapplication.

"(B) an application for an alternative requirement under this subsection shall be deemed to have been denied, if not approved by final agency action within two hundred forty days after submission to the Administrator.

"(C) For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment of the Clean Water Act Amendments of 1985 shall be deemed to have been submitted to the Administrator thirty days after such date of enactment.

"(3) <FWPCA § 301> an application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

"(4) The authority of this subsection shall apply only to those primary industrial categories identified in the permit regulations issued under section 402 as of the date of enactment of the Clean Water Act Amendments of 1985.

"(o) <FWPCA § 301> The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to section 301(c), (g), (h), (i), (m), and (n), section 304(d)(4), and section 316(a) of this Act. All amounts collected by the Administrator under this subsection shall be deposited into miscellaneous receipts of the Treasury.".

(b) <FWPCA § 301> Section 301(1) of the Clean Water Act is amended by striking "The" and inserting in lieu thereof "Other than as provided in subsection (n) of this section, the".

WATER QUALITY-BASED EFFLUENT LIMITATIONS
AFTER BAT ATTAINMENT

[**107] SEC. 107. (a) <FWPCA § 304> Section 305 of the Clean Water Act is amended by adding the following new subsection:

"(c) Each State shall prepare and submit to the Administrator and the Congress

[*15666] within two years after the enactment of the Clean Water Act Amendments of 1985, and revise biennially thereafter, an identification of --

"(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and

"(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.

In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1)."

(b) <FWPCA § 304> Section 304(a) of the Clean Water Act is amended by adding the following new paragraphs:

"(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1985, guidance to the States on performing the identification required by section 305(c)(1) of this Act.

"(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1985, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".

(c) <FWPCA § 303> Section 303(c)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)" and by adding the following new sub-paragraph:

"B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.".

(d) <FWPCA § 304> Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

"(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.".

(e) <FWPCA § 302> (1) Section 302(a) of the Clean Water Act is amended by (1) inserting after "in the judgment of the Administrator" the phrase "or as identified under section 305(c)"; and (2) inserting after "protection of" the phrase "public health.".

(2) Section 302(b) of the Clean Water Act is amended to read as follows:

"(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.

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

"(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".

(f) <FWPCA § 304> Section 304 of the Clean Water Act is amended by adding the following new subsection:

"(1) Within twelve months of the date of enactment of the Clean Water Act Amendments of 1985, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall:

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

"(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

"(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than four years after the date of enactment for categories identified in the first published plan or three years after the publication of the plan for categories identified in later published plans.

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

INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

[**108] SEC. 108 <FWPCA § 402>. Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. 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 preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".

CIVIL AND CRIMINAL PENALTIES

[**109] SEC. 109. (a) <FWPCA § 309> Section 309(d) is amended by --

(1) inserting ", or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act," immediately after "section 404 of this Act by a State":

(2) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(3) adding the following at the end thereof: "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.".

(b) <FWPCA § 309> No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1987.

(c) <FWPCA § 404> Section 404(s) of the Clean Water Act is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and in redesignating paragraph (4), by --

(1) deleting "$10,000 per day of such violation" and substituting "$25,000 per day for each violation";

(2) adding the following at the end thereof: "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.".

(d) Section 309 of the Clean Water Act is amended by adding a new subsection (g) as follows:

"(g)(1) <FWPCA § 309> ADMINISTRATIVE PENALTIES. -- In addition to any other relief provided, when

[*15667] ever on the basis of any information available the Administrator finds that any person has violated section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or has violated any permit condition or limitation implementing any of such sections in a permit issued under sections 402 of this Act by him or by a State, or in a permit issued under section 404 by a State, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) and (b)(8) of this Act, the Administrator may, after notice to the State in which the violation occurs, issue an order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000. In addition to any other relief provided, whenever on the basis of any information available the Secretary of the Army find that any person has violated any permit condition or limitation in a permit issued under section 404 of this Act by the Secretary of the Army, the Secretary may, after notice to the State in which the violation occurs, issue an

order assessing a civil penalty of not more than $10,000 per day for each violation, up to a maximum administrative penalty of $125,000,"

"(2) The authority provided in paragraph (1) of this subsection shall expire on September 30, 1990.

"(3) <FWPCA § 309> PROCEDURAE. -- (A) A civil penalty assessed by the Administrator or the Secretary of the Army under this subsection shall be by an order made after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator or the Secretary of the Army shall give to the person to be assessed a civil penalty written notice of the Administrator's or Secretary's proposal to issue such order and the opportunity to request, within thirty days of the date the notice is received by such person, a hearing on the proposed order. Such hearing shall not be subject to section 554 or 556 of title 5. United States Code, but shall provide a reasonable opportunity to be heard and to present evidence.

"(B) The Administrator or the Secretary of the Army shall provide public notice of and reasonable opportunity to comment on any proposed assessment.

"(C) Any citizen who comments on a proposed assessment under subparagraph (B) shall be given notice of any hearing held under this subsection and of any order assessing a penalty. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence. If no hearing is held prior to issuance of the order assessing the penalty, then upon presentation by such citizen, within thirty days of issuance of the order, of evidence that such order was inadequate or improper, the Administrator or the Secretary of the Army shall set aside such order immediately and provide a hearing in accordance with subparagraph (A) on the proposed order.

"(D) Any order issued under this subsection shall become final thirty days following its issuance unless an appeal is taken pursuant to paragraph (6) or the order is set aside pursuant to subparagraph (C).

"(4) <FWPCA § 309> CONTENT OF ORDER. -- Indetermining the amount of a civil penalty, the Administrator or the Secretary of the Army shall take into account 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.

"(5) <FWPCA § 309> EFFECT OF ORDER. -- (A) Action taken by the Administrator or the Secretary of the Army pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act: Provided, however, That any violation with respect to which the Administrator or the Secretary of the Army has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator or the Secretary of the Army has issued a final order not subject to further judicial review and the violator paid a penalty assessed under this subsection, shall not be the subject of a civil penalty action under section 309(d), section 311(b), or section 505 of this Act: Provided further. That the foregoing limitation on civil penalty actions under section 505 of this Act shall not apply with respect to any violation for which (i) a civil action under section 505(a)(1) of this Act has been filed prior to commencement of an action under this subsection, or (ii) a notice of violation under section 505(b)(1) of this Act has been given prior to commencement of an action under this subsection and an action under section 505(a)(1) of this Act is filed prior to 120 days after such notice is given.

"B) Nothing in this subsection shall change the procedures now existing under other subsections of section 309 of this Act for issuance and enforcement of orders by the Administrator.

"(C) No action by the Administrator or the Secretary of the Army pursuant to this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

"(6) <FWPCA § 309> JUDICIAL REVIEW. -- Any person against whom a civil penalty order is issued or who commented on a proposed assessment pursuant to paragraph (3) may file an appeal of such order in the United States district court for the District of Columbia or in the district in which the violation is alleged to have occurred. This appeal may only be filed within the thirty-day period beginning on the date the civil penalty order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator or the Secretary of the Army and to the Attorney General. The Administrator or the Secretary of the Army shall promptly file in such court a certified copy of the record on which the order was issued. The district court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties

for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

"(7) <FWPCA § 309> COLLECTION. -- If any person fails to pay an assessment of a civil penalty --

"(A) after an order is final under paragraph (3), or

"(B) after a court in an action brought under paragraph (6) has entered a final judgment in favor of the Administrator or the Secretary of the Army, the Administrator or the Secretary of the Army shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date of the final order or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(8) <FWPCA § 309> SUBPOENA. -- The Administrator or the Secretary of the Army may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions."

(e) Section 309(c) of the Clean Water Act is amended to read as follows:

"(c)(1) <FWPCA § 309> Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both

"(2) <FWPCA § 309> Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402 (a)(3) and (b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage, or, other than in compliance with all applicable Federal, State or local requirements or permits, causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than three years, or by both.

"(3) <FWPCA § 309> (A) Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent

[*15668] danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

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

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

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

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

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

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

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

"(II) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

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

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

"(4) <FWPCA § 309> Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

"(5) <FWPCA § 309> If a conviction is for a violation of paragraph (1), (2), (3), or (4) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

"(6) <FWPCA § 309> For the purpose of paragraphs (1), (2), (3), and (4) the term 'person' shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(7) <FWPCA § 309> For the purpose of paragraphs (1) and (2), the term 'hazardous substance' shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act. (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress). (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

"(8) <FWPCA § 309> Whenever any action is brought under this section in a court of the United States, the plaintiff shall provide a copy of the complaint to the Attorney General of the United States and to the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

"(9) <FWPCA § 309> The Secretary shall prepare and submit a report to the Congress, not later than December 1, 1987, which shall examine and analyze various enforcement mechanisms for use by the Secretary, including an administrative civil penalty mechanism. Such report shall also examine, in consultation with the Comptroller General, the efficacy of the Secretary's existing enforcement authorities, and shall make recommendations for improvements in their operation.".

PARTIAL NPDES PROGRAM APPROVAL

[**110] SEC. 110 <FWPCA § 402>. (a) Section 402(b) of the Clean Water Act is amended by --

(1) inserting ", or part of a permit program in accordance with paragraph (10) of this subsection," immediately after "its own permit program" in the first full sentence; and

(2) adding at the end thereof the following new paragraph:

"(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that --

"(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and

"ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or

"(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of dischargers which represent a significant and identifiable part of the permit program in the State; and

"(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, 'a complete permit program,' means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.".

(b) Section 402(c)(1) of the Clean Water Act is amended by striking "as to those navigable waters" and inserting in lieu thereof "as to those activities and discharges".

(c) Section 402(c) of the Clean Water Act is amended by adding a new paragraph (4) as follows:

"(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.".

JUDICIAL REVIEW AND AWARD OF FEES

[**111] SEC. 111.(a) <FWPCA § 509> Section 509(b)(1) of the Clean Water Act is amended by (1) striking the phrase "transacts business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and (2) striking "ninety" and "ninetieth" and inserting in lieu thereof "one hundred and twenty" and "one hundred and twentieth" respectively.

(b) <FWPCA § 509> Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraphs:

"(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing 'he Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United Stats which remanded such action.

"(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.

"(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection,

[*15669] including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.

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

(c) <FWPCA § 505> Section 505(d) of the Clean Water Act is amended by inserting "prevailing or substantially prevailing" before "party" in the first sentence thereof.

NONPOINT SOURCE POLLUTION

[**112] SEC. 112. (a) Title III of the Clean Water Act is amended by adding the following new section:

"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

"SEC. 319. (a) <FWPCA § 319> (1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1985, a proposed notpoint source pollution management program which shall -

"(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonable be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act:

"(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

"(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B), taking into account the impact of the proposed practice on ground water quality;

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

"(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

"(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

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

"(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

"(b) <FWPCA § 319> (1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

"(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

"(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

"(c) <FWPCA § 319> If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1985, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

"(d)(1) <FWPCA § 319> The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

"(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

State	Percentage allotment
Alabama	1.56
Alaska	.50
Arizona	1.95
Arkansas	1.43
California	6.37
Colorado	2.19
Connecticut	.68
Delaware	.50
District of Columbia	.50
Florida	2.66
Georgia	2.04
Hawaii	.50
Idaho	1.20
Illinois	4.03
Indiana	2.07
Iowa	2.39
Kansas	2.78
Kentucky	1.32
Louisiana	1.56

Maine	.55
Maryland	1.03
Massachusetts	1.25
Michigan	2.67
Minnesota	2.43
Mississippi	1.40
Missouri	2.44
Montana	2.46
Nebraska	2.26
Nevada	1.78
New Hampshire	.50
New Jersey	1.62
New Mexico	1.93
New York	4.22
North Carolina	1.90
North Dakota	2.14
Ohio	3.14
Oklahoma	2.05
Oregon	1.75
Pennsylvania	2.97
Rhode Island	.50
South Carolina	1.09
South Dakota	1.94
Tennessee	1.50
Texas	8.08
Utah	1.36
Vermont	.50
Virginia	1.60
Washington	1.58
West Virginia	.60
Wisconsin	1.90
Wyoming	1.39
Guam	.10
Northern Marianas	.10
Pacific Trust Territories	.10
Puerto Rico	.72
[*15670]	
Samoa	.10
Virgin Islands	.10
Total	100.00

"(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in --

"(i) <FWPCA § 319> controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;

"(ii) <FWPCA § 319> implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

"(iii) <FWPCA § 319> controlling interstate nonpoint source pollution problems;

"(iv) <FWPCA § 319> assessing the relationship between nonpoint source pollution and ground water contamination; or

"(v) <FWPCA § 518> providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Indian tribe shall be subject to all terms and conditions

of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

"(3) <FWPCA § 319> The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

"(4) <FWPCA § 319> States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(5) <FWPCA § 319> No grant shall be made to a State under this section unless the Administrator determination the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

"(6) <FWPCA § 319> No grant shall be made under this section to any State in any fiscal year in which the expenditure of non-Federal funds by such State for purposes comparable to the activities assisted by this section are less than the average level of such expenditures in the two fiscal years of such State next preceding the date of enactment of the Clean Water Act Amendments of 1985.

"(7) <FWPCA § 319> The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

"(8) <FWPCA § 319> For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1986, $100,000,000 for the fiscal year ending September 30, 1987, and $130,000,000 for the fiscal year ending September 30, 1988.

"(e) <FWPCA § 319> Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

"(f) <FWPCA § 319> The Administrator shall

"(1) transmith to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)((G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shallccommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

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

"(3) submit to the Congress, within thirty-six months of enactment of the Clean Water Act Amendments of 1985, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

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

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

"(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

"(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

"(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.".

(b) <FWPCA § 304> Section 304(k)(1) of the Clean Water Act is amended by inserting after the word "Act" the following: "and nonpoint source pollution management programs approved under section 319 of this Act.".

(c) <FWPCA § 205> Section 205(j) of the Clean Water Act is amended by adding the following new paragraph:

"(5) In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 per centum of the sums allotted and available for obligation to such State under this section for each fiscal year beginning on or after October 1, 1986, or $100,000, whichever is greater, for the purpose of carrying out section 319 of this Act. Sums so reserved in a State in any fiscal year for which such State does not request the use of such sums, to the extent such sums exceed $100,000, may be used by such State for other purposes under this title.".

NATIONAL ESTUARY PROGRAM

[**113] SEC. 113 <FWPCA § 320>. Title III of the Clean Water Act is amended by adding at the end thereof the following new section:

"NATIONAL ESTUARY PROGRAM

"SEC. 320. (a)(1) Whenever the Administrator determines that the attainment and maintenance of the chemical, physical, and biological integrity of an estuary requires the interstate or international control of sources of pollution to supplement existing controls, the Administrator shall convene, for a period not to exceed five years, an estuarine management conference, to --

"(A) assess trends in water quality, natural resources, and uses of the estuary;

"(B) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

"(C) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

"(D) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

"(E) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

"(F) monitor the effectiveness of actions taken pursuant to the plan; and

"(G) review any Federal financial assistance program or federal development project subject to the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of any plan prepared under this section. For purposes of this subparagraph, these programs and projects shall not be limited to the assistance programs or development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of any plan developed pursuant to this section.

"(b) The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of --

"(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

"(2) international, interstate, or regional agencies having jurisdiction over all or a significant part of the estuary;

"(3) each interested Federal agency, as determined appropriate by the Administrator;

[*15671] "(4) local governments within the estuarine zone, as determined appropriate by the Administrator; and

"(5) affected industries, public and private educational institutions and the general public in the estuarine zone.

"(c) Prior to developing a comprehensive conservation and management plan under this section, the management conferees shall survey and use existing reports, data, and studies as well as local master or regional plans relating to the estuary that have been developed by or made available to Federal, interstate, international, State, or local agencies.

"(d)(1) Not later than ninety days after the completion of a conservation and management plan, the Administrator shall, if the plan satisfies the purposes of this section and the affected Governor or Governors concur, approve such plan.

"(2) Upon approval of a conservation and management plan under this section, funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act, to assist States with the implementation of such plan.

"(e) There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of the fiscal years 1986, 1987, 1988, and 1989, for:

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 per centum of the amount appropriated under this paragraph;

"(2) grants to State, interstate or regional water pollution control agencies for research, surveys, studies, monitoring, modeling, and other technical work necessary for the development of a conservation and management plan under this section: Provided, That such grants shall not exceed 75 per centum of the costs of such technical work and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this paragraph; and

"(3) the costs of monitoring the implementation of a conservation and management plan. Such monitoring shall be done by the management conference or, in any case in which the conference has expired or been terminated, by the Administrator. The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out tasks assigned under subsection (g).

"(f) Any State, interstate, or regional agency that receives a grant under subsection (e) shall report to the Administrator not later than eighteen months after receipt of such grant and biennially thereafter on the progress being made under this section.

"(g)(1) In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones --

"(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameter which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures:

"(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

"(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

"(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

"(2) The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including --

"(A) a listing of priority monitoring and research needs:

"(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection:

"(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

"(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (a)(1)(D) of this section.

"(h) For the purposes of this section, the terms 'estuary' and 'estuarine zone' shall have the same meanings such terms have in section 104(n)(4) of this Act, except that the term 'estuarine zone' shall include those portions of tributaries draining into the estuary, up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.".

STORMWATER RUNOFF FROM OIL AND GAS OPERATIONS

[**114] SEC. 114 <FWPCA § 402>. Section 402(1) of the Clean Water Act is amended by inserting "(1)" after "(1)" and by adding the following new paragraph:

"(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from oil or gas exploration, production, processing, or treatment operations (including transmission pumping stations), composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease in excess of reportable quantities.".

ANTI-BACKSLIDING

[**115] SEC. 115. (a) <FWPCA § 402> Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(n) 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 solely 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. If the source 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, the limitations in the renewed, 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). 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 be renewed, reissued, or modified on the basis of subsequently revised waste load allocations under section 303(d) to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit only in compliance with section 303(d)(5).".

(b) <FWPCA § 402> Section 402(a)(1) of the Clean Water Act is amended by inserting "(A)" after "either" and by inserting "(B)" after "this Act, or".

(c) <FWPCA § 303> Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:

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

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

STORMWATER DISCHARGES

[**116] SEC. 116 <FWPCA § 402>. (a) Section 402 of the Clean Water Act is amended by adding the following new subsection:

"(o)(1) Following the date of enactment of the Clean Water Act Amendments of 1985 and prior to October 1, 1992, the Administrator or the State (in the case of a State with a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater, other than (A) those associated with industrial activity or a municipal separate storm sewer, or (B) those for which the Administrator or the State determines that the stormwater

[*15672] discharge violates a water quality standard or is a significant contributor of pollutants to waters of the United States.

(2) Prior to October 1, 1988, the Administrator, in consultation with States with a permit program approved under section 402 of this Act, shall submit to the Congress the report of a study (i) to identify stormwater discharges or classes of stormwater discharges for which permits were not required pursuant to paragraph (1) of this subsection, and (ii) to determine, to the maximum extent practicable, the nature and extent of pollutants in such discharges. Prior to October 1, 1989, the Administrator, in consultation with States with a permit program approved pursuant to section 402 of this Act, shall submit to the Congress the report of a study setting forth procedures and methods to control stormwater discharges to the extent necessary to attain and maintain water quality standards.

SEWAGE SLUDGE

[**117] SEC. 117. (a) <FWPCA § 405> Section 405(d) of the Clean Water Act is amended by inserting "(1)" after "(d)", by striking "(1)", "(2)" and "(3)" and inserting in lieu thereof "(A)", "(B)" and "(C)", and by adding the following new paragraphs:

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

"(ii) Not later than March 1, 1987, and after opportunity for public hearing, the Administrator shall promulgate the regulations required by subparagraph (A)(i).

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

"(ii) Not later than December 15, 1987, the Administrator shall promulgate the regulations required by subparagraph (B)(i).

"(C) The management practices and numerical criteria established under subparagraphs (A) and (B) shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of each pollutant. Such regulations shall require compliance no later than twelve months after their publication, unless such regulations require the construction of new pollution control technology, 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.

"(I) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under this paragraph, the Administrator may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in the judgment of the

Administrator is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant.

(E) Prior to the promulgation of the regulations required by subparagraphs (A) and (B), 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.

"(F) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.".

(b) <FWPCA § 405> Section 405(e) of the Clean Water Act is amended to read as follows:

"(e) 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 primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) for any use for which regulations have been established pursuant to subsection (d) of this section, except in accordance with such regulations.".

(c) <FWPCA § 405> Section 405 of the Clean Water Act is further amended by adding at the end thereof the following:

"(f)(1) Any permit issued under section 402 of this Act to a publicly owned treatment works or any other treatment works treating primarily domestic sewage (but not including privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities) 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, 1985, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

"(2) 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.".

(d)(1) <FWPCA § 308> Section 308(a)(4) of the Clean Water Act is amended by inserting "405," before the phrase "and 504".

(2) <FWPCA § 505> Section 505(f) of the Clean Water Act is amended by striking "or" where it appears before "(6)", and inserting before the period a semicolon and the following: "or (7) a regulation under section 405(d) of this Act.".

(3) <FWPCA § 509> Section 509(b)(1)(E) of the Clean Water Act is amended by striking "or 306" and inserting in lieu thereof "306, or 405".

INTERSTATE DISPUTE RESOLUTION

[**118] SEC. 118. (a) Section 402(d)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)", by striking "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)" respectively, and by adding the following subparagraph:

"(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine within 90 days following written objection to the Administrator by the State whose recommendations were not accepted, whether any substantial violation of a water quality requirement (including any standard) of the affected State or adverse effect on public health of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit or provide specific modifications to such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection

shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance or denial of a permit under section 402.".

(b) Section 402(b)(1) of the Clean Water Act is amended by adding the following:

"(E) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State and seeks a modification of such permit;".

(c) Section 511 of the Clean Water Act is amended by adding a new subsection (e) as follows:

"(e) Any State or municipality he water quality of which is adversely affected by pollutants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to *5 U.S.C. 554,* 556, and 557 that such pollution is causing a substantial violation of a water quality requirement (including any standard) of such State or adversely affecting the public health of such State, shall issue an order within 90 days restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In no case shall such order or other relief based solely on this subsection supersede or abrogate rights to quantities of water which have been established by interstate water compacts. Supreme Court decrees, or State water laws. This subsection shall not apply in any case in which section 402(d)(2)(B) or section 402(B)(1)(F) is available, or section 402(d)(2)(B) or section 402(b)(1)(E) apply to any pollution which is subject to the Colorado River Basin Salinity Control Act, nor to any water pollution which results from emissions from mobile or stationary sources which are regulated under the Clean Air Act.". [*15673]

PRESERVATION OF OTHER RIGHTS

[**119] SEC. 119. (a) Section 505(e) of the Clean Water Act is amended by inserting "(1)" after "(e)" and by adding the following new paragraphs:

"(2) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.

"(3) In any case involving the application of State common or statutory law to an instance where a discharge of pollutants arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality, a State or municipality shall be considered a citizen of such State for the purpose of filing an action in, or seeking removal to, a Federal district court to section 1332 of title 28. United States Code.".

(b) The amendments made by this section shall not apply in any dispute involving claims of interstate water pollution, wherein a State or municipality is the defending party, which is pending as of the enactment of this Act (or has been finally adjudicated), and on which the Supreme Court of the United States has rendered a decision.

AD VALOREM TAX DEDICATION

[**120] SEC. 120 <WQA87 § 215>. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton. New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.

LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

[**121] SEC. 121 <WQA87 § 511>. (a)(1) If the wastewater treatment plant identified in the consent decree as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(2) If the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any thirty-day period than an amount equal to thirty times the average daily amount of raw sewage discharged from such drainage area during the twelve-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b).

(b)(1) In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the city of New York to resume operation of such plant.

(2) In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation

(3) In the event that an increase in discharges from the North River drainage area constituting a violation of subsection (a)(1) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(1), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(4) In the event that an increase in discharges from the Red Hook drainage area constituting a violation of subsection (a)(2) is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator of the Environmental Protection Agency shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

(5) The Administrator of the Environmental Protection Agency shall extend either deadline under paragraph (1) or (2) of subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any --

(A) act of war,

(B) unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight, or

(C) other circumstances beyond the control of the city of New York, such circumstances not to include (i) the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, (ii) the unavailability of funds from the city of New York or the State of New York, or (iii) a policy decision made by the city of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline in subsection (a).

(c) Except as otherwise provided in subsection (b), any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

(d) For purposes of this section, the "consent decree" is the consent decree entered into by the Environmental Protection Agency, the city of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

(e) The Administrator of the Environmental Protection Agency shall work with the city of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

(f) Nothing in this section shall be construed as modifying the terms of the consent decree.

(g) It is the sense of the Congress that the Administrator of the Environmental Protection Agency should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

(h)(1) The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(2) The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

(i) The Administrator of the Environmental Protection Agency shall promptly establish and carry out a program for the monitoring activities which may be required under subsection (a). The Administrator of the Environmental Protection Agency shall establish the methodologies, data base, and any other information required for making determinations under subsection (b) for the North River drainage area (as defined in the consent decree) by July 31, 1986, unless the requirements of subsection on (h)(1) have been satisfied, and for the Red Hook drainage area (as defined by the consent decree) by July 31, 1987, unless the requirements of subsection (h)(2) have been satisfied. In carrying out such program, if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within thirty days after such finding, whether a provision of subsection (b) applies. If the Administrator requires information from the city of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the city of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The city of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such thirty days unless a provision of subsection (b) applies.

CHESAPEAKE BAY

[**122] SEC. 122 <FWPCA § 117>. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:

"CHESAPEAKE BAY

SEC. 117. (a) The Administrator shall continue the Chesapeake Bay Program and shall establish and maintain in the Environ-

[*15674] mental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to --

"(1) collect and make available, through publications and other appropriate, means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter 'the Bay');

"(2) coordinate all Federal research projects pertaining to the Bay;

"(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

"(4) conduct research on the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.

"(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay Program (hereinafter 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1985, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

"(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement

actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

"(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.

"(c) Any State or combination of States that receives a grant under subsection (b) shall, within eighteen months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with the Administrator to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay Program.

"(d) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:

"(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a); and

"(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (b).".

GREAT LAKES

[**123] SEC. 123. (a) <FWPCA § 118> Title I of the Clean Water Act is further amended by adding the following new section:

"GREAT LAKES

SEC. 118. (a) DEFINITIONS. -- For the purposes of this section, the term --

"(1) 'Agency' means the Environmental Protection Agency;

"(2) 'Great Lakes' means Lake Ontario, Lake Erie, Lake Huron (including Lake St. Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border);

"(3) 'Great Lakes System' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

"(4) 'Program Office' means the Great Lakes National Program Office established by this section; and

"(5) 'Research Office' means the Great Lakes Research Office established by subsection (d).

"(b) GREAT LAKES NATIONAL PROGRAM OFFICE. -- The Great Lakes National Program Office (previously established by the Administrator) is hereby established within the Agency. The Program Office shall be headed by a Director who, by reason of management experience and technical expertise relating to the Great Lakes, is highly qualified to direct the development of programs and plans on a variety of Great Lakes issues. The Great Lakes National Program Office shall be located in a Great Lakes State.

"(c) GREAT LAKES MANAGEMENT. -- (1) The Program Office shall --

"(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 101(e) of this Act, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978;

"(B) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

"(C) serve as the liaison with, and provide information to, the Canadian members of the International Joint Commission and the Canadian counterpart to the Agency.

"(2) The Program Office shall develop, in consultation with the states, a five-year plan and program for reducing the amount of nutrients introduced into the Great Lakes. Such program shall incorporate any management program for reducing nutrient runoff from nonpoint sources established under section 319 of this Act and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

"(3) The Program Office shall carry out a five year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes, with emphasis on the removal of toxic pollutants from bottom sediments.

"(4) To the extent practicable, the Agency's annual budget submission to Congress, shall include a funding request for the Program Office as a separate budget line item.

"(5) Within ninety days after the end of each fiscal year, the Administrator shall submit to the Congress a comprehensive report which --

"(A) describes the achievements in the preceding fiscal year in implementing the Great Lakes Water Quality Agreement of 1978 and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) initiatives in such preceding fiscal year;

"(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality in the Great Lakes system, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

"(C) describes the, long-term prospects for improving the condition of the Great Lakes; and

"(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes management efforts.

"(d) GREAT LAKES RESEARCH. --

"(1) There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

"(2) the Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report on such issues prior to the end of each fiscal year which shall identify any changes in the Great Lakes system with respect to such issues.

"(3) The Research Office shall identify and inventory Federal, State, university, and tribal environmental research programs, and to the extent feasible, those of private organization and other nations, relating to the Great Lakes system, and shall update that inventory every four years.

"(4) The Research Office shall establish a Great Lakes research exchange for the purpose of facilitating the rapid identification, acquisition, retrieval, dissemination, and use of information concerning research projects which are on-going or completed and which affect the Great Lakes System.

"(5) The Research Office shall develop, in cooperation with the Program Office, a comprehensive environmental research program and data base for the Great Lakes System. The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

"(6) The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College Program, and other Federal laborites, and the private sector, appropriate research and monitoring activities which address priority issues and current needs relating to the Great Lakes.

[*15675] "(7) The Great Lakes Research Office shall be located in a Great Lakes State.

"(e) RESEARCH AND MANAGEMENT COORDINATION. --

"(1) Prior to October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins the following calendar year.

"(2) Each plan prepared under paragraph (1) shall --

"(A) identify all proposed research dedicated to activities conducted under the Great Lakes Water quality Agreement of 1978;

"(B) include the Agency's assessment of priorities for research needed to fulfill the terms of such agreement; and

"(C) identify all proposed research that may be used to develop a comprehensive environmental data base for the Great Lakes System and establish priorities for development of such data base.

"(f) INTERAGENCY COOPERATION. -- The head of each department, agency, or other instrumentality of the Federal Government which is engaged in, is concerned with, or has authority over programs relating to research, monitoring, and planning to maintain, enhance, preserve, or rehabilitate the environmental quality and natural resources of the Great Lakes, including the Chief of Engineers of the Army, the Chief of the Soil Conservation Service, the Commandant of the Coast Guard, the Director of the Fish and Wildlife Service, and the Administrator of the National Oceanic and Atmospheric Administration shall submit an annual report to the Administrator with respect to the activities of that agency or office affecting compliance with the Great Lakes Water Quality Agreement of 1978.

"(g) RELATIONSHIP TO EXISTING FEDERAL AND STATE LAWS AND INTERNATIONAL TREATIES. -- Nothing contained in this section shall be construed to affect the jurisdiction, powers, or prerogatives of any department, agency, or officer of the Federal Government or of any State government, or of any tribe, nor any powers, jurisdiction, or prerogatives of international bodies created by treaty with authority relating to the Great Lakes.

"(h) AUTHORIZATIONS OF GREAT LAKES APPROPRIATIONS. --

There are authorized to be appropriated to carry out this section not to exceed $10,000,000 per fiscal year for the fiscal years 1986, 1987, 1988, 1989 and 1990. Of such amounts as are appropriated each fiscal year --

"(1) 50 per centum shall be used for the Great Lakes National Program Office demonstration projects on the feasibility of controlling and removing toxic pollutants;

"(2) 7 per centum shall be used for the Great Lakes National Program Office's program of nutrient monitoring; and

"(3) 30 per centum shall be used for the Great Lakes Research Office.".

(b) Section 517 of the Clean Water Act is amended by inserting "118," immediately after "115".

CLEAN LAKES

[**124] SEC. 124 <FWPCA § 314>. Section 314(a) of the Clean Water Act is amended to read as follows:

"(a)(1) Each State shall prepare a report on a biennial basis which shall include --

"(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

"(B) a list and description of those publicly owned lakes for which uses are known to be impaired, including those lakes which are known to not meet the applicable water quality standards, or which require implementation of protection programs to maintain compliance with applicable standards; and

"(C) a description of the State programs and methods to control sources of pollution of lakes and protect the quality of lakes.

"(2) The report provided for in paragraph (1) shall be included in the report required under section 305(b) of this Act.

"(3) A State must submit a report in accord with paragraph (1) in order to receive a grant under this section.".

LAKE PEND OREILLE STUDY

[**125] SEC. 125 <WQA87 § 525>. The Administrator shall conduct a comprehensive study of the causes of increasing pollution in Lake Pend Oreille and its tributaries. In such study, the Administrator shall attempt to identify any up-stream or local permitted or other discharges and the source of such discharges. In conducting this study, the Administrator should take into account any previous studies that will assist in carrying out the provisions of this subsection, and report to Congress the findings and recommendations of the study.

CONSTRUCTION AND OPERATION OF LOG TRANSFER FACILITIES

[**126] SEC. 126 <WQA87 § 407>. (a) Not later than October 12, 1985, the Administrator and the Secretary of the Army shall enter into an agreement to designate a lead agency and to process permits required under section 402 and section 404 of the Clean Water Act, where both such sections apply, for discharges associated with the construction and operation of log transfer facilities.

(b) The requirements of sections 301(a) and 402(a) of the Clean Water Act shall be stayed until October 12, 1985, or until an agreement is entered into under subsection (a), whichever is earlier, for discharge associated with such facilities, except discharges of dredged or fill material.

(c) Such agreement shall be developed to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

(d) Where both sections 402 and 404 of that Act apply, log transfer facilities that have received a permit under section 404 of that Act prior to the date of enactment of this section shall not be required to submit a new application for a permit under section 402 of this Act. If the Administrator determines that the terms of an existing permit under section 404 of that Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, a separate application for a permit under section 402 shall not be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of an existing permit under section 404 of that Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of that Act, modifications to the existing permit under section 404 of that Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of that Act.

(e) For the purpose of this section, the term "log transfer facility" means a facility which is constructed in whole or in part in waters of the United States, and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.

TITLE II -- CONSTRUCTION GRANT AMENDMENTS

CONSTRUCTION GRANT AUTHORIZATION

[**201] SEC. 201. (a) <FWPCA § 207> Section 207 of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: "; and to carry out this title, other than sections 206(e), 208, and 209, subject to such amounts as are provided in appropriation Acts, for each of the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $2,400,000,000; and for each of the fiscal years ending September 30, 1989, and September 30, 1990, not to exceed $1,200,000,000.".

(b) <FWPCA § 205> Section 205(e) of the Clean Water Act is amended by striking,", 1979, 1980, 1981, 1982, 1983, 1984, and 1985" in the first and second sentences and inserting in each place in lieu thereof "through 1994".

ALLOCATION

[**202] SEC. 202 <FWPCA § 202>. Section 205(c) of the Clean Water Act is amended by adding the following new paragraphs:

"(3) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	.012442
Alaska	.007321
Arizona	.012442
Arkansas	.008002
California	.061966
Colorado	.009785
Connecticut	.012442
Delaware	.005001
District of Columbia	.005958
Florida	.044973

Georgia	.014649
Hawaii	.007440
Idaho	.005958
Illinois	.039186
Indiana	.020001
Iowa	.012614
Kansas	.011041
Kentucky	.014975
Louisiana	.014314
Maine	.009346
Maryland	.020955
Massachusetts	.036028
Michigan	.037255
Minnesota	.015925
Mississippi	.012442
Missouri	.025305
Montana	.005411
Nebraska	.006257
Nevada	.005958
New Hampshire	.012442
New Jersey	.048642
New Mexico	.005958
New York	.096132
North Carolina	.016094
North Dakota	.004658
Ohio	.048776
Oklahoma	.009882
Oregon	.011794
Pennsylvania	.034320
Rhode Island	.007428
South Carolina	.013337
South Dakota	.005958
Tennessee	.016597
Texas	.053634
Utah	.006445
Vermont	.005958
Virginia	.017732
[*15876]	
Washington	.020533
West Virginia	.013507
Wisconsin	.023423
Wyoming	.005359
American Samoa	.000778
Guam	.000564
Northern Marianas	.000531
Puerto Rico	.012582
Pacific Trust Territory	.001403
Virgin Islands	.000462

"(4) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1989 and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Clean Water Act Amendments of 1985. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:

Alabama	.012500
Alaska	.007563
Arizona	.012500
Arkansas	.011714
California	.058321
Colorado	.010503
Connecticut	.012500
Delaware	.005801
District of Columbia	.009172
Florida	.045181
Georgia	.014570
Hawaii	.007440
Idaho	.007272
Illinois	.036881
Indiana	.019653
Iowa	.012672
Kansas	.012337
Kentucky	.015044
Louisiana	.014380
Maine	.009772
Maryland	.019722
Massachusetts	.036195
Michigan	.035063
Minnesota	.014988
Mississippi	.012500
Missouri	.025422
Montana	.005411
Nebraska	.007467
Nevada	.006805
New Hampshire	.012500
New Jersey	.048867
New Mexico	.006814
New York	.090478
North Carolina	.016168
North Dakota	.004658
Ohio	.045906
Oklahoma	.012223
Oregon	.011794
Pennsylvania	.032302
Rhode Island	.007428
South Carolina	.013399
South Dakota	.006400
Tennessee	.016674
Texas	.053882
Utah	.012486
Vermont	.006581
Virginia	.016689
Washington	.028665
West Virginia	.012712
Wisconsin	.022322
Wyoming	.005359
Samoa	.000732
Guam	.000567
Northern Marianas	.000533
Puerto Rico	.012640

Pacific Trust Territories	.001409
Virgin Islands	.000464".

CHICAGO TUNNEL AND RESERVOIR PROJECT

[**203] SEC. 203 <WQA87 § 214>. Section 201(g)(1) of the Clean Water Act is amended by adding the following sentence: "The Chicago tunnel and reservoir project may receive grants under the previous sentence without regard to the limitation contained therein, if the Administrator determines that such project meets the cost-effectiveness requirements of sections 217 and 218 without any redesign or reconstruction, and the Governor of the affected State demonstrates to the satisfaction of the Administrator the water quality benefits of such project.".

ELIGIBILITIES AFTER 1990

[**204] SEC. 204 <FWPCA § 202>. (a) Section 202(a)(1) of the Clean Water Act is amended by striking out the period at the end thereof and adding the following: ", for any such grants made before October 1, 1990.".

(b) Section 204(c) of the Clean Water Act is amended by inserting "awarded a grant before October 1, 1990," after the words "such facility and interceptors".

(c) <FWPCA § 205> Section 205(g)(1) of the Clean Water Act is amended by striking "October 1, 1985" and inserting in lieu thereof "October 1, 1994".

DESIGN/BUILD PROJECTS

[**205] SEC. 205 <FWPCA § 203>. Section 203 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f)(1) An applicant from a State allowing use of this subsection who proposes to construct waste water treatment works may enter into an agreement with the Administrator under this subsection providing for the preparation of construction plans and specifications and the erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) Agreements under this subsection shall be limited to projects which are, under an approved facility plan:

"(A) treatment works that have an estimated total cost of $8,000,000 or less; and

"(B) any of the following types of waste water treatment systems: aerated lagoons, trickling filters, stabilization ponds, land application systems, sand filters, and subsurface disposal systems.

"(3) An agreement entered into under this subsection shall --

"(A) set forth an amount agreed to as the maximum Federal contribution to the project, based upon a competitively bid document of basic design data and applicable standard construction specifications and determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act:

"(B) set forth dates for the start and completion of construction of the treatment works by the applicant and a schedule of payments of the Federal contribution to the project;

"(C) contain assurances by the applicant that (i) engineering and management assistance will be provided to manage the project; (ii) the proposed treatment works will be an operable unit and will meet all the requirements of this title; and (iii) not later than one year after the date specified as the date of completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

"(D) require the applicant to obtain a bond from the contractor in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as are necessary to assure compliance with this title (except as provided in paragraph (4) of this subsection).

"(4) Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

"(5) The Administrator shall reserve a portion of the grant to assure contract compliance until final project approval as defined by the Administrator. If the amount agreed to under paragraph (3)(A) exceeds the cost of designing and constructing the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) Not more than 25 percent of the amount allotted to a State for any fiscal year under section 205 of this Act shall be obligated for grants pursuant to this subsection.

"(7) The Administrator will determine an allowance for facilities planning for projects constructed under this subsection in accordance with section 201(1).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (3), the Administrator is authorized to take such action as may be necessary to recover the appropriate amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

INNOVATIVE AND ALTERNATIVE PROJECTS

[**206] SEC. 206 <FWPCA § 205>. Section 205(i) of the Clean Water Act is amended to read as follows:

"(i) Not less than one-half of 1 per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, through September 30, 1990, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of 2 per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (c) of this section shall be expended only for increasing grants for construction of treatment works pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7 1/2 per centum of the funds allotted to such State under subsection (c) of this section for each of the fiscal years ending September 30, 1982, through September 30, 1990, shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.".

MARINE CSO'S AND ESTUARIES

[**207] SEC. 207 <FWPCA § 205>. Section 205 of the Clean Water Act is amended by adding the following new subsection:

"(1) The Administrator shall reserve each fiscal year beginning after September 30, 1985, 1 per centum (during fiscal years 1986, 1987, and 1988) or 1 1/2 percentum (during fiscal years 1989 and 1990) of the sums appropriated under section 207, prior to allotment among the States under subsection (c) of this section. Of the sums reserved under this subsection, two thirds shall be available to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and

[*15677] sanitary sewer overflows from adjacent urban complexes, and one-third shall be available for the implementation of section 320 of this Act. Sums so reserved shall be subject to the period of availability for obligation established under subsection (d) of this section.".

INDIAN TRIBES

[**208] SEC. 208 <FWPCA § 518>. (a) Title II of the Clean Water Act is amended by adding the following new section:

INDIAN TRIBES

"SEC. 220. (a) 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 in accordance with section 216 of this Act, and any obstacles which prevent such needs from being met. The Administrator shall submit a report to the Congress for such assessment no later than one year after the enactment of the Clean Water Act Amendments of 1985.

"(b) Beginning with fiscal year 1987, the Administrator is authorized to reserve each fiscal year up to one-half of one per centum of the sums appropriated under section 207, prior to allotment among the States under section 205(e), based on the determination of unmet needs reported under subsection (a). Sums reserved under this subsection shall be available for grants to provide sewage treatment works to serve Indian tribes.

"(c) The Administrator is authorized to make special provision for the treatment of Indian tribes under this title, including the treatment of Indian tribes as States to the degree necessary to carry out the purposes of this section. Such

special provision may include the direct provision of funds reserved under subsection (b) 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 is authorized to reduce the non-Federal share otherwise required under section 202 with respect to Indian tribes, as determined by the Administrator in cooperation with the Director of the Indian Health Service.".

(b) Section 502 of the Clean Water Act is amended by adding the following new paragraph:

"(20) the term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community (including any Alaska Native village, as defined in section 113(g), but not including any Alaska Native regional or village corporation) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.".

STATE WATER POLLUTION CONTROL REVOLVING FUNDS

[**209] SEC. 208 [209?]. The Clean Water Act is amended by adding at the end thereof the following new title:

"TITLE VI -- GRANTS FOR WATER POLLUTION CONTROL REVOLVING FUNDS

"AUTHORIZATION, ALLOTMENT, AWARD, AND PAYMENT

"SEC. 601. (a) <FWPCA § 607> There are hereby authorized to be appropriated the following sums to carry out the purposes of this title:

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

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

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

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

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

"(b) <FWPCA § 604> For fiscal years 1989 and 1990, sums appropriated to carry out this title for each fiscal year shall be allotted by the Administrator in accordance with section 205(c) of this Act.

"(c) <FWPCA § 604> Sums allotted to the States for a fiscal year shall be available for a grant award under subsection (d) during the fiscal year for which authorized. The amount of any allotment not obligated by the end of such fiscal year 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 next fiscal year, except that none of the funds reallotted by the Administrator will be allotted to any State which failed to obligate any of the funds being reallotted.

"(d) <FWPCA § 602> If a State has entered into a grant agreement with the Administrator as provided in section 602 of this title, the Administrator is authorized to make a capitalization grant to the State from funds available for obligation under this title.

"(e) <FWPCA § 602> From funds obligated for a given fiscal year pursuant to subsection (d) of this section, quarterly installment payments shall be made in accordance with the schedule of payments established under section 602(b)(2) of this title.

"(f) <FWPCA § 605> If the Administrator determines that a State has not complied with agreements under section 602, or requirements of this title, the Administrator shall notify the State of such noncompliance and the necessary corrective action. If the State does not take such corrective action by the sixtieth day after the date the State receives notice, the Administrator shall withhold additional payments to the State until the Administrator is satisfied that the State has taken the necessary corrective action.

"(g) <FWPCA § 605> If the Administrator is not satisfied that adequate corrective actions have been taken by the State within twelve months of the notice provided under subsection (f) of this section, the payments withheld by the Administrator shall be made available for reallotment under subsection (c) of this section.

"CAPITALIZATION GRANT AGREEMENTS WITH STATES

"SEC. 602 <FWPCA § 602>. (a) To receive a capitalization grant under this title, 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.

(b) The Administrator shall enter into an agreement with a State only after the State has established to the satisfaction of the Administrator that --

"(1) the State has established a Water Pollution Control Revolving Fund, as defined in section 603 of this title;

"(2) the State has agreed to accept grant payments under this title in accordance with a payment schedule established by the Administrator, and has agreed to deposit all such payments in the dedicated revolving fund;

"(3) the State has deposited in the fund or has agreed to deposit in the fund, from State moneys, an amount equal to at least 15 per centum of the total of all capitalization grants, so that such necessary matching deposits are made no later than the date of each grant payment under the provisions of paragraph (2) of this subsection;

"(4) the State has agreed to make binding loan commitments in an amount equal to 100 per centum of the amount of the grant payments within one year of the receipt of the quarterly payment of such funds;

"(5) the State has made adequate assurances through submission of an intended use report under section 604(c) of this title that (A) all funds available in the Water Pollution Control Revolving Fund will be committed in an expeditious and timely manner, (B) treatment works projects that are constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m) to the State Water Pollution Control Revolving Fund will meet the same requirements applicable to grant projects funded under title II, and (C) such funds will first be used to assure maintenance of progress in the completion of all projects needed to meet the enforceable deadlines, goals, and requirements of this Act;

"(6) in addition to meeting the requirements of this title, the State has made assurances that it will commit or expend the payments so received in accordance with laws and procedures applicable to the commitment or expenditure of revenue of the State;

"(7) in carrying out the requirements of section 604 of this title, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

"(8) the State will require as a condition of making a loan that recipients will maintain project accounts in accordance with generally accepted government accounting standards; and

"(9) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 604(d) of this title.

"STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 603 <FWPCA § 603>. (a) To be eligible for an award of a grant under section 601 of this title, each State shall establish a Water Pollution Control Revolving Fund, administered by an instrumentality of the State with powers and limitations including those specified in subsections (b), (c), and (d) of this section.

"(b) The amounts of funds available to the Water Pollution Control Revolving Fund shall be dedicated solely to providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212(2) of title II of this Act) and (2) for the implementation of management programs established under sections 319 and 320. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for this purpose.

"(c) The instrumentality of the State administering the Water Pollution Control Revolving Fund shall be authorized to use the fund to make loans, on the condition that --

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

"(2) annual principal payments shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after project completion;

[*15678] "(3) the recipient of a loan shall establish a dedicated source of revenue for repayment of loans; and

"(4) the fund shall be credited with all repayment of principal and interest on all loans.

"(d) Except as otherwise limited by State law, a Water Pollution Control Revolving Fund may be used --

"(1) 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;

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

"(3) 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 are deposited in the Water Pollution Control Revolving Fund;

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

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

"(6) for the reasonable costs of administering the fund and conducting activities under this title provided that such amounts shall not exceed 4 per centum of all grant awards to such fund under section 601(d).

"AUDITS, REPORTS, AND FISCAL CONTROLS

SEC. 604 <FWPCA § 606>. (a) 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 --

"(1) payments received by the fund;

"(2) disbursements made by the fund; and

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

"(b) The Administrator shall conduct, or require each State to have conducted, not less than annually, an independent audit to review the operations of each Water Pollution Control Revolving Fund. Such audits shall be conducted by an entity independent of the State, and in accordance with the Comptroller General's standards for auditing government organizations, programs, activities, and functions. An audit under this subsection shall be completed in such time and manner as deemed necessary or appropriate by the Administrator to carry out the purposes of this title.

"(c)(1) Each State shall, on an annual basis, prepare a plan on the intended uses of the amounts available to the fund. The plan shall include --

"(A) a description of the short and long term goals and objectives of the State's Water Pollution Control Revolving Fund;

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

"(C) assurances and specific proposals for meeting the requirements of section 602(b) (4) and (5) of this title; and

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

"(2) To meet the requirements of this subsection and to facilitate comments from interested local governments and persons on the use of funds, a State may adapt or use priority systems and lists developed under section 216 of this Act.

"(d) Beginning the first fiscal year after the receipt of payments under section 601(e) of 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) of this section, including identification of loan recipients, loan amounts, and loan terms.

"(e) The Administrator shall conduct an annual review of each State plan and report prepared under subsections (c) and (d) of this section, 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 a Water Pollution Control Revolving Fund, the State or loan recipient shall make available to the Administrator records the Administrator reasonably requires to review and determine compliance with this title.".

STATE-OPTION TO USE TITLE II FUNDS

[**210] SEC. 210 <FWPCA § 205>. Section 205 is amended by adding a new subsection as follows:

"(m)(1) The Administrator is authorized to award from funds available for obligation during each fiscal year ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990, September 30, 1991, September 30, 1992, September 30, 1993, and September 30, 1994, a capitalization grant to a State for the purpose of capitalizing a Water Pollution Control Revolving Fund established in compliance with title VI of this Act, where the Governor requests such action in accordance with paragraph (2) of this subsection.

"(2) No later than thirty days after the date of enactment of this Act with respect to funds available for obligation in the fiscal year beginning October 1, 1985, and not less than ninety days prior to the start of each of the fiscal years 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, a State shall provide notice of its intent to use all or a portion of the funds available for obligation in that fiscal year as a capitalization grant for a Water Pollution Control Revolving Fund under title VI of this Act.

"(3) Any sum made available to a State's Water Pollution Control Revolving Fund under this subsection shall be in addition to any funds otherwise allotted to that State under section 601(b) during any fiscal year.".

REPORT TO CONGRESS

[**211] SEC. 211 <FWPCA § 516>. Section 516 of the Clean Water Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator shall submit to the Congress by February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States in accordance with title VI of this Act. The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies, shall include in such report the following:

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

"(2) an estimate of the cost of construction for such facilities that require construction to meet such requirements;

"(3) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(4) an assessment of the operations, loan portfolio and loan conditions of Water Pollution Control Revolving Funds established by the States under title VI of this Act;

"(5) an assessment of the effect on user charges of the assistance provided by Water Pollution Control Revolving Funds established by the States under title VI, compared to assistance under title II of this Act; and

"(6) an assessment of the efficiency of the operation and maintenance of treatment works constructed with financial assistance under titles II and VI of this Act.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CHAFEE. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I do commend, Mr. President, the distinguished Senator from Rhode Island [Mr. CHAFEE] and the distinguished Senator from Maine [Mr. MITCHELL] for their very professional handling of the clean water bill. They managed the bill with skill. They demonstrated a clear understanding with respect to the contents of the bill. They were patient and cooperative with other Members who had amendments.

They brought to fruition the enactment of a good piece of legislation. Others of us would hope to emulate the demonstrated prowess of these two fine Senators as we observed them in the managership of this important legislation.

Mr. SIMPSON. Mr. President, I certainly concur in those remarks. They are well-deserved and well-served. They are appreciated by the assistant majority leader.