Mechanical Dredging at the Church Street Boat Ramp

BID # 23-08

ADDENDUM No. 02

February 09, 2023

Any and all changes to the Bid are valid only if they are included by written addendum to all potential respondents, which will be emailed prior to the proposal due date. Each respondent must acknowledge receipt of any addenda by indicating in its proposal. Each respondent, by acknowledging receipt of addenda, is responsible for the contents of the addenda and any changes to the proposal therein. Failure to acknowledge receipt of addenda may cause the proposal to be rejected. If any language or figures contained in this addendum are in conflict with the original Bid Document, this addendum shall prevail.

This addendum consists of the following:

1. Addendum Number Two (2) is attached and consists of a total of Seven Hundred Thirty-Two (732) pages including this cover sheet.

Please contact me at (847-866-2971) or (johngonzalez@cityofevanston.org) with any further questions or comments.

Sincerely,

John Gonzalez
Purchasing Specialist

Mechanical Dredging at the Church Street Boat Ramp

BID # 23-08

ADDENDUM No. 02

February 09, 2023

This addendum forms a part of the Bid documents for Bid # 23-08 and modifies these documents. This addendum consists of the following:

Questions:

1. **Question:** Is there and existing and dredge contours for the project?
   Response: Most recent topography map is attached. This topography map was created in July 2022, after 3 months' worth of sand back filled the boat ramp area.

2. **Question:** How many CY have been removed in previous years?
   Response: Up to 10,000 CU.

3. **Question:** What water depth are you looking to achieve?
   Response: Roughly 8ft at the mouth.

4. **Question:** Do you have a copy of any permits required for this project for me to look at?
   Response: Yes, please see the attachment.

5. **Question:** Would hydraulic dredging be allowed if it was pumped directly into the disposal area?
   Response: Yes, this would be allowed and would be required to follow the specifications as outlined in the permits.

6. **Question:** Type of hydraulic oil required?
   Response: Please refer to the attached Clean Water Act, Rivers and Harbors Act, and the Illinois Environmental Protection Act.

GENERAL:

The Complete Detailed Work Instructions on Exhibit A has been amended to include Hydraulic or Mechanical Dredging as part of Bid Option # 2:

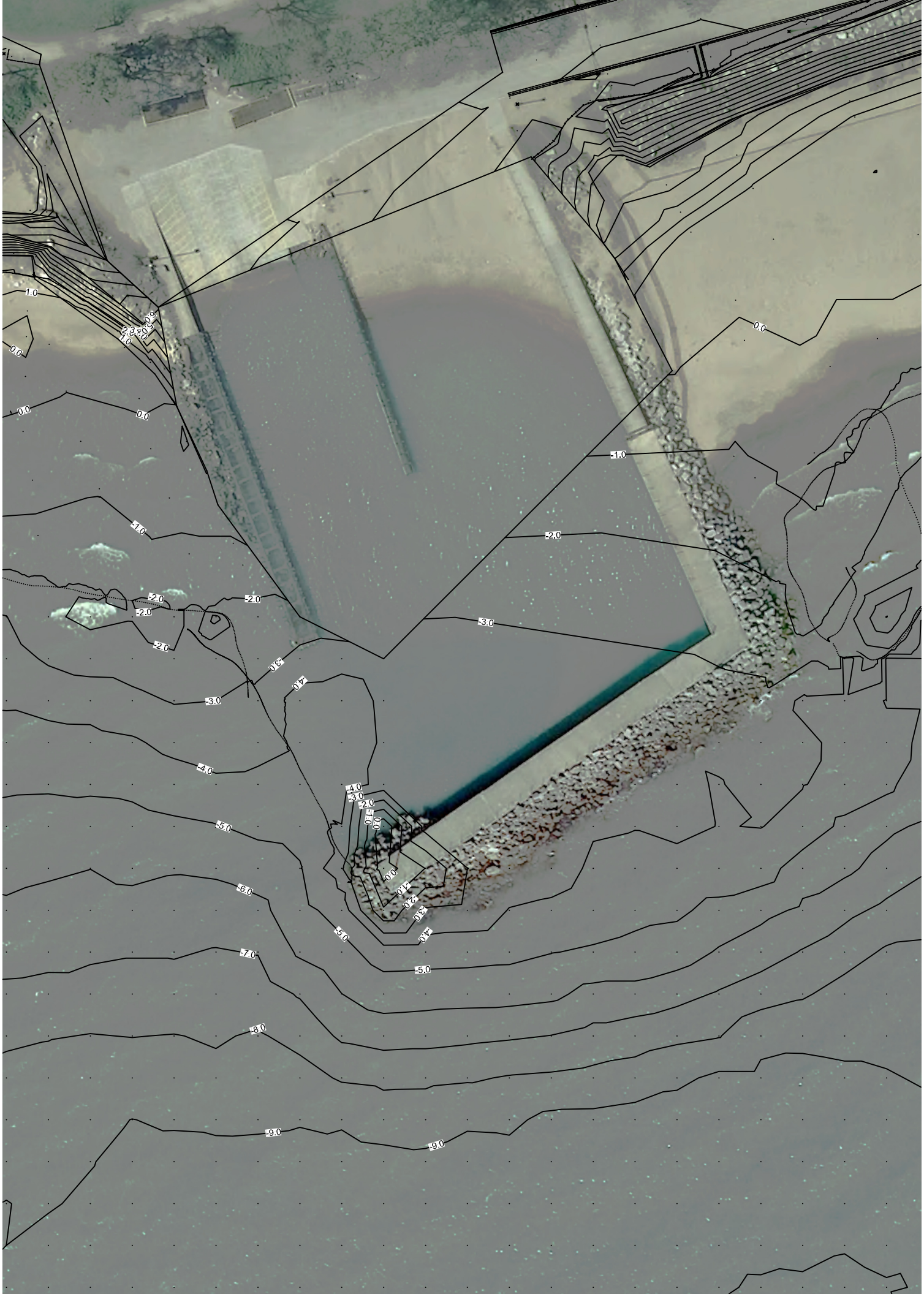
Bid Option # 2 – Submit total base bid for:

1. **Hydraulic or Mechanical Dredging** area as per plan (See map attachment)
2. Remove sand from water. Contractor will move and place sand in the "deposit area" WITHOUT the assistance of Evanston Public Works
3. Provide water, soil, and sand testing as required by the Illinois Department of Natural Resources and Illinois Environmental Protection Agency. The City of Evanston must receive testing results within 14 business days

ATTACHMENTS

1. Shoreline Topography Map
2. IDNR Permit
3. IEPA Permit
4. US Army Corps Permit
5. Clean Water Act
6. Rivers and Harbors Act
7. Illinois Environmental Protection Act
8. Non-Mandatory Pre-Bid Sign in Sheet dated February 02,2023

Note: Acknowledgment of this Addendum is required in the Bid.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Illinois Department of
Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

Bruce Rauner, Governor
Wayne A. Rosenthal, Director

Office of Water Resources, Michael A. Bilandic Building, 160 N. LaSalle St., S-703, Chicago, IL 60601

March 5, 2015

Bob Dorneker
City of Evanston
Lorraine H. Morton Civic Center
Evanston, IL 60201

RE: Application for permit No. C20150003 by the City of Evanston to annually dredge the Church Street boat ramp in Lake Michigan in the City of Evanston, Illinois

Dear Mr. Dorneker:

Enclosed is Illinois Department of Natural Resources, Office of Water Resources (Department) Permit No. LM2015006 and Illinois Environmental Protection Agency (IEPA) Final Determination Letter dated May 1, 2015; authorizing the annual dredging of the Church Street boat ramp in Lake Michigan in the City of Evanston, Illinois.

If any changes in the location or plans of the work are found necessary, revised plans should be submitted promptly to the Department and the IEPA so that approval is received prior to the beginning of the work.

If you have any questions, feel free to contact me at (312) 793-5947 or james.casey@illinois.gov.

Sincerely,

James P. Casey

James P. Casey
Lake Michigan Management Section

Enclosures:

cc: Corps of Engineers (Soren Hall), w/enclosures
IEPA (Dan Heacock), w/enclosures

PERMIT NO. LM2015006
DATE: June 12, 2015

State of Illinois
Department of Natural Resources, Office of Water Resources
and
Illinois Environmental Protection Agency

Permission is hereby granted to: **City of Evanston**
Lorraine H. Morton Civic Center
2100 Ridge Avenue
Evanston, IL 60201

To annually dredge up to 10,000 cubic yards of material from the bed of Lake Michigan at the Church Street boat launch and dispose of the material in the Lake Michigan nearshore. The project is located at Church Street and Lake Michigan, in the City of Evanston, in the Southeast Quarter of Section 18 and Southwest Quarter of Section 18, Township 41 North, Range 14 East, of the 3rd Principal Meridian in Cook County.

In accordance with an application dated **January 27, 2015**, and the plans and specifications entitled:

2015 DREDGING VICINITY MAP, ONE SHEET, DATED JANUARY 28, 2015, RECEIVED FEBRUARY 2, 2015.

CITY OF EVANSTON DREDGING & DISPOSAL AREAS, ONE SHEET, DATED JANUARY 27, 2015, RECEIVED FEBRUARY 2, 2015.

Examined and Recommended:

James P. Casey
Lake Michigan Management Section

Approval Recommended:

Daniel A. Injerd, Director
Office of Water Resources

Approved:

Wayne A. Rosenthal, Director
Department of Natural Resources

This PERMIT is subject to the terms and special conditions contained herein and in the attached NOTICE OF FINAL DETERMINATION of the Illinois Environmental Protection Agency. This PERMIT is not valid unless a NOTICE OF FINAL DETERMINATION of the Illinois Environmental Protection Agency as required by Section 39(a) of the Environmental Protection Act is attached.

PERMIT NO. LM2015006

THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:

1) This permit is granted in accordance with the Rivers, Lakes and Streams Act, "615 ILCS 5," and the Environmental Protection Act "415 ILCS 5/1."

2) This permit does not convey title to the permittee or recognize title of the permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the activity or any part thereof will be located, or otherwise grant to the permittee any right or interest in or to the property, whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.

3) This permit does not release the permittee from liability for damage to persons or property resulting from the work covered by this permit, and does not authorize any injury to private property or invasion of private rights.

4) This permit does not relieve the permittee of the responsibility to obtain other federal, state or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approvals from any federal or other state agency to do the work, this permit is not effective until the federal and state approvals are obtained. . If construction does not begin within two years of the date of this permit, the permittee must submit the project to EcoCAT (http://dnr.illinois.gov/EcoPublic/) for an updated consultation under the Illinois Endangered Species Protection Act and the Illinois Natural Areas Preservation Act.

5) The permittee shall, at the permittee's own expense, remove all temporary piling, cofferdams, false work, and material incidental to the construction of the project from Lake Michigan. If the permittee fails to remove such structures or materials, the Department may have removal made at the expense of the permittee.

6) In public waters, if future need for public navigation or other public interest by the state or federal government necessitates changes in any part of the structure or structures, such changes shall be made by and at the expense of the permittee or the permittee's successors as required by the Department or other properly constituted agency, within sixty (60) days from receipt of written notice of the necessity from the Department or other agency, unless a longer period of time is specifically authorized.

7) The execution and details of the work authorized shall be subject to the review and approval of the Department and/or the Agency. Department and Agency personnel shall have the right of access to accomplish this purpose.

8) Starting work on the activity authorized will be considered full acceptance by the permittee of the terms and conditions of the permit.

9) The Department and Agency in issuing this permit have relied upon the statements and representations made by the permittee; if any substantive statement or representation made by the permittee is found to be false, this permit will be revoked and when revoked, all rights of the permittee under the permit are voided.

10) The permittee and the permittee's successors shall make no claim whatsoever to any interest in any accretions caused by the activity.

11) In issuing this permit, the Department and Agency do not ensure the adequacy of the design or structural strength of the structure or improvement.

12) Noncompliance with the conditions of this permit will be considered grounds for revocation.

13) If the construction activity here permitted is not completed on or before **December 31, 2025,** this permit shall cease and be null and void. When all work is constructed, the permittee shall notify the Department so that a final inspection can be completed.

THIS PERMIT IS SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS:

A. Special conditions 1 – 15 of the Illinois Environmental Protection Agency Final Determination Letter dated May 1, 2015.
B. After each dredging event submit to the Department's Chicago Office the amount of material dredged.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829
BRUCE RAUNER, GOVERNOR LISA BONNETT, DIRECTOR

217/782-3362

May 1, 2015

Illinois Department of Natural Resources
Lake Michigan Management Section
Michael A. Bilandic Building
160 N. LaSalle Street, Suite S-700
Chicago, IL 60601

Re: City of Evanston – Maintenance Dredging of Church Street Boat Launch Facility
Permit # 2015-LM-59653
Log # 2015-59653

Gentlemen:

This Agency received a request on February 2, 2015 from the City of Evanston requesting necessary comments concerning the maintenance dredging at the Church Street boat launch facility. We offer the following comments.

Based on the information included in this submittal, it is our engineering judgment that the proposed project may be completed without causing water pollution as defined in the Illinois Environmental Protection Act, provided the project is carefully planned and supervised.

These comments are directed at the effect on water quality of the construction procedures involved in the above described project and are not an approval of any discharge resulting from the completed facility, nor an approval of the design of the facility. These comments do not supplant any permit responsibilities of the applicant toward the Agency.

This Agency hereby issues final determination under Section 39 of the Illinois Environmental Protection Act, subject to the applicant's compliance with the following conditions:

1. The applicant shall not cause:
   a. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulations;
   b. water pollution defined and prohibited by the Illinois Environmental Protection Act;
   c. violation of applicable provisions of the Illinois Environmental Protection Act; or
   d. interference with water use practices near public recreation areas or water supply intakes.

2. The applicant shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.

3. The applicant shall not place or discharge dredge material into Lake Michigan or into waters of the State for beach nourishment or other purposes without written approval from the Illinois EPA for the particular dredge cut location. For any new proposed dredge area not previously approved by the Illinois EPA, the applicant shall provide the data and information of Condition 4 prior to the initial dredging event for the dredge cut location.

4. Prior to each dredging event or placement of dredged material during the term of this authorization, the following sampling and analysis shall be conducted on a representative number of samples from the dredge cut (minimum of 3 samples analyzed separately):

    a. A particle size distribution.
    b. Analysis of asbestos by the following appropriate method(s):
        i. For material to be placed below the Ordinary High Water Mark (OHWM), Polarized Light Microscopy (PLM) and Transmission Electron Microscopy (TEM) methods shall be used for asbestos testing. All samples shall be analyzed by each asbestos test method.
        ii. Beginning with the 2015 dredging season, for each new dredge material source location, for material to be placed on the beach or in waters for beach nourishment, the modified Superfund method as described in Condition 8 shall be conducted at least one time. After the initial modified Superfund testing is conducted, any future Superfund testing requirements for dredge material at that same location will be determined after Illinois EPA review considering existing data, regulations, Illinois Pollution Control Board orders or judicial orders regarding asbestos.
        iii. The modified Superfund method tests already performed and submitted on or about May 18, 2009 in accordance with IEPA permit 2005-LM-3467-3 are hereby approved and fulfill the requirements of the above item for the proposed dredge cut in vicinity of the Church Street boat launch.
    c. For hydraulic dredging or open water placement of dredged material, supernatant analysis shall be conducted based on settling periods of zero (0) and four (4) hours. Supernatant analysis will be reported in mass per volume for the following parameters: total suspended solids (TSS), total volatile solids (TVS), ammonia-nitrogen (as N), phosphorus (as P), total dissolved solids (TDS), sulfate, chloride, lead (total), and zinc (total).

5. For each dredging event, all test results from condition 4 shall be submitted to the Agency by the 15th of the month after the month the samples were taken. The submittal shall include a map with sampling locations and the methods/procedures including reporting limits for the parameters analyzed. The reporting limits shall be in compliance with condition 9. Should any of the results from condition 4 meet the following, the applicant shall submit the results to the Agency for approval 90 days prior to proposed dredging.
    a. Material with greater than 20% passing a #230 U.S. sieve.
    b. Material with greater than 1% ACM reported from the PLM or TEM test.
    c. Material tested for asbestos using the Superfund method that exceeds a mean value of 6.23 Ms/g PM_{10} and a 95% upper confidence limit (UCL) of 12.58 Ms/g PM_{10} for the 12 or more samples using the sum of the Protocol and NIOSH 7402 test methods of condition 8.
    d. Material for new dredge cut locations not previously reviewed and approved for dredge material discharge.

6. For open water disposal, the dredge material shall be placed in the water in a manner to minimize re-suspension of sediment material and contaminants by utilizing techniques including careful placement methods, disposal during favorable weather conditions that minimize turbulence and transport of suspended contaminants and other methods such as turbidity curtains should be used as necessary to minimize re-suspension of sediment material.

7. If the 4 hour supernatant test results of the dredge material exceed the following, monitoring shall be conducted in the case of open water disposal of the dredged materials: 0.02 mg/L ammonia-nitrogen (as N), 12 mg/L chloride, 0.007 mg/L phosphorus and 15 mg/L of total suspended solids (TSS). The following parameters shall be monitored on a twice weekly basis in the first week of the dredging event and weekly thereafter and reported in mg/L: total suspended solids (TSS), ammonia-nitrogen (as N), phosphorus (as P), and chloride. The sampling shall be conducted in accordance with the following:
    a. A sample of the water quality at the dredge disposal site shall be collected prior to the start of dredging activities, at surface and mid-depth elevations consisting of water hardness, water pH, and water temperature in addition to the above listed parameters.
    b. Samples shall be collected at surface and mid-depth elevations at two locations representative of the prevailing water current direction, one at approximately 100 feet from the discharge point and the other at approximately 500 feet from the discharge point.
    c. Samples shall be taken at approximately one (1) hour and four (4) hours after the first bucket load of dredge material is deposited in the lake or hydraulic discharge begins.
    d. Monitoring results, drawings depicting the location of each collected sample point, the volume of dredge material discharged, method of dredging (e.g. mechanical or hydraulic), and the dredge disposal location shall be submitted in a report by the 15th of the month following the calendar month when samples were collected. The monitoring report shall provide the data and method of determining downstream sample locations. The date, time, location, and individual(s) who performed the sampling shall be included in the monitoring reports. The laboratory analysis sheets shall be included in the monitoring reports. The date and time that discharge begins and ends for the front end-loader disposal operation or for the hydraulic dredging operation shall be recorded and included in the monitoring report.

8. For new areas to be dredged from Lake Michigan for material to be placed on the beach or in waters for beach nourishment, the applicant shall submit sediment sample results from a minimum of 12 sites for each potential nutrient sand source. Samples shall be prepared in accordance with the most current version of the Superfund Method for the Determination of Releasable Asbestos in Soils and Bulk Materials (U.S. EPA 540-R-97-028, 1997) and modified in the Draft Modified Elutriator Method for the Determination of Asbestos in Soils and Bulk Material (Berman and Kolk, May 2000) and additional modifications necessary to obtain the necessary samples of PM_{10} in accordance with the Illinois Attorney General's Task Force Report. Sampling shall utilize a grid sampling system with equally spaced samples. Samples analyzed for asbestos shall be analyzed by Transmission Electron Microscopy (TEM) and for both the NIOSH 7402 (PCME) method and Protocol Structures method. The aforementioned sampling and analysis shall be conducted in accordance with the recommendations specified in the document entitled "Illinois Beach State Park (IBSP): Determination of Asbestos Contamination in Sand Used for Beach Nourishment, Final Recommendations," dated December 29, 2003, prepared by the University of Illinois at Chicago, Center of Excellence in Environmental Health, Health Hazard Evaluation Program for the Illinois Attorney General's Task Force that was formed to address asbestos contaminated at Illinois Beach State Park (IBSP). An initial report for the initial dredging event containing the sampling results, methods, locations and depths, laboratory analysis reports and a discussion of the findings shall be submitted to the Agency. The Illinois EPA will reevaluate the need for future sampling, analysis and reporting, and will issue necessary additional conditions based upon the results of the sampling, analysis and reports required by this condition.

9. All parameters tested in accordance with condition 4 and 7 shall be tested by methods in accordance with 40CFR 136 with reporting limits that do not exceed the following values:

a.	Ammonia-Nitrogen (as N)	0.01 mg/L
b.	Chloride	1 mg/L
c.	Lead (total)	0.005 mg/L
d.	Phosphorus	0.001 mg/L
e.	Sulfate	10 mg/L
f.	Total Dissolved Solids (TDS)	10 mg/L
g.	Zinc (total)	0.1 mg/L
h.	Polarized Light Microscopy (PLM)	1% ACM
i.	Transmission Electron Microscopy (TEM)	1% ACM
j.	Superfund Method	2 Ms/g PM_{10}

10. Any material with PLM or TEM values exceeding 1% of asbestos containing material (ACM) shall be disposed in a properly permitted landfill.

11. The permittee shall monitor in accordance with condition 7. The permittee shall operate the dredge and disposal such that the surface water at 500 feet from the discharge point does not exceed 0.02 mg/L ammonia-nitrogen (as N), 12 mg/L chloride, 0.05 mg/L lead (total), 0.007 mg/L phosphorus, 24 mg/L sulfate, 180 mg/L total dissolved solids (TDS), 0.159 mg/L zinc (total), or does not exceed the background concentrations measured under condition 7 and otherwise complies with the water quality standards of 35 III. Adm. Code, Subtitle C.

12. The Illinois EPA may reopen and revise this certification and final determination based on the findings, recommendations and health risk criteria developed by and published in the final report of the Illinois Attorney General's Task Force on asbestos contamination at Illinois Beach State Park and in Lake Michigan, or due to new additional information regarding asbestos contamination of dredge materials and beaches, or to conform to new state or federal regulations, Illinois Pollution Control Board orders or judicial orders.

13. For any hydraulically dredged material placed in a constructed upland area, a construction and operation permit issued by the Agency under 35 II. Adm. Code Section 309.202 and 309.203 must be obtained and any conditions thereof complied with.

14. This final determination is not a Section 401 water quality certification that may be required for your project in conjunction with a Section 404 permit issued by the U.S. Army Corps of Engineers.

15. This final determination expires on April 30, 2020.

This final determination becomes effective when the Illinois Department of Natural Resources, Office of Water Resources, includes the above conditions # 1 through # 15 as conditions of the requested permit issued pursuant to Section 39 of the Illinois Environmental Protection Act (415 ILCS 5/39) and Section 18 of the Rivers, Lakes, and Streams Act (615 ILCS 5/18).

The final determination does not grant immunity from any enforcement action found necessary by this Agency to meet its responsibilities in prevention, abatement, and control of water pollution. If you have any questions or comments concerning the content of this letter, please contact Thaddeus Faught of my staff at 217-782-0610.

Sincerely,

Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

SAK:DLH:TJF:59653-15.docx

cc: IEPA, Records Unit
IEPA, DWPC, FOS, Des Plaines
CoE, Chicago District
USEPA, Region 5
Binds
City of Evanston

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR JOHN J. KIM, DIRECTOR

217/782-0610

May 11, 2022

Illinois Department of Natural Resources/Office of Water Resources
Lake Michigan Management Section
Michael A. Bilandic Building
160 N. LaSalle Street, Suite S-703
Chicago, IL 60601

Re: City of Evanston, Lorraine H. Morton Civic Center - 2100 Ridge Avenue - Church Street Boat Launch Maintenance Dredging Activity
Lake Michigan Final Determination No.: 2022-LM-67298
Log No.: 2022-67298
Bureau of Water ID: W0310810018

Sir or Madam:

This Agency received a request on April 14, 2022 from City of Evanston, Lorraine H. Morton Civic Center ("Applicant") requesting necessary comments concerning the proposed maintenance dredging at the Church Street boat launch area. The proposed activity includes mechanical dredging of up to 10,000 cubic yards of accumulated sediments and placement of the dredged material into Lake Michigan immediately south of the boat launch location.

Based on the information included in this submittal, it is our engineering judgment that the proposed project may be completed without causing water pollution as defined in the Illinois Environmental Protection Act, provided the project is carefully planned and supervised. These comments do not supplant any permit responsibilities of the Applicant toward the Agency.

This Agency hereby issues final determination under Section 39 of the Illinois Environmental Protection Act, subject to the Applicant's compliance with the following conditions:

1. The Applicant shall not cause:
   a. violation of applicable water quality standards of the Illinois Pollution Control Board, Title 35, Subtitle C: Water Pollution Rules and Regulations;
   b. water pollution defined and prohibited by the Illinois Environmental Protection Act;
   c. violation of applicable provisions of the Illinois Environmental Protection Act; or
   d. interference with water use practices near public recreation areas or water supply intakes.

2. The Applicant shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes and cleanup procedures necessary to prevent water pollution and control erosion.

3. The Applicant shall not place or discharge dredge material into Lake Michigan or into waters of the State for beach nourishment or other purposes without written approval from the Illinois EPA for the particular dredge cut location. For any new proposed dredge area not previously approved by the Illinois EPA, the Applicant shall provide the data and information of Condition 4 prior to the initial dredging event for the dredge cut location.

4. Prior to each dredging event or placement of dredged material during the term of this authorization, the following sampling and analysis shall be conducted on a representative number of samples from the dredge cut (minimum of 3 samples analyzed separately):
    a. A particle size distribution.
    b. Analysis of asbestos by the following appropriate method(s):
        i. For material to be placed below the Ordinary High Water Mark (OHWM), Polarized Light Microscopy (PLM) and Transmission Electron Microscopy (TEM) methods shall be used for asbestos testing. All samples shall be analyzed by each asbestos test method.
        ii. Beginning with the 2015 dredging season, for each new dredge material source location, for material to be placed on the beach or in Lake Michigan waters, the approved asbestos sampling and analytical testing method as described in Condition 8 shall be conducted at least one time. After the initial asbestos analysis is conducted, any future asbestos testing requirements for dredge material at that same location will be determined after Illinois EPA review considering existing data, regulations, Illinois Pollution Control Board orders or judicial orders regarding asbestos.
        iii. The modified Superfund method tests already performed and submitted on or about May 18, 2009 in accordance with IEPA permit 2005-LM-3467-3 are hereby approved and fulfill the requirements of the above item for the proposed dredge cut in vicinity of the Church Street boat launch.
    c. For hydraulic dredging or open water placement of dredged material, supernatant analysis shall be conducted based on settling periods of zero (0) and four (4) hours. Supernatant analysis will be reported in mass per volume for the following parameters: total suspended solids (TSS), total volatile solids (TVS), ammonia-nitrogen (as N), phosphorus (as P), total dissolved solids (TDS), sulfate, chloride, lead (total), and zinc (total).

5. For each dredging event, all test results from condition 4 shall be submitted to the Agency by the 15th of the month after the month the samples were taken. The submittal shall include a map with sampling locations and the methods/procedures including reporting limits for the parameters analyzed. The reporting limits shall be in compliance with condition 9. Should any of the results from condition 4 meet the following, the Applicant shall submit the results to the Agency for approval 90 days prior to proposed dredging.
    a. Material with greater than 20% passing a #230 U.S. sieve.
    b. Material with greater than 1% ACM reported from the PLM or TEM test.
    c. Material tested for asbestos using the Superfund method that exceeds a mean value of 6.23 Ms/g PM_{10} and a 95% upper confidence limit (UCL) of 12.58 Ms/g PM_{10} for the 12 or more samples using the sum of the Protocol and NIOSH 7402 test methods of condition 8 or if an alternative method is approved, the specific criteria value or values set forth in a supplemental permit issued by the Agency.
    d. Material for new dredge cut locations not previously reviewed and approved for dredge material discharge.

6. For open water disposal, the dredge material shall be placed in the water in a manner to minimize re-suspension of sediment material and contaminants by utilizing techniques including careful placement methods, disposal during favorable weather conditions that minimize turbulence and transport of suspended contaminants and other methods such as turbidity curtains should be used as necessary to minimize re-suspension of sediment material.

7. If the 4 hour supernatant test results of the dredge material exceed the following, monitoring shall be conducted in the case of open water disposal of the dredged materials: 0.02 mg/L ammonia-nitrogen (as N), 12 mg/L chloride, 0.007 mg/L phosphorus and 15 mg/L of total suspended solids (TSS). The following parameters shall be monitored on a twice weekly basis in the first week of the dredging event and weekly thereafter and reported in mg/L: total suspended solids (TSS), ammonia-nitrogen (as N), phosphorus (as P), and chloride. The sampling shall be conducted in accordance with the following:
    a. A sample of the water quality at the dredge disposal site shall be collected prior to the start of dredging activities, at surface and mid-depth elevations consisting of water hardness, water pH, and water temperature in addition to the above listed parameters.
    b. Samples shall be collected at surface and mid-depth elevations at two locations representative of the prevailing water current direction, one at approximately 100 feet from the discharge point and the other at approximately 500 feet from the discharge point.
    c. Samples shall be taken at approximately one (1) hour and four (4) hours after the first bucket load of dredge material is deposited in the lake or hydraulic discharge begins.
    d. Monitoring results, drawings depicting the location of each collected sample point, the volume of dredge material discharged, method of dredging (e.g. mechanical or hydraulic), and the dredge disposal location shall be submitted in a report by the 15th of the month following the calendar month when samples were collected. The monitoring report shall provide the data and method of determining downstream sample locations. The date, time, location, and individual(s) who performed the sampling shall be included in the monitoring reports. The laboratory analysis sheets shall be included in the monitoring reports. The date and time that discharge begins and ends for the front end-loader disposal operation or for the hydraulic dredging operation shall be recorded and included in the monitoring report.

8. Prior to dredging areas within Lake Michigan where those dredged materials are to be placed on the beach or into Lake Michigan waters, the Applicant shall submit a technical report documenting the sediment asbestos concentrations within the proposed dredged materials. Asbestos concentrations shall be obtained by separate analyses of a minimum of 12 samples from each new potential dredge area. Unless a supplemental Lake Michigan final determination has been issued to modify the approved testing method, samples shall be prepared in accordance with the most current version of the Superfund Method for the Determination of Releasable Asbestos in Soils and Bulk Materials (U.S. EPA 540-R-97-028, 1997) and modified in the Draft Modified Elutriator Method for the Determination of Asbestos in Soils and Bulk Material (Berman and Kolk, May 2000) and additional modifications necessary to obtain the necessary samples of PM_{10} in accordance with the Illinois Attorney General's Task Force Report. Sampling shall utilize a grid sampling system with equally spaced samples. Samples analyzed for asbestos shall be analyzed by Transmission Electron Microscopy (TEM) and for both the NIOSH 7402 (PCME) method and Protocol Structures method. The aforementioned sampling and analysis shall be conducted in accordance with the recommendations specified in the document entitled "Illinois Beach State Park (IBSP): Determination of Asbestos Contamination in Sand Used for Beach Nourishment, Final Recommendations," dated

December 29, 2003, prepared by the University of Illinois at Chicago, Center of Excellence in Environmental Health, Health Hazard Evaluation Program for the Illinois Attorney General's Task Force that was formed to address asbestos contaminated at Illinois Beach State Park (IBSP). The required technical report containing the sampling methods, locations, depths and results, laboratory analysis reports and a discussion of the findings shall be submitted to the Agency. The Illinois EPA will reevaluate the need for future sampling, analysis and reporting, and will issue necessary additional conditions based upon the results of the sampling, analysis and reports required by this condition.

9. All parameters tested in accordance with condition 4 and 7 shall be tested by methods in accordance with 40 CFR 136 with reporting limits that do not exceed the following values:

a.	Ammonia-Nitrogen (as N)	0.01 mg/L
a.	Chloride	1 mg/L
b.	Lead (total)	0.005 mg/L
c.	Phosphorus	0.001 mg/L
d.	Sulfate	10 mg/L
e.	Total Dissolved Solids (TDS)	10 mg/L
f.	Zinc (total)	0.1 mg/L
g.	Polarized Light Microscopy (PLM)	1% ACM
h.	Transmission Electron Microscopy (TEM)	1% ACM
i.	Superfund Method	2 Ms/g PM_{10}

10. Any material with PLM or TEM values exceeding 1% of asbestos containing material (ACM) shall be disposed in a properly permitted landfill.

11. The permittee shall monitor in accordance with condition 7. The permittee shall operate the dredge and disposal such that the surface water at 500 feet from the discharge point does not exceed 0.02 mg/L ammonia-nitrogen (as N), 12 mg/L chloride, 0.05 mg/L lead (total), 0.007 mg/L phosphorus, 24 mg/L sulfate, 180 mg/L total dissolved solids (TDS), 0.159 mg/L zinc (total), or does not exceed the background concentrations measured under condition 7 and otherwise complies with the water quality standards of 35 III. Adm. Code, Subtitle C.

12. The Illinois EPA may reopen and revise this final determination for reasons such as, but not limited to, the findings, recommendations and health risk criteria developed by and published in supplemental reports of the Illinois Attorney General's Task Force on asbestos contamination at Illinois Beach State Park and in Lake Michigan, new or additional information regarding asbestos contamination of dredge materials and beaches, new state or federal laws, rules, regulations or guidance regarding analytical test methods, or judicial or Illinois Pollution Control Board orders.

13. For any hydraulically dredged material placed in a constructed upland area, a construction and operation permit issued by the Agency under 35 II. Adm. Code Section 309.202 and 309.203 must be obtained and any conditions thereof complied with.

14. This final determination is not a Section 401 water quality certification that may be required for your project in conjunction with a Section 404 permit issued by the U.S. Army Corps of Engineers.

15. This final determination expires on April 30, 2027.

This final determination becomes effective when the Illinois Department of Natural Resources, Office of Water Resources, includes the above conditions # 1 through # 15 as conditions of the requested permit issued pursuant to Section 39 of the Illinois Environmental Protection Act (415 ILCS 5/39) and Section 18 of the Rivers, Lakes, and Streams Act (615 ILCS 5/18).

This final determination does not grant immunity from any enforcement action found necessary by this Agency to meet its responsibilities in prevention, abatement, and control of water pollution.

Sincerely,

Darin E. LeCrone, P.E.
Manager, Permit Section
Division of Water Pollution Control
Illinois Environmental Protection Agency

DEL:

DRG:2022-67298_Section 39 Final Determination_14Apr22.docx

cc: IEPA, Records Unit
IEPA, DWPC, FOS, DesPlaines
City of Evanston, Audrey Thompson (via email)
DRG

DEPARTMENT OF THE ARMY

PERMIT

PERMITTEE: Wally Bobkiewicz
City of Evanston

APPLICATION: LRC-2015-00128

ISSUING OFFICE: U.S. Army Corps of Engineers, Chicago District

DATE: May 19, 2017

You are hereby authorized to perform work in accordance with the terms and conditions specified below.

Note: The term "you" and its derivatives, as used in this authorization, means the permittee or any future transferee. The term "this office" refers to the U.S. Army Corps of Engineers, Chicago District.

PROJECT DESCRIPTION: Permit to Dredge and Discharge up to 10,000 Cubic Yards Material Annually for 10 years and in Lake Michigan at Church Street Boat Ramp in Evanston as described in your notification and as shown on the plans titled "City of Evanston Dredging & Disposal Areas", dated January 28, 2015, prepared by the City of Evanston.

PROJECT LOCATION: Church Street boat ramp at the terminus of Church Street at Lake Michigan in Evanston, Cook County, Illinois (42.04607, -87.67156)

GENERAL CONDITIONS:

1. The time limit for completing the authorized work ends on June 1, 2027. If you find that you need more time to complete the authorized activities, submit your request for a time extension to this office for consideration at least 60 days before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish

to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. You shall comply with the water quality certification issued under Section 401 of the Clean Water Act by the Illinois Environmental Protection Agency for the project. Conditions of the certification are conditions of this authorization. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being accomplished in accordance with the terms and conditions of your permit.

The following special conditions are a requirement of your authorization:

1. This authorization is contingent upon implementing and maintaining soil erosion and sediment controls in a serviceable condition throughout the duration of the project. You shall comply with the project's soil erosion and sediment control (SESC) plans and the installation and maintenance requirements of the SESC practices on-site. You shall notify this office any changes or modifications to the approved plan set. Please be aware that field conditions during project construction may require the implementation of additional SESC measures for further protection of aquatic resources. If you fail to implement corrective measures, this office may require more frequent site inspections to ensure the installed SESC measures are acceptable. Please be aware that work authorized herein may not commence until you receive written notification from this office that your plans meet technical standards.

2. This site is within the aboriginal homelands of several American Indian Tribes. If any human remains, Native American cultural items falling under the Native American Graves Protection and Repatriation Act (NAGPRA), or archaeological evidence are discovered during any phase of this project, interested Tribes request immediate consultation with the entity of jurisdiction for the location of discovery. In such case, please contact Mr. Soren Hall by telephone at (312) 846-5532, or email at Soren.G.Hall@usace.army.mil.

3. You are responsible for all work authorized herein and for ensuring that all contractors are aware of the terms and conditions of this authorization.

4. A copy of this authorization must be present at the project site during all phases of construction.

5. You shall notify this office of any proposed modifications to the project, including revisions to any of the plans or documents cited in this authorization. You must receive approval from this office before work affected by the proposed modification is performed.

6. You shall notify this office prior to the transfer of this authorization and liabilities associated with compliance with its terms and conditions. The transferee must sign the authorization in the space provided and forward a copy of the authorization to this office.

7. The permittee understands and agrees that, if future operations by the United States require removal, relocation, or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative said structure or work shall cause unreasonable obstruction to the free navigation of the navigable water, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

8. You shall provide written notification to this office at least ten (10) days prior to the commencement of dredging indicating the start date and estimated end date of the activity. Notification must also include:
    a. Description of the action to be undertaken;
    b. Detailed location of all phases of the activity;
    c. Proof of IEPA review and approval of all activities;
    d. Characterization of material to be dredged and discharged in Lake Michigan;
    e. Copies of environmental contaminant testing results for all material to be dredged or discharged, tests must include an IEPA approved asbestos testing protocol and any other testing required for IEPA approval of the dredge or discharge activity; and

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C.

1413).

2. Limits of this Authorization.

a. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. The Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on the behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modifications, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in the reliance on the information you provided.

5. Reevaluation of Permit Decision. The office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 established a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this authorization.

Approved as to form:
W. Grant Farrar
Corporation Counsel

PERMITTEE — DATE

Wally Bobkiewicz
City of Evanston

5-18-17

LRC-2015-00128
Corps Authorization Number

This authorization becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

For and on behalf of — DATE
Christopher T. Drew
Colonel, U.S. Army
District Commander

If the structures or work authorized by this authorization are still in existence at the time the property is transferred, the terms and conditions of this authorization will continue to be binding on the new owner(s) of the property. To validate the transfer of this authorization and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. The document shall be attached to a copy of the permit and submitted to the Corps.

LRC-2015-128
CORPS PROJECT NUMBER

TRANSFEREE — DATE

ADDRESS

TELEPHONE

of 1978 Amendment note above] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.''

§ 1223a. Transferred

CODIFICATION

Section, Pub. L. 92–340, § 4A, as added Pub. L. 108–293, title IV, § 410, Aug. 9, 2004, 118 Stat. 1045, was redesignated and transferred to section 3105 of Title 46, Shipping, by Pub. L. 115–282, title IV, § 402(a)(1)(A), Dec. 4, 2018, 132 Stat. 4263.

§§ 1224, 1225. Repealed. Pub. L. 115–282, title IV, § 402(e), Dec. 4, 2018, 132 Stat. 4264

Section 1224, Pub. L. 92–340, § 5, formerly title I, § 104, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1474; Pub. L. 107–295, title IV, § 443(2), Nov. 25, 2002, 116 Stat. 2132, related to considerations by the Secretary in carrying out certain duties and responsibilities. See section 70004 of Title 46, Shipping.

Section 1225, Pub. L. 92–340, § 6, formerly title I, § 105, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1475, related to waterfront safety. See section 70011 of Title 46.

§ 1226. Transferred

CODIFICATION

Section was comprised of Pub. L. 92–340, § 7, as added Pub. L. 99–399, title IX, § 906, Aug. 27, 1986, as amended. Subsections (a) and (b) of section 7 of Pub. L. 92–340 were redesignated and transferred to section 70116 of Title 46, Shipping, by Pub. L. 115–282, title IV, § 402(b)(1), Dec. 4, 2018, 132 Stat. 4264, and also to section 70102a of Title 46 by Pub. L. 115–282, title IV, § 408(a), Dec. 4, 2018, 132 Stat. 4268. Subsection (c) of section 7 of Pub. L. 92–340 was redesignated subsec. (f) and transferred to section 70103 of Title 46 by Pub. L. 115–282, title IV, §§ 402(c)(1), 408(d)(1), Dec. 4, 2018, 132 Stat. 4264, 4268.

PRIOR PROVISIONS

A prior section 1226, Pub. L. 92–340, § 7, formerly title I, § 106, July 10, 1972, 86 Stat. 427; renumbered § 7 and amended Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1475, related to requirement respecting federally licensed pilots on any foreign or domestic self-propelled vessel engaged in the foreign trade when operating in the navigable waters of the United States in areas, etc., where a pilot is not otherwise required by State law, prior to repeal by Pub. L. 98–557, § 29(g), Oct. 30, 1984, 98 Stat. 2875.

§§ 1227 to 1231. Repealed. Pub. L. 115–282, title IV, § 402(e), Dec. 4, 2018, 132 Stat. 4264

Section 1227, Pub. L. 92–340, § 8, formerly title I, § 107, July 10, 1972, 86 Stat. 427; renumbered and amended Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1476, related to investigatory powers of the Secretary. See section 70035 of Title 46, Shipping.

Section 1228, Pub. L. 92–340, § 9, as added Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1476; amended Pub. L. 101–380, title IV, § 4106(c), Aug. 18, 1990, 104 Stat. 514, related to conditions for entry to ports in the United States. See section 70021 of Title 46.

Section 1229, Pub. L. 92–340, § 10, as added Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1477; amended Pub. L. 98–557, § 29(h), Oct. 30, 1984, 98 Stat. 2875, related to delegations of authority with respect to the Saint Lawrence Seaway. See section 70032 of Title 46.

Section 1230, Pub. L. 92–340, § 11, as added Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1477; amended Pub. L. 105–383, title III, § 313, Nov. 13, 1998, 112 Stat. 3424, related to international agreements. See section 70005 of Title 46.

Section 1231, Pub. L. 92–340, § 12, as added Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1477, related to regulations necessary to implement this chapter. See section 70034 of Title 46.

§ 1231a. Repealed. Pub. L. 115–282, title VI, § 601(c)(6)(A), Dec. 4, 2018, 132 Stat. 4290

Section, Pub. L. 96–380, Oct. 6, 1980, 94 Stat. 1521; Pub. L. 97–322, title I, § 118(d), Oct. 15, 1982, 96 Stat. 1587; Pub. L. 98–557, § 16(a), Oct. 30, 1984, 98 Stat. 2866; Pub. L. 101–225, title I, § 105(b), Dec. 12, 1989, 103 Stat. 1910; Pub. L. 104–324, title III, § 304(c), Oct. 19, 1996, 110 Stat. 3917; Pub. L. 107–295, title III, § 336, Nov. 25, 2002, 116 Stat. 2105; Pub. L. 108–293, title IV, § 418(g), Aug. 9, 2004, 118 Stat. 1049; Pub. L. 111–281, title VI, § 621(e), Oct. 15, 2010, 124 Stat. 2976, established the Towing Safety Advisory Committee. See section 15108 of Title 46, Shipping.

§§ 1232 to 1232c. Repealed. Pub. L. 115–282, title IV, § 402(e), Dec. 4, 2018, 132 Stat. 4264

Section 1232, Pub. L. 92–340, § 13, as added Pub. L. 95–474, § 2, Oct. 17, 1978, 92 Stat. 1478; amended Pub. L. 101–380, title IV, § 4302(j), Aug. 18, 1990, 104 Stat. 539; Pub. L. 104–324, title III, § 312(b), Oct. 19, 1996, 110 Stat. 3920; Pub. L. 115–44, title III, § 315(b)(2), Aug. 2, 2017, 131 Stat. 949, related to enforcement provisions. See section 70036 of Title 46, Shipping.

Section 1232a, Pub. L. 92–340, § 14, as added Pub. L. 101–599, § 2, Nov. 16, 1990, 104 Stat. 3040, related to navigational hazards. See section 70012 of Title 46.

Section 1232b, Pub. L. 92–340, § 15, as added Pub. L. 109–241, title VI, § 602, July 11, 2006, 120 Stat. 553, related to requirement to notify Coast Guard of release of objects into the navigable waters of the United States. See section 70013 of Title 46.

Section 1232c, Pub. L. 92–340, § 16, as added Pub. L. 115–44, title III, § 315(a), Aug. 2, 2017, 131 Stat. 948, related to prohibition on entry and operation of certain vessels in the navigable waters of the United States.

§§ 1233 to 1236. Repealed. Pub. L. 115–282, title IV, § 406(c), Dec. 4, 2018, 132 Stat. 4266

Section 1233, act Apr. 28, 1908, ch. 151, § 1, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to regulations as to regattas or marine parades. See section 70041(a) of Title 46, Shipping.

Section 1234, act Apr. 28, 1908, ch. 151, § 2, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to enforcement of regulations and use of public or private vessels. See section 70041(b) of Title 46.

Section 1235, act Apr. 28, 1908, ch. 151, § 3, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736, related to transfer of authority to regulate to head of other department. See section 70041(c) of Title 46.

Section 1236, act Apr. 28, 1908, ch. 151, § 4, 35 Stat. 69; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; Pub. L. 101–380, title IV, § 4302(k), Aug. 18, 1990, 104 Stat. 539, related to penalties for violations of regulations. See section 70041(d) of Title 46.

CHAPTER 26—WATER POLLUTION PREVENTION AND CONTROL

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

CODIFICATION

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30, 1948, ch. 758, 62 Stat. 1155, and amended by acts July 17, 1952, ch. 927, 66 Stat. 755; July 9, 1956, ch. 518, §§1, 2, 70 Stat. 498–507; June 25, 1959, Pub. L. 86–70, 73 Stat. 141; July 12, 1960, Pub. L. 86–624, 74 Stat. 411; July 20, 1961, Pub. L. 87–88, 75 Stat. 204; Oct. 2, 1965, Pub. L. 89–234, 79 Stat. 903; Nov. 3, 1966, Pub. L. 89–753, 80 Stat. 1246; Apr. 3, 1970, Pub. L. 91–224, 84 Stat. 91; Dec. 31, 1970, Pub. L. 91–611, 84 Stat. 1818; July 9, 1971, Pub. L. 92–50, 85 Stat. 124; Oct. 13, 1971, Pub. L. 92–137, 85 Stat. 379; Mar. 1,

1972, Pub. L. 92–240, 86 Stat. 47, and was formerly classified first to section 466 et seq. of this title and later to section 1151 et seq. of this title. The act is shown herein, however, as having been added by Pub. L. 92–500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the act's provisions by Pub. L. 92–500.

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy

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

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

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

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

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

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

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

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

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

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

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

(c) Congressional policy toward Presidential activities with foreign countries

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

(d) Administrator of Environmental Protection Agency to administer chapter

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

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

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

(f) Procedures utilized for implementing chapter

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

(g) Authority of States over water

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

(June 30, 1948, ch. 758, title I, § 101, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816; amended Pub. L. 95–217, §§ 5(a), 26(b), Dec. 27, 1977, 91 Stat. 1567, 1575; Pub. L. 100–4, title III, § 316(b), Feb. 4, 1987, 101 Stat. 60.)

AMENDMENTS

1987—Subsec. (a)(7). Pub. L. 100–4 added par. (7).

1977—Subsec. (b). Pub. L. 95–217, § 26(b), inserted provisions expressing Congressional policy that the States manage the construction grant program under this chapter and implement the permit program under sections 1342 and 1344 of this title.

Subsec. (g). Pub. L. 95–217, § 5(a), added subsec. (g).

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 115–436, § 1, Jan. 14, 2019, 132 Stat. 5558, provided that: ''This Act [enacting section 1377a of this title and section 4370j of Title 42, The Public Health and Welfare, amending sections 1319, 1342, and 1362 of this title, enacting provisions set out as a note under section 4370j of Title 42, and renumbering provisions set out as a note under this section] may be cited as the 'Water Infrastructure Improvement Act'.''

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–282, title IX, § 901, Dec. 4, 2018, 132 Stat. 4322, provided that: ''This title [enacting sections 4729 and 4730 of Title 16, Conservation, amending sections 1319, 1322, 1365, and 1369 of this title, sections 4712 and 4725 of Title 16, section 42 of Title 18, Crimes and Criminal Procedure, and section 11301 of Title 46, Shipping, repealing section 4711 of Title 16, enacting provisions set out as a note under section 1322 of this title and section 4711 of Title 16, and repealing provisions set out as a note under section 1342 of this title] may be cited as the 'Vessel Incidental Discharge Act of 2018'.''

SHORT TITLE OF 2017 AMENDMENT

Pub. L. 115–91, div. C, title XXXV, § 3508(a), Dec. 12, 2017, 131 Stat. 1915, provided that: ''This section [amending sections 1321, 2701, and 2715 of this title] may be cited as the 'Foreign Spill Protection Act of 2017'.''

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–365, § 1, Oct. 8, 2008, 122 Stat. 4021, provided that: ''This Act [amending sections 1268 and 1271a of this title] may be cited as the 'Great Lakes Legacy Reauthorization Act of 2008'.''

Pub. L. 110–288, § 1, July 29, 2008, 122 Stat. 2650, provided that: ''This Act [amending sections 1322, 1342, and 1362 of this title] may be cited as the 'Clean Boating Act of 2008'.''

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–303, § 1(a), Nov. 27, 2002, 116 Stat. 2355, provided that: ''This Act [enacting section 1271a of this title, amending sections 1254, 1266, 1268, 1270, 1285, 1290, 1324, 1329, 1330, and 1375 of this title, enacting provisions set out as notes under this section, section 1254 of this title, and section 1113 of Title 31, Money and Finance, and repealing provisions set out as a note under section 50 of Title 20, Education] may be cited as the 'Great Lakes and Lake Champlain Act of 2002'.''

Pub. L. 107–303, title I, § 101, Nov. 27, 2002, 116 Stat. 2355, provided that: ''This title [enacting section 1271a of this title and amending section 1268 of this title] may be cited as the 'Great Lakes Legacy Act of 2002'.''

Pub. L. 107–303, title II, § 201, Nov. 27, 2002, 116 Stat. 2358, provided that: ''This title [amending section 1270 of this title] may be cited as the 'Daniel Patrick Moynihan Lake Champlain Basin Program Act of 2002'.''

SHORT TITLE OF 2000 AMENDMENTS

Pub. L. 106–457, title II, § 201, Nov. 7, 2000, 114 Stat. 1967, provided that: ''This title [amending section 1267 of this title and enacting provisions set out as a note under section 1267 of this title] may be cited as the 'Chesapeake Bay Restoration Act of 2000'.''

Pub. L. 106–457, title IV, § 401, Nov. 7, 2000, 114 Stat. 1973, provided that: ''This title [amending section 1269 of this title] may be cited as the 'Long Island Sound Restoration Act'.''

Pub. L. 106–457, title V, § 501, Nov. 7, 2000, 114 Stat. 1973, provided that: ''This title [enacting section 1273 of this title] may be cited as the 'Lake Pontchartrain Basin Restoration Act of 2000'.''

Pub. L. 106–457, title VI, § 601, Nov. 7, 2000, 114 Stat. 1975, provided that: ''This title [enacting section 1300 of this title] may be cited as the 'Alternative Water Sources Act of 2000'.''

Pub. L. 106–284, § 1, Oct. 10, 2000, 114 Stat. 870, provided that: ''This Act [enacting sections 1346 and 1375a of this title and amending sections 1254, 1313, 1314, 1362, and 1377 of this title] may be cited as the 'Beaches Environmental Assessment and Coastal Health Act of 2000'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–431, § 1, Oct. 31, 1994, 108 Stat. 4396, provided that: ''This Act [amending section 1311 of this title] may be cited as the 'Ocean Pollution Reduction Act'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–596, § 1, Nov. 16, 1990, 104 Stat. 3000, provided that: ''This Act [enacting sections 1269 and 1270 of this title, amending sections 1268, 1324, and 1416 of this title, and enacting provisions set out as notes under this section and section 1270 of this title] may be cited as the 'Great Lakes Critical Programs Act of 1990'.''

Pub. L. 101–596, title II, § 201, Nov. 16, 1990, 104 Stat. 3004, provided that: ''This part [probably means title, enacting section 1269 of this title and amending section 1416 of this title] may be cited as the 'Long Island Sound Improvement Act of 1990'.''

Pub. L. 101–596, title III, § 301, Nov. 16, 1990, 104 Stat. 3006, provided that: ''This title [enacting section 1270 of this title, amending section 1324 of this title, and enacting provisions set out as a note under section 1270 of this title] may be cited as the 'Lake Champlain Special Designation Act of 1990'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–653, title X, § 1001, Nov. 14, 1988, 102 Stat. 3835, provided that: ''This title [amending section 1330 of this title and enacting provisions set out as notes under section 1330 of this title] may be cited as the 'Massachusetts Bay Protection Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–4, § 1(a), Feb. 4, 1987, 101 Stat. 7, provided that: ''This Act [enacting sections 1254a, 1267, 1268, 1281b, 1329, 1330, 1377, 1381 to 1387, and 1414a of this title, amending this section and sections 1254, 1256, 1262, 1281, 1282 to 1285, 1287, 1288, 1291, 1311 to 1313, 1314, 1317 to 1322, 1324, 1342, 1344, 1345, 1361, 1362, 1365, 1369, 1375, and 1376 of this title, and enacting provisions set out as notes under this section, sections 1284, 1311, 1317, 1319, 1330, 1342, 1345, 1362, 1375, and 1414a of this title, and section 1962d–20 of Title 42, The Public Health and Welfare] may be cited as the 'Water Quality Act of 1987'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–117, § 1, Dec. 29, 1981, 95 Stat. 1623, provided that: ''This Act [enacting sections 1298, 1299, and 1313a of this title, amending sections 1281 to 1285, 1287, 1291, 1292, 1296, 1311, and 1314 of this title, and enacting provisions set out as notes under sections 1311 and 1375 of this title] may be cited as the 'Municipal Wastewater Treatment Construction Grant Amendments of 1981'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–217, § 1, Dec. 27, 1977, 91 Stat. 1566, provided: ''That this Act [enacting sections 1281a, 1294 to 1296, and 1297 of this title, amending this section and sections 1252, 1254 to 1256, 1259, 1262, 1263, 1281, 1282 to 1288, 1291, 1292, 1311, 1314, 1315, 1317 to 1319, 1321 to 1324, 1328, 1341, 1342, 1344, 1345, 1362, 1364, 1375, and 1376 of this title, enacting provisions set out as notes under this section and sections 1284, 1286, 1314, 1321, 1342, 1344, and 1376 of this title, and amending provisions set out as a note under this section] may be cited as the 'Clean Water Act of 1977'.''

SHORT TITLE

Pub. L. 92–500, §1, Oct. 18, 1972, 86 Stat. 816, provided that: ''That this Act [enacting this chapter, amending section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of former Title 31, Money and Finance, and enacting provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'.''

Act June 30, 1948, ch. 758, title V, §520, formerly §518, as added by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 896, amended Pub. L. 95–217, §2, Dec. 27, 1977, 91 Stat. 1566, renumbered §519, Pub. L. 100–4, title V, §506, Feb. 4, 1987, 101 Stat. 76, renumbered §520, Pub. L. 115–436, §5(b)(1), Jan. 14, 2019, 132 Stat. 5561, provided that: ''This Act [this chapter] may be cited as the 'Federal Water Pollution Control Act' (commonly referred to as the Clean Water Act).''

SAVINGS PROVISION

Pub. L. 92–500, §4, Oct. 18, 1972, 86 Stat. 896, provided that:

''(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

''(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

''(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act.''

SEPARABILITY

Act June 30, 1948, ch. 758, title V, §512, as added by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 894, provided that: ''If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby.''

NATIONAL SHELLFISH INDICATOR PROGRAM

Pub. L. 102–567, title III, §308, Oct. 29, 1992, 106 Stat. 4286; as amended by Pub. L. 105–362, title II, §201(b), Nov. 10, 1998, 112 Stat. 3282, provided that:

''(a) ESTABLISHMENT OF A RESEARCH PROGRAM.—The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the 'Program') for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Consortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for—

''(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of fecal contamination and human enteric pathogens;

''(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;

''(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;

''(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;

''(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and

''(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

''(b) ADVISORY COMMITTEE.—(1) For the purpose of providing oversight of the Program on a continuing basis, an advisory committee (hereafter in this section referred to as the 'Committee') shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

''(2) The Committee shall—

''(A) identify priorities for achieving the purpose of the Program;

''(B) review and recommend approval or disapproval of Program work plans and plans of operation;

''(C) review and comment on all subcontracts and grants to be awarded under the Program;

''(D) receive and review progress reports from the Consortium and program subcontractors and grantees; and

''(E) provide such other advice on the Program as is appropriate.

''(3) The Committee shall consist of at least ten members and shall include—

''(A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;

''(B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;

''(C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and

''(D) one member representing the Shellfish Institute of North America.

''(4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

''(5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

''(6) Members of the Committee and its scientific subcommittee established under this subsection shall not be paid for serving on the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code.

''(c) CONTRACT WITH CONSORTIUM.—Within 30 days after the date of enactment of this Act [Oct. 29, 1992], the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will—

''(1) be the academic administrative organization and fiscal agent for the Program;

''(2) award and administer such grants and subcontracts as are approved by the Committee under subsection (b);

''(3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;

''(4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;

''(5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and

''(6) make available to the Committee such staff, information, and assistance as the Committee may reasonably require to carry out its activities.

''(d) AUTHORIZATION OF APPROPRIATIONS.—(1) Of the sums authorized under section 4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98–210; 97 Stat. 1409), there are authorized to be appropriated to the Secretary of Commerce $5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

''(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

''(e) DEFINITIONS.—As used in this section, the term—

''(1) 'Consortium' means the Louisiana Universities Marine Consortium; and

''(2) 'shellfish' means any species of oyster, clam, or mussel that is harvested for human consumption.''

LIMITATION ON PAYMENTS

Pub. L. 100–4, § 2, Feb. 4, 1987, 101 Stat. 8, provided that: ''No payments may be made under this Act [see Short Title of 1987 Amendment note above] except to the extent provided in advance in appropriation Acts.''

SEAFOOD PROCESSING STUDY; SUBMITTAL OF RESULTS TO CONGRESS NOT LATER THAN JANUARY 1, 1979

Pub. L. 95–217, § 74, Dec. 27, 1977, 91 Stat. 1609, provided that the Administrator of the Environmental Protection Agency conduct a study to examine the geographical, hydrological, and biological characteristics of marine waters to determine the effects of seafood processes which dispose of untreated natural wastes into such waters and to include in this study an examination of technologies which may be used in such processes to facilitate the use of the nutrients in these wastes or to reduce the discharge of such wastes into the marine environment and to submit the result of this study to Congress not later than Jan. 1, 1979.

STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

OVERSIGHT STUDY

Pub. L. 92–500, § 5, Oct. 18, 1972, 86 Stat. 897, authorized the Comptroller General of the United States to conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution conducted, supported, or assisted by any Federal agency pursuant to any Federal law or regulation and assess conflicts between these programs and their coordination and efficacy, and to report to Congress thereon by Oct. 1, 1973.

INTERNATIONAL TRADE STUDY

Pub. L. 92–500, § 6, Oct. 18, 1972, 86 Stat. 897, provided that:

''(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

''(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

''(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

''(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

''(A) does not require its manufacturers to implement pollution abatement and control programs.

''(B) requires a lesser degree of pollution abatement and control in its programs, or

''(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

''(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

''(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

''(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months.''

INTERNATIONAL AGREEMENTS

Pub. L. 92–500, §7, Oct. 18, 1972, 86 Stat. 898, provided that: ''The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums.''

NATIONAL POLICIES AND GOAL STUDY

Pub. L. 92–500, §10, Oct. 18, 1972, 86 Stat. 899, directed President to make a full and complete investigation and study of all national policies and goals established by law to determine what the relationship should be between these policies and goals, taking into account the resources of the Nation, and to report results of his investigation and study together with his recommendations to Congress not later than two years after Oct. 18, 1972.

EFFICIENCY STUDY

Pub. L. 92–500, §11, Oct. 18, 1972, 86 Stat. 899, directed President, by utilization of the General Accounting Office, to conduct a full and complete investigation and study of ways and means of most effectively using all of the various resources, facilities, and personnel of the Federal Government in order to most efficiently carry out the provisions of this chapter and to report results of his investigation and study together with his recommendations to Congress not later than two hundred and seventy days after Oct. 18, 1972.

SEX DISCRIMINATION

Pub. L. 92–500, §13, Oct. 18, 1972, 86 Stat. 903, provided that: ''No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act [see Short Title note above] the Federal Water Pollution Control Act [this chapter], or the Environmental Financing Act [set out as a note under section 1281 of this title]. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.''

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

EXECUTIVE ORDER NO. 11548

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, formerly set out as a note under section 1321 of this title.

EX. ORD. NO. 11742. DELEGATION OF FUNCTIONS TO SECRETARY OF STATE RESPECTING THE NEGOTIATION OF INTERNATIONAL AGREEMENTS RELATING TO THE ENHANCEMENT OF THE ENVIRONMENT

Ex. Ord. No. 11742, Oct. 23, 1973, 38 F.R. 29457, provided:

Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

DEFINITION OF ''ADMINISTRATOR''

Pub. L. 100–4, §1(d), Feb. 4, 1987, 101 Stat. 8, provided that: ''For purposes of this Act [see Short Title of 1987 Amendment note above], the term 'Administrator' means the Administrator of the Environmental Protection Agency.''

§ 1252. Comprehensive programs for water pollution control

(a) Preparation and development

The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) Planning for reservoirs; storage for regulation of streamflow

(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and

fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Energy Regulatory Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c) Basins; grants to State agencies

(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after October 18, 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 1288 of this title, and any State plan developed pursuant to section 1313(e) of this title.

(3) For the purposes of this subsection the term ''basin'' includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof as well as the lands drained thereby.

(June 30, 1948, ch. 758, title I, § 102, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 817; amended Pub. L. 95–91, title IV, § 402(a)(1)(A), Aug. 4, 1977, 91 Stat. 583; Pub. L. 95–217, § 5(b), Dec. 27, 1977, 91 Stat. 1567; Pub. L. 104–66, title II, § 2021(a), Dec. 21, 1995, 109 Stat. 726.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which read as follows: ''The Administrator, after consultation with the States, and River Basin Commissions established under the Water Resources Planning Act, shall submit a report to Congress on or before July 1, 1978, which analyzes the relationship between programs under this chapter, and the programs by which State and Federal agencies allocate quantities of water. Such report shall include recommendations concerning the policy in section 1251(g) of this title to improve coordination of efforts to reduce and eliminate pollution in concert with programs for managing water resources.''

1977—Subsec. (d). Pub. L. 95–217 added subsec. (d).

TRANSFER OF FUNCTIONS

''Federal Energy Regulatory Commission'' substituted for ''Federal Power Commission'' in subsec. (b)(6) on authority of Pub. L. 95–91, title IV, § 402(a)(1)(A), Aug. 4, 1977, 91 Stat. 583, which is classified to section 7172(a)(1)(A) of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10014

Ex. Ord. No. 10014, Nov. 3, 1948, 13 F.R. 6601, which related to the cooperation of Federal and State agencies to prevent pollution of surface and underground waters, was superseded by Ex. Ord. No. 11258, Nov. 17, 1965, 30 F.R. 14483.

§ 1252a. Reservoir projects, water storage; modification; storage for other than for water quality, opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits

In the case of any reservoir project authorized for construction by the Corps of Engineers, Bureau of Reclamation, or other Federal agency when the Administrator of the Environmental Protection Agency determines pursuant to section 1252(b) of this title that any storage in such project for regulation of streamflow for water quality is not needed, or is needed in a different amount, such project may be modified accordingly by the head of the appropriate agency, and any storage no longer required for water quality may be utilized for other authorized purposes of the project when, in the opinion of the head of such agency, such use is justified. Any such modification of a project where the benefits attributable to water quality are 15 per centum or

more but not greater than 25 per centum of the total project benefits shall take effect only upon the adoption of resolutions approving such modification by the appropriate committees of the Senate and House of Representatives. The provisions of the section shall not apply to any project where the benefits attributable to water quality exceed 25 per centum of the total project benefits.

(Pub. L. 93–251, title I, § 65, Mar. 7, 1974, 88 Stat. 30.)

CODIFICATION

Section was not enacted as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1253. Interstate cooperation and uniform laws

(a) The Administrator shall encourage cooperative activities by the States for the prevention, reduction, and elimination of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention, reduction, and elimination of pollution; and encourage compacts between States for the prevention and control of pollution.

(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress.

(June 30, 1948, ch. 758, title I, § 103, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 818.)

§ 1254. Research, investigations, training, and information

(a) Establishment of national programs; cooperation; investigations; water quality surveillance system; reports

The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 1375 of this title; and

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) Authorized activities of Administrator

In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a);

(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a);

(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41, referred to in paragraph (1) of subsection (a);

(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related

responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof;

(7) develop effective and practical processes, methods, and prototype devices for the prevention, reduction, and elimination of pollution; and

(8) make grants to nonprofit organizations—

(A) to provide technical assistance to rural, small, and tribal municipalities for the purpose of assisting, in consultation with the State in which the assistance is provided, such municipalities and tribal governments in the planning, developing, and acquisition of financing for eligible projects and activities described in section 1383(c) of this title;

(B) to provide technical assistance and training for rural, small, and tribal publicly owned treatment works and decentralized wastewater treatment systems to enable such treatment works and systems to protect water quality and achieve and maintain compliance with the requirements of this chapter; and

(C) to disseminate information to rural, small, and tribal municipalities and municipalities that meet the affordability criteria established under section 1383(i)(2) of this title by the State in which the municipality is located with respect to planning, design, construction, and operation of publicly owned treatment works and decentralized wastewater treatment systems.

(c) Research and studies on harmful effects of pollutants; cooperation with Secretary of Health and Human Services

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health and Human Services.

(d) Sewage treatment; identification and measurement of effects of pollutants; augmented streamflow

In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

(1) Practicable means of treating municipal sewage, and other waterborne wastes to implement the requirements of section 1281 of this title;

(2) Improved methods and procedures to identify and measure the effects of pollutants, including those pollutants created by new technological developments; and

(3) Methods and procedures for evaluating the effects on water quality of augmented streamflows to control pollution not susceptible to other means of prevention, reduction, or elimination.

(e) Field laboratory and research facilities

The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the conduct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention, reduction and elimination of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out. In conjunction with the development of criteria under section 1343 of this title, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) Great Lakes water quality research

The Administrator shall conduct research and technical development work, and make studies, with respect to the quality of the waters of the Great Lakes, including an analysis of the present and projected future water quality of the Great Lakes under varying conditions of waste treatment and disposal, an evaluation of the water quality needs of those to be served by such waters, an evaluation of municipal, industrial, and vessel waste treatment and disposal practices with respect to such waters, and a study of alternate means of solving pollution problems (including additional waste treatment measures) with respect to such waters.

(g) Treatment works pilot training programs; employment needs forecasting; training projects and grants; research fellowships; technical training; report to the President and transmittal to Congress

(1) For the purpose of providing an adequate supply of trained personnel to operate and maintain existing and future treatment works and related activities, and for the purpose of enhancing substantially the proficiency of those engaged in such activities, the Administrator shall finance pilot programs, in cooperation with State and interstate agencies, municipalities, educational institutions, and other organizations and individuals, of manpower development and training and retraining of persons in, on entering into, the field of operation and maintenance of treatment works and related activities. Such program and any funds expended for such a program shall supplement, not supplant, other manpower and training programs and funds available for the purposes of this paragraph. The Administrator is authorized, under such terms and conditions as he deems appropriate, to enter into agreements with one or more States, acting jointly or severally, or with other public or private agencies or institutions for the development and implementation of such a program.

(2) The Administrator is authorized to enter into agreements with public and private agencies and institutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various profes-

sional and other occupational categories needed for the prevention, reduction, and elimination of pollution in each region, State, or area of the United States and, from time to time, to publish the results of such forecasts.

(3) In furtherance of the purposes of this chapter, the Administrator is authorized to—

(A) make grants to public or private agencies and institutions and to individuals for training projects, and provide for the conduct of training by contract with public or private agencies and institutions and with individuals without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most promising research fellows; and

(C) provide, in addition to the program established under paragraph (1) of this subsection, training in technical matters relating to the causes, prevention, reduction, and elimination of pollution for personnel of public agencies and other persons with suitable qualifications.

(4) The Administrator shall submit, through the President, a report to the Congress not later than December 31, 1973, summarizing the actions taken under this subsection and the effectiveness of such actions, and setting forth the number of persons trained, the occupational categories for which training was provided, the effectiveness of other Federal, State, and local training programs in this field, together with estimates of future needs, recommendations on improving training programs, and such other information and recommendations, including legislative recommendations, as he deems appropriate.

(h) Lake pollution

The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(i) Oil pollution control studies

The Administrator, in cooperation with the Secretary of the Department in which the Coast Guard is operating, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate, relative to the removal of oil from any waters and to the prevention, control, and elimination of oil and hazardous substances pollution;

(2) publish from time to time the results of such activities; and

(3) from time to time, develop and publish in the Federal Register specifications and other technical information on the various chemical compounds used in the control of oil and hazardous substances spills.

In carrying out this subsection, the Administrator may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

(j) Solid waste disposal equipment for vessels

The Secretary of the department in which the Coast Guard is operating shall engage in such research, studies, experiments, and demonstrations as he deems appropriate relative to equipment which is to be installed on board a vessel and is designed to receive, retain, treat, or discharge human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes with particular emphasis on equipment to be installed on small recreational vessels. The Secretary of the department in which the Coast Guard is operating shall report to Congress the results of such research, studies, experiments, and demonstrations prior to the effective date of any regulations established under section 1322 of this title. In carrying out this subsection the Secretary of the department in which the Coast Guard is operating may enter into contracts with, or make grants to, public or private organizations and individuals.

(k) Land acquisition

In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

***(l)* Collection and dissemination of scientific knowledge on effects and control of pesticides in water**

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

(m) Waste oil disposal study

(1) The Administrator shall, in an effort to prevent degradation of the environment from the disposal of waste oil, conduct a study of (A) the generation of used engine, machine, cooling, and similar waste oil, including quantities generated, the nature and quality of such oil, present collecting methods and disposal practices, and alternate uses of such oil; (B) the long-term, chronic biological effects of the disposal of such waste oil; and (C) the potential market for such oils, including the economic and legal factors relating to the sale of products made from such oils, the level of subsidy, if any, needed to encourage the purchase by public and private nonprofit agencies of products from such oil, and the practicability of Federal procurement, on a priority basis, of products made from such oil. In conducting such study, the Administrator shall consult with affected industries and other persons.

(2) The Administrator shall report the preliminary results of such study to Congress within six months after October 18, 1972, and shall submit a final report to Congress within 18 months after such date.

(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report during any six-year period. Copies of each such report shall be made available to all interested parties, public and private.

(4) For the purpose of this subsection, the term ''estuarine zones'' means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term ''estuary'' means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

***(o)* Methods of reducing total flow of sewage and unnecessary water consumption; reports**

(1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after October 18, 1972, and annually thereafter in the report required under subsection (a) of section 1375 of this title. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such devices, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

(p) Agricultural pollution

In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

(q) Sewage in rural areas; national clearinghouse for alternative treatment information; clearinghouse on small flows

(1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, communitywide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

(3) The Administrator shall establish, either within the Environmental Protection Agency, or through contract with an appropriate public or private non-profit organization, a national clearinghouse which shall (A) receive reports and information resulting from research, demonstrations, and other projects funded under this chapter related to paragraph (1) of this subsection and to subsection (e)(2) of section 1255 of this title; (B) coordinate and disseminate such reports and information for use by Federal and State agencies, municipalities, institutions, and persons in developing new and improved methods pursuant to this subsection; and (C) provide for the collection and dissemination of reports and information relevant to this subsection from other Federal and State agencies, institutions, universities, and persons.

(4) SMALL FLOWS CLEARINGHOUSE.—Notwithstanding section 1285(d) of this title, from amounts that are set aside for a fiscal year under section 1285(i) of this title and are not obligated by the end of the 24-month period of availability for such amounts under section 1285(d) of this title, the Administrator shall make available $1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 1285(i) of this title for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1986.

(r) Research grants to colleges and universities

The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of freshwater aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the chemical, physical, and biological integrity of freshwater aquatic ecosystems.

(s) River Study Centers

The Administrator is authorized to make grants to one or more institutions of higher education (regionally located and to be designated as ''River Study Centers'') for the purpose of conducting and reporting on interdisciplinary studies on the nature of river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water related activities. No such grant in any fiscal year shall exceed $1,000,000.

(t) Thermal discharges

The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) such data as are available on the latest available technology, economic feasibility including cost-effectiveness analysis, and (2) the total impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of freshwater and other natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable, but not later than 270 days after October 18, 1972, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 1326 of this title and by the States in proposing thermal water quality standards.

(u) Authorization of appropriations

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, not to exceed $14,039,000 for the fiscal year ending September 30, 1980, not to exceed $20,697,000 for the fiscal year ending September 30, 1981, not to exceed $22,770,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990, 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 $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, $3,000,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990, for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal years 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, $1,500,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990, 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); (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); and (7) not to exceed $25,000,000 for each of fiscal years 2019 through 2023 for carrying out subsections (b)(3), (b)(8), and (g).

(v) Studies concerning pathogen indicators in coastal recreation waters

Not later than 18 months after October 10, 2000, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Ad-

ministrator shall initiate, and, not later than 3 years after October 10, 2000, shall complete, in cooperation with the heads of other Federal agencies, studies to provide additional information for use in developing—

(1) an assessment of potential human health risks resulting from exposure to pathogens in coastal recreation waters, including non-gastrointestinal effects;

(2) appropriate and effective indicators for improving detection in a timely manner in coastal recreation waters of the presence of pathogens that are harmful to human health;

(3) appropriate, accurate, expeditious, and cost-effective methods (including predictive models) for detecting in a timely manner in coastal recreation waters the presence of pathogens that are harmful to human health; and

(4) guidance for State application of the criteria for pathogens and pathogen indicators to be published under section 1314(a)(9) of this title to account for the diversity of geographic and aquatic conditions.

(w) Nonprofit organization

For purposes of subsection (b)(8), the term ''nonprofit organization'' means a nonprofit organization that the Administrator determines, after consultation with the States regarding what small publicly owned treatments works in the State find to be most beneficial and effective, is qualified and experienced in providing on-site training and technical assistance to small publicly owned treatment works.

(June 30, 1948, ch. 758, title I, § 104, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 819; amended Pub. L. 93–207, § 1(1), Dec. 28, 1973, 87 Stat. 906; Pub. L. 93–592, § 1, Jan. 2, 1975, 88 Stat. 1924; Pub. L. 95–217, §§ 4(a), (b), 6, 7, Dec. 27, 1977, 91 Stat. 1566, 1567; Pub. L. 95–576, § 1(a), Nov. 2, 1978, 92 Stat. 2467; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96–483, § 1(a), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, §§ 101(a), 102, Feb. 4, 1987, 101 Stat. 8, 9; Pub. L. 102–154, title I, Nov. 13, 1991, 105 Stat. 1000; Pub. L. 105–362, title V, § 501(a)(1), (d)(2)(A), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–284, § 3(a), Oct. 10, 2000, 114 Stat. 871; Pub. L. 107–303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361; Pub. L. 115–270, title IV, § 4103, Oct. 23, 2018, 132 Stat. 3872.)

CODIFICATION

In subsecs. (b)(4) and (g)(3)(A), ''section 3324(a) and (b) of title 31 and section 6101 of title 41'' substituted for references to sections 3648 and 3709 of the Revised Statutes on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, which Act enacted Title 31, Money and Finance, and Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2018—Subsec. (b)(8). Pub. L. 115–270, § 4103(a)(1), added par. (8).

Subsec. (u)(7). Pub. L. 115–270, § 4103(b), added par. (7).

Subsec. (w). Pub. L. 115–270, § 4103(a)(2), added subsec. (w).

2002—Subsecs. (a)(5), (n)(3), (4), (*o*)(2). Pub. L. 107–303 repealed Pub. L. 105–362, § 501(a), (d). See 1998 Amendment notes below.

2000—Subsec. (v). Pub. L. 106–284 added subsec. (v).

1998—Subsec. (a)(5). Pub. L. 105–362, § 501(d)(2)(A)(i), which directed the substitution of ''not later than 90 days after the date of convening of each session of Congress'' for ''in the report required under subsection (a) of section 1375 of this title'', was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

Subsec. (n)(3), (4). Pub. L. 105–362, § 501(a)(1), which directed the redesignation of par. (4) as (3) and striking out of former par. (3), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

Subsec. (*o*)(2). Pub. L. 105–362, § 501(d)(2)(A)(ii), which directed the substitution of ''not later than 90 days after the date of convening of each session of Congress'' for ''in the report required under subsection (a) of section 1375 of this title'', was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

1987—Subsec. (q)(4). Pub. L. 100–4, § 102, added par. (4).

Subsec. (u). Pub. L. 100–4, § 101(a), in cl. (1) struck out ''and'' after ''1975,'', ''1980,'', and ''1981,'' and inserted ''such sums as may be necessary for fiscal years 1983 through 1985, and not to exceed $22,770,000 per fiscal year for each of the fiscal years 1986 through 1990,'', in cl. (2) struck out ''and'' after ''1981,'' and inserted ''such sums as may be necessary for fiscal years 1983 through 1985, and $3,000,000 per fiscal year for each of the fiscal years 1986 through 1990,'', and in cl. (3) struck out ''and'' after ''1981,'' and inserted ''such sums as may be necessary for fiscal years 1983 through 1985, and $1,500,000 per fiscal year for each of the fiscal years 1986 through 1990,''.

1980—Subsec. (u). Pub. L. 96–483 in par. (1) inserted authorization of not to exceed $20,697,000 and $22,770,000 for fiscal years ending Sept. 30, 1981, and 1982, respectively; in par. (2) inserted authorization of the sum of $3,000,000 for each of fiscal years 1981 and 1982; and in par. (3) inserted authorization of the sum of $1,500,000 for each of fiscal years 1981 and 1982.

1978—Subsec. (u)(1). Pub. L. 95–576 authorized appropriation of not to exceed $14,039,000 for fiscal year ending Sept. 30, 1980 and prohibited use of authorizations for any research, development, or demonstration activity pursuant to provisions of this section.

1977—Subsec. (n)(3). Pub. L. 95–217, § 6, substituted ''any six-year period'' for ''any three year period''.

Subsec. (q)(3). Pub. L. 95–217, § 7, added par. (3).

Subsec. (u)(2). Pub. L. 95–217, § 4(a), substituted ''1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, and $3,000,000 for fiscal year 1980,'' for ''1975''.

Subsec. (u)(3). Pub. L. 95–217, § 4(b), substituted ''1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, and $1,500,000 for fiscal year 1980,'' for ''1975''.

1975—Subsec. (u)(1). Pub. L. 93–592, § 1(a), substituted ''the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975,'' for ''and the fiscal year ending June 30, 1974,''.

Subsec. (u)(2). Pub. L. 93–592, § 1(b), substituted ''fiscal years 1973, 1974, and 1975'' for ''fiscal years 1973 and 1974''.

Subsec. (u)(3). Pub. L. 93–592, § 1(c), substituted ''fiscal years 1973, 1974, and 1975'' for ''fiscal year 1973''.

Subsec. (u)(4), (5), (6). Pub. L. 93–592, § 1(d)–(f), substituted ''June 30, 1974, and June 30, 1975,'' for ''and June 30, 1974,''.

1973—Subsec. (u)(2). Pub. L. 93–207 substituted ''fiscal years 1973 and 1974'' for ''fiscal year 1973''.

CHANGE OF NAME

''United States Geological Survey'' substituted for ''Geological Survey'' in subsec. (a)(5) pursuant to provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–303, title III, § 302(b), Nov. 27, 2002, 116 Stat. 2361, provided that:

''(1) IN GENERAL.—Effective November 10, 1998, section 501 of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 112 Stat. 3283) is amended by striking subsections (a) [amending this section and section 1330 of this title], (b) [amending section 1324 of this title], (c) [amending section 1329 of this title], and (d) [amending this section and sections 1266, 1285, 1290, and 1375 of this title].

''(2) APPLICABILITY.—The Federal Water Pollution Control Act (33 U.S.C. 1254(n)(3)) [33 U.S.C. 1251 et seq.] shall be applied and administered on and after the date of enactment of this Act [Nov. 27, 2002] as if the amendments made by subsections (a), (b), (c), and (d) of section 501 of the Federal Reports Elimination Act of 1998 (Public Law 105–362; 112 Stat. 3283) had not been enacted.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

COLUMBIA RIVER BASIN SYSTEM; PROTECTION FROM OIL SPILLS AND DISCHARGES; CRITERIA FOR EVALUATION AND REPORT TO CONGRESS BY COMMANDANT OF COAST GUARD IN CONSULTATION WITH FEDERAL, ETC., AGENCIES

Pub. L. 95–308, §8, June 30, 1978, 92 Stat. 359, set forth Congressional findings and declarations and evaluation criteria with respect to protection from oil spills and discharges and betterment of the Columbia River Basin system, with such evaluation by the Commandant of the Coast Guard to begin within 180 days after June 30, 1978, and immediate submission of the evaluation to appropriate Congressional committees.

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1254a. Research on effects of pollutants

In carrying out the provisions of section 1254(a) of this title, the Administrator 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.

(Pub. L. 100–4, title I, §105, Feb. 4, 1987, 101 Stat. 15.)

CODIFICATION

Section was enacted as part of the Water Quality Act of 1987, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

DEFINITION

Administrator means the Administrator of the Environmental Protection Agency, see section 1(d) of Pub. L. 100–4, set out as a note under section 1251 of this title.

§ 1255. Grants for research and development

(a) Demonstration projects covering storm waters, advanced waste treatment and water purification methods, and joint treatment systems for municipal and industrial wastes

The Administrator is authorized to conduct in the Environmental Protection Agency, and to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of—

(1) any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; or

(2) any project which will demonstrate advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvements to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes;

and to include in such grants such amounts as are necessary for the purpose of reports, plans, and specifications in connection therewith.

(b) Demonstration projects for advanced treatment and environmental enhancement techniques to control pollution in river basins

The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within such basins or portions thereof, including nonpoint sources, together with in stream[1] water quality improvement techniques.

(c) Research and demonstration projects for prevention of water pollution by industry

In order to carry out the purposes of section 1311 of this title, the Administrator is author-

[1] So in original.

ized to (1) conduct in the Environmental Protection Agency, (2) make grants to persons, and (3) enter into contracts with persons, for research and demonstration projects for prevention of pollution of any waters by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants. No grant shall be made for any project under this subsection unless the Administrator determines that such project will develop or demonstrate a new or improved method of treating industrial wastes or otherwise prevent pollution by industry, which method shall have industry-wide application.

(d) Accelerated and priority development of waste management and waste treatment methods and identification and measurement methods

In carrying out the provisions of this section, the Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of:

(1) waste management methods applicable to point and nonpoint sources of pollutants to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from inplace or accumulated sources;

(2) advanced waste treatment methods applicable to point and nonpoint sources, including inplace or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution; and

(3) improved methods and procedures to identify and measure the effects of pollutants on the chemical, physical, and biological integrity of water, including those pollutants created by new technological developments.

(e) Research and demonstration projects covering agricultural pollution and pollution from sewage in rural areas; dissemination of information

(1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 1254(p) of this title, and section 1314 of this title as will encourage and enable the adoption of such methods in the agricultural industry.

(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

(f) Limitations

Federal grants under subsection (a) of this section shall be subject to the following limitations:

(1) No grant shall be made for any project unless such project shall have been approved by the appropriate State water pollution control agency or agencies and by the Administrator;

(2) No grant shall be made for any project in an amount exceeding 75 per centum of cost thereof as determined by the Administrator; and

(3) No grant shall be made for any project unless the Administrator determines that such project will serve as a useful demonstration for the purpose set forth in clause (1) or (2) of subsection (a).

(g) Maximum grants

Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

(h) Authorization of appropriations

For the purpose of this section there is authorized to be appropriated $75,000,000 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 from such appropriations at least 10 per centum of the funds actually appropriated in each fiscal year shall be available only for the purposes of subsection (e).

(i) Assistance for research and demonstration projects

The Administrator is authorized to make grants to a municipality to assist in the costs of operating and maintaining a project which received a grant under this section, section 1254 of this title, or section 1263 of this title prior to December 27, 1977, so as to reduce the operation and maintenance costs borne by the recipients of services from such project to costs comparable to those for projects assisted under subchapter II of this chapter.

(j) Assistance for recycle, reuse, and land treatment projects

The Administrator is authorized to make a grant to any grantee who received an increased grant pursuant to section 1282(a)(2) of this title. Such grant may pay up to 100 per centum of the costs of technical evaluation of the operation of the treatment works, costs of training of persons (other than employees of the grantee), and costs of disseminating technical information on the operation of the treatment works.

(June 30, 1948, ch. 758, title I, § 105, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 825; amended Pub. L. 93–592, § 2, Jan. 2, 1975, 88 Stat. 1925; Pub. L. 95–217, §§ 8, 9, Dec. 27, 1977, 91 Stat. 1568.)

AMENDMENTS

1977—Subsecs. (i), (j). Pub. L. 95–217 added subsecs. (i) and (j).

1975—Subsec. (h). Pub. L. 93–592 substituted ''the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975,'' for ''and the fiscal year ending June 30, 1974,''.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 1256. Grants for pollution control programs

(a) Authorization of appropriations for State and interstate programs

There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purpose 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, such sums as may be necessary for fiscal years 1983 through 1985, and $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990;

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.

(b) Allotments

From the sums appropriated in any fiscal year, the Administrator shall make allotments to the several States and interstate agencies in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.

(c) Maximum annual payments

The Administrator is authorized to pay to each State and interstate agency each fiscal year either—

(1) the allotment of such State or agency for such fiscal year under subsection (b), or

(2) the reasonable costs as determined by the Administrator of developing and carrying out a pollution program by such State or agency during such fiscal year,

which ever amount is the lesser.

(d) Limitations

No grant shall be made under this section to any State or interstate agency for any fiscal year when the expenditure of non-Federal funds by such State or interstate agency during such fiscal year for the recurrent expenses of carrying out its pollution control program are less than the expenditure by such State or interstate agency of non-Federal funds for such recurrent program expenses during the fiscal year ending June 30, 1971.

(e) Grants prohibited to States not establishing water quality monitoring procedures or adequate emergency and contingency plans

Beginning in fiscal year 1974 the Administrator shall not make any grant under this section to any State which has not provided or is not carrying out as a part of its program—

(1) the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under section 1315 of this title;

(2) authority comparable to that in section 1364 of this title and adequate contingency plans to implement such authority.

(f) Conditions

Grants shall be made under this section on condition that—

(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after October 18, 1972:

(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

(B) such additional information, data, and reports as the Administrator may require.

(2) No federally assumed enforcement as defined in section 1319(a)(2) of this title is in effect with respect to such State or interstate agency.

(3) Such State (or interstate agency) submits within one hundred and twenty days after October 18, 1972, and before October 1 of each year thereafter for the Administrator's approval of its program for the prevention, reduction, and elimination of pollution in accordance with purposes and provisions of this chapter in such form and content as the Administrator may prescribe.

(g) Reallotment of unpaid allotments

Any sums allotted under subsection (b) in any fiscal year which are not paid shall be reallotted by the Administrator in accordance with regulations promulgated by him.

(June 30, 1948, ch. 758, title I, §106, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 827; amended Pub. L. 93–592, §3, Jan. 2, 1975, 88 Stat. 1925; Pub. L. 94–273, §3(20), Apr. 21, 1976, 90 Stat. 377; Pub. L. 95–217, §4(c), Dec. 27, 1977, 91 Stat. 1566; Pub. L. 96–483, §1(b), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, §101(b), Feb. 4, 1987, 101 Stat. 9.)

AMENDMENTS

1987—Subsec. (a)(2). Pub. L. 100–4 inserted ", such sums as may be necessary for fiscal years 1983 through

1985, and $75,000,000 per fiscal year for each of the fiscal years 1986 through 1990'' after ''1982''.

1980—Subsec. (a)(2). Pub. L. 96–483 inserted authorization of the sum of $75,000,000 per fiscal year for fiscal years 1981 and 1982.

1977—Subsec. (a)(2). Pub. L. 95–217 substituted ''and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980'' for ''and the fiscal year ending June 30, 1975''.

1976—Subsec. (f)(3). Pub. L. 94–273 substituted ''October'' for ''July''.

1975—Subsec. (a)(2). Pub. L. 93–592 substituted ''June 30, 1974, and the fiscal year ending June 30, 1975;'' for ''June 30, 1974;''.

§ 1257. Mine water pollution control demonstrations

(a) Comprehensive approaches to elimination or control of mine water pollution

The Administrator in cooperation with the Appalachian Regional Commission and other Federal agencies is authorized to conduct, to make grants for, or to contract for, projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, and other pollution affecting water quality, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution affecting water quality from acid, sedimentation, or other pollutants and in such projects to restore affected lands to usefulness for forestry, agriculture, recreation, or other beneficial purposes.

(b) Consistency of projects with objectives of subtitle IV of title 40

Prior to undertaking any demonstration project under this section in the Appalachian region (as defined in section 14102(a)(1) and (b) of title 40), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of subtitle IV of title 40.

(c) Watershed selection

The Administrator, in selecting watersheds for the purposes of this section, shall be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

(d) Conditions upon Federal participation

Federal participation in such projects shall be subject to the conditions—

(1) that the State shall acquire any land or interests therein necessary for such project; and

(2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

(e) Authorization of appropriations

There is authorized to be appropriated $30,000,000 to carry out the provisions of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, § 107, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 828.)

CODIFICATION

In subsec. (b), ''section 14102(a)(1) and (b) of title 40'' substituted for ''section 403 of the Appalachian Regional Development Act of 1965, as amended'' and ''subtitle IV of title 40'' substituted for ''the Appalachian Regional Development Act of 1965, as amended'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

§ 1257a. State demonstration programs for cleanup of abandoned mines for use as waste disposal sites; authorization of appropriations

The Administrator of the Environmental Protection Agency is authorized to make grants to States to undertake a demonstration program for the cleanup of State-owned abandoned mines which can be used as hazardous waste disposal sites. The State shall pay 10 per centum of project costs. At a minimum, the Administrator shall undertake projects under such program in the States of Ohio, Illinois, and West Virginia. There are authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984, to carry out this section. Such projects shall be undertaken in accordance with all applicable laws and regulations.

(Pub. L. 96–483, § 12, Oct. 21, 1980, 94 Stat. 2363.)

CODIFICATION

Section was not enacted as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1258. Pollution control in the Great Lakes

(a) Demonstration projects

The Administrator, in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. Such projects shall demonstrate the engineering and economic feasibility and practicality of removal of pollutants and prevention of any polluting matter from entering into the Great Lakes in the future and other reduction and remedial techniques which will contribute substantially to effective and practical methods of pollution prevention, reduction, or elimination.

(b) Conditions of Federal participation

Federal participation in such projects shall be subject to the condition that the State, political subdivision, interstate agency, or other public agency, or combination thereof, shall pay not less than 25 per centum of the actual project

costs, which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, and personal property or services the value of which shall be determined by the Administrator.

(c) Authorization of appropriations

There is authorized to be appropriated $20,000,000 to carry out the provisions of subsections (a) and (b) of this section, which sum shall be available until expended.

(d) Lake Erie demonstration program

(1) In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers, is directed to design and develop a demonstration waste water management program for the rehabilitation and environmental repair of Lake Erie. Prior to the initiation of detailed engineering and design, the program, along with the specific recommendations of the Chief of Engineers, and recommendations for its financing, shall be submitted to the Congress for statutory approval. This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from select sources around Lake Erie.

(2) This program is to be developed in cooperation with the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the Federal Government, and the States and their political subdivisions. This program shall set forth alternative systems for managing waste water on a regional basis and shall provide local and State governments with a range of choice as to the type of system to be used for the treatment of waste water. These alternative systems shall include both advanced waste treatment technology and land disposal systems including aerated treatment-spray irrigation technology and will also include provisions for the disposal of solid wastes, including sludge. Such program should include measures to control point sources of pollution, area sources of pollution, including acid-mine drainage, urban runoff and rural runoff, and in place sources of pollution, including bottom loads, sludge banks, and polluted harbor dredgings.

(e) Authorization of appropriations for Lake Erie demonstration program

There is authorized to be appropriated $5,000,000 to carry out the provisions of subsection (d) of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, §108, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 828.)

§ 1259. Training grants and contracts

(a) The Administrator is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of undergraduate students to enter an occupation which involves the design, operation, and maintenance of treatment works, and other facilities whose purpose is water quality control. Such grants or contracts may include payment of all or part of the cost of programs or projects such as—

(A) planning for the development or expansion of programs or projects for training persons in the operation and maintenance of treatment works;

(B) training and retraining of faculty members;

(C) conduct of short-term or regular session institutes for study by persons engaged in, or preparing to engage in, the preparation of students preparing to enter an occupation involving the operation and maintenance of treatment works;

(D) carrying out innovative and experimental programs of cooperative education involving alternate periods of full-time or part-time academic study at the institution and periods of full-time or part-time employment involving the operation and maintenance of treatment works; and

(E) research into, and development of, methods of training students or faculty, including the preparation of teaching materials and the planning of curriculum.

(b)(1) The Administrator may pay 100 per centum of any additional cost of construction of treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel and for the costs of other State treatment works operator training programs, including mobile training units, classroom rental, specialized instructors, and instructional material.

(2) The Administrator shall make no more than one grant for such additional construction in any State (to serve a group of States, where, in his judgment, efficient training programs require multi-State programs), and shall make such grant after consultation with and approval by the State or States on the basis of (A) the suitability of such facility for training operation and maintenance personnel for treatment works throughout such State or States; and (B) a commitment by the State agency or agencies to carry out at such facility a program of training approved by the Administrator. In any case where a grant is made to serve two or more States, the Administrator is authorized to make an additional grant for a supplemental facility in each such State.

(3) The Administrator may make such grant out of the sums allocated to a State under section 1285 of this title, except that in no event shall the Federal cost of any such training facilities exceed $500,000.

(4) The Administrator may exempt a grant under this section from any requirement under section 1284(a)(3) of this title. Any grantee who received a grant under this section prior to enactment of the Clean Water Act of 1977 shall be eligible to have its grant increased by funds made available under such Act.

(June 30, 1948, ch. 758, title I, §109, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 829; amended Pub. L. 95–217, §10, Dec. 27, 1977, 91 Stat. 1568.)

REFERENCES IN TEXT

Prior to the date of enactment of the Clean Water Act of 1977, referred to in subsec. (b)(4), means prior to

the enactment of Pub. L. 95–217, Dec. 27, 1977, 91 Stat. 1566, which was approved Dec. 27, 1977.

Such Act, referred to in subsec. (b)(4), means Pub. L. 95–217, Dec. 27, 1977, 91 Stat. 1566, as amended, known as the Clean Water Act of 1977. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1251 of this title and Tables.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95–217, § 10(c), (d), substituted ''cost of construction of treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel and for the costs of other State treatment works operator training programs, including mobile training units, classroom rental, specialized instructors, and instructional material'' for ''cost of construction of a treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel''.

Subsec. (b)(2). Pub. L. 95–217, § 10(e), authorized Administrator to make an additional grant for a supplemental facility in each of the States in any case where a grant is made to serve two or more States.

Subsec. (b)(3). Pub. L. 95–217, § 10(a), substituted ''$500,000'' for ''$250,000''.

Subsec. (b)(4). Pub. L. 95–217, § 10(b), added par. (4).

§ 1260. Applications; allocation

(1) A grant or contract authorized by section 1259 of this title may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

(A) sets forth programs, activities, research, or development for which a grant is authorized under section 1259 of this title and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 1261 of this title;

(B) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section; and

(C) provides for making such reports, in such form and containing such information, as the Administrator may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(2) The Administrator shall allocate grants or contracts under section 1259 of this title in such manner as will most nearly provide an equitable distribution of the grants or contracts throughout the United States among institutions of higher education which show promise of being able to use funds effectively for the purpose of this section.

(3)(A) Payments under this section may be used in accordance with regulations of the Administrator, and subject to the terms and conditions set forth in an application approved under paragraph (1), to pay part of the compensation of students employed in connection with the operation and maintenance of treatment works, other than as an employee in connection with the operation and maintenance of treatment works or as an employee in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this section.

(B) Departments and agencies of the United States are encouraged, to the extent consistent with efficient administration, to enter into arrangements with institutions of higher education for the full-time, part-time, or temporary employment, whether in the competitive or excepted service, of students enrolled in programs set forth in applications approved under paragraph (1).

(June 30, 1948, ch. 758, title I, § 110, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 830.)

§ 1261. Scholarships

(1) The Administrator is authorized to award scholarships in accordance with the provisions of this section for undergraduate study by persons who plan to enter an occupation involving the operation and maintenance of treatment works. Such scholarships shall be awarded for such periods as the Administrator may determine but not to exceed four academic years.

(2) The Administrator shall allocate scholarships under this section among institutions of higher education with programs approved under the provisions of this section for the use of individuals accepted into such programs in such manner and according to such plan as will insofar as practicable—

(A) provide an equitable distribution of such scholarships throughout the United States; and

(B) attract recent graduates of secondary schools to enter an occupation involving the operation and maintenance of treatment works.

(3) The Administrator shall approve a program of any institution of higher education for the purposes of this section only upon application by the institution and only upon his finding—

(A) that such program has a principal objective the education and training of persons in the operation and maintenance of treatment works;

(B) that such program is in effect and of high quality, or can be readily put into effect and may reasonably be expected to be of high quality;

(C) that the application describes the relation of such program to any program, activity, research, or development set forth by the applicant in an application, if any, submitted pursuant to section 1260 of this title; and

(D) that the application contains satisfactory assurances that (i) the institution will recommend to the Administrator for the award of scholarships under this section, for study in such program, only persons who have demonstrated to the satisfaction of the institution a serious intent, upon completing the program, to enter an occupation involving the operation and maintenance of treatment works, and (ii) the institution will make reasonable continuing efforts to encourage recipients of scholarships under this section, enrolled in such program, to enter occupations involving the operation and maintenance of treatment works upon completing the program.

(4)(A) The Administrator shall pay to persons awarded scholarships under this section such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(B) The Administrator shall (in addition to the stipends paid to persons under paragraph (1)) pay to the institution of higher education at which such person is pursuing his course of study such amount as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(5) A person awarded a scholarship under the provisions of this section shall continue to receive the payments provided in this section only during such periods as the Administrator finds that he is maintaining satisfactory proficiency and devoting full time to study or research in the field in which such scholarship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Administrator by or pursuant to regulation.

(6) The Administrator shall by regulation provide that any person awarded a scholarship under this section shall agree in writing to enter and remain in an occupation involving the design, operation, or maintenance of treatment works for such period after completion of his course of studies as the Administrator determines appropriate.

(June 30, 1948, ch. 758, title I, §111, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 831.)

§1262. Definitions and authorizations

(a) As used in sections 1259 through 1262 of this title—

(1) The term ''institution of higher education'' means an educational institution described in the first sentence of section 1001 of title 20 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency or association approved by the Administrator for this purpose. For purposes of this subsection, the Administrator shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

(2) The term ''academic year'' means an academic year or its equivalent, as determined by the Administrator.

(b) The Administrator shall annually report his activities under sections 1259 through 1262 of this title, including recommendations for needed revisions in the provisions thereof.

(c) 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, $7,000,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $7,000,000 per fiscal year for each of the fiscal years 1986 through 1990, to carry out sections 1259 through 1262 of this title.

(June 30, 1948, ch. 758, title I, §112, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 832; amended Pub. L. 93–592, §4, Jan. 2, 1975, 88 Stat. 1925; Pub. L. 95–217, §4(d), Dec. 27, 1977, 91 Stat. 1566; Pub. L. 96–483, §1(c), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, §101(c), Feb. 4, 1987, 101 Stat. 9; Pub. L. 105–244, title I, §102(a)(11), Oct. 7, 1998, 112 Stat. 1620.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–244 substituted ''section 1001'' for ''section 1141''.

1987—Subsec. (c). Pub. L. 100–4 struck out ''and'' after ''1981,'' and inserted ''such sums as may be necessary for fiscal years 1983 through 1985, and $7,000,000 per fiscal year for each of the fiscal years 1986 through 1990,'' after ''1982,''.

1980—Subsec. (c). Pub. L. 96–483 inserted authorization of the sum of $7,000,000 for each of fiscal years ending Sept. 30, 1981 and 1982.

1977—Subsec. (c). Pub. L. 95–217 substituted ''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, and $7,000,000 for the fiscal year ending September 30, 1980,'' for ''June 30, 1975,''.

1975—Subsec. (c). Pub. L. 93–592 substituted ''June 30, 1974, and June 30, 1975,'' for ''and June 30, 1974,''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§1263. Alaska village demonstration projects

(a) Central community facilities for safe water; elimination or control of pollution

The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and eliminate or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

(b) Utilization of personnel and facilities of Department of Health and Human Services

In carrying out this section the Administrator shall cooperate with the Secretary of Health and Human Services for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) Omitted

(d) Authorization of appropriations

There is authorized to be appropriated not to exceed $2,000,000 to carry out this section. In addition, there is authorized to be appropriated to

carry out this section not to exceed $200,000 for the fiscal year ending September 30, 1978, and $220,000 for the fiscal year ending September 30, 1979.

(e) Study to develop comprehensive program for achieving sanitation services; report to Congress

The Administrator is authorized to coordinate with the Secretary of the Department of Health and Human Services, the Secretary of the Department of Housing and Urban Development, the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture, and the heads of any other departments or agencies he may deem appropriate to conduct a joint study with representatives of the State of Alaska and the appropriate Native organizations (as defined in Public Law 92–203) to develop a comprehensive program for achieving adequate sanitation services in Alaska villages. This study shall be coordinated with the programs and projects authorized by sections 1254(q) and 1255(e)(2) of this title. The Administrator shall submit a report of the results of the study, together with appropriate supporting data and such recommendations as he deems desirable, to the Committee on Environment and Public Works of the Senate and to the Committee on Public Works and Transportation of the House of Representatives not later than December 31, 1979. The Administrator shall also submit recommended administrative actions, procedures, and any proposed legislation necessary to implement the recommendations of the study no later than June 30, 1980.

(f) Technical, financial, and management assistance

The Administrator is authorized to provide technical, financial and management assistance for operation and maintenance of the demonstration projects constructed under this section, until such time as the recommendations of subsection (e) are implemented.

(g) "Village" and "sanitation services" defined

For the purpose of this section, the term ''village'' shall mean an incorporated or unincorporated community with a population of ten to six hundred people living within a two-mile radius. The term ''sanitation services'' shall mean water supply, sewage disposal, solid waste disposal and other services necessary to maintain generally accepted standards of personal hygiene and public health.

(June 30, 1948, ch. 758, title I, § 113, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 832; amended Pub. L. 95–217, § 11, Dec. 27, 1977, 91 Stat. 1568; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Public Law 92–203, referred to in subsec. (e), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, known as the Alaska Native Claims Settlement Act, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CODIFICATION

Subsec. (c) authorized the Administrator to report to Congress the results of the demonstration project accompanied by his recommendations for the establishment of a statewide project not later than July 1, 1973.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95–217, § 11(b), authorized additional appropriations of not to exceed $200,000 for the fiscal year ending Sept. 30, 1978, and $220,000, for the fiscal year ending Sept. 30, 1979, to carry out this section.

Subsecs. (e) to (g). Pub. L. 95–217, § 11(a), added subsecs. (e), (f), and (g).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b), and ''Secretary of the Department of Health and Human Services'' substituted for ''Secretary of the Department of Health, Education, and Welfare'' in subsec. (e), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

CORPS CAPABILITY STUDY, ALASKA

Pub. L. 104–303, title IV, § 401, Oct. 12, 1996, 110 Stat. 3740, provided that: ''Not later than 18 months after the date of the enactment of this Act [Oct. 12, 1996], the Secretary shall report to Congress on the advisability and capability of the Corps of Engineers to implement rural sanitation projects for rural and Native villages in Alaska.''

§ 1263a. Grants to Alaska to improve sanitation in rural and Native villages

(a) In general

The Administrator of the Environmental Protection Agency may make grants to the State of Alaska for the benefit of rural and Native villages in Alaska to pay the Federal share of the cost of—

(1) the development and construction of public water systems and wastewater systems to improve the health and sanitation conditions in the villages; and

(2) training, technical assistance, and educational programs relating to the operation and management of sanitation services in rural and Native villages.

(b) Federal share

The Federal share of the cost of the activities described in subsection (a) shall be 50 percent.

(c) Administrative expenses

The State of Alaska may use an amount not to exceed 4 percent of any grant made available under this subsection[1] for administrative expenses necessary to carry out the activities described in subsection (a).

(d) Consultation with State of Alaska

The Administrator shall consult with the State of Alaska on a method of prioritizing the allocation of grants under subsection (a) according to the needs of, and relative health and sanitation conditions in, each eligible village.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2001 through 2005.

[1] So in original. Probably should be ''section''.

(Pub. L. 104–182, title III, § 303, Aug. 6, 1996, 110 Stat. 1683; Pub. L. 106–457, title IX, § 903, Nov. 7, 2000, 114 Stat. 1982.)

CODIFICATION

Section was enacted as part of the Safe Drinking Water Act Amendments of 1996, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–457 substituted ''to carry out this section $40,000,000 for each of fiscal years 2001 through 2005'' for ''$15,000,000 for each of the fiscal years 1997 through 2000 to carry out this section''.

§ 1264. Omitted

CODIFICATION

Section, act June 30, 1948, ch. 758, title I, § 114, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833, authorized the Administrator, in consultation with the Tahoe Regional Planning Agency, the Secretary of Agriculture, other Federal agencies, representatives of State and local governments, and members of the public, to conduct a thorough and complete study on the need of extending Federal oversight and control in order to preserve the fragile ecology of Lake Tahoe and to report the results of this study to Congress not later than one year after Oct. 18, 1972.

§ 1265. In-place toxic pollutants

The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended.

(June 30, 1948, ch. 758, title I, § 115, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 833.)

§ 1266. Hudson River reclamation demonstration project

(a) The Administrator is authorized to enter into contracts and other agreements with the State of New York to carry out a project to demonstrate methods for the selective removal of polychlorinated biphenyls contaminating bottom sediments of the Hudson River, treating such sediments as required, burying such sediments in secure landfills, and installing monitoring systems for such landfills. Such demonstration project shall be for the purpose of determining the feasibility of indefinite storage in secure landfills of toxic substances and of ascertaining the improvement of the rate of recovery of a toxic contaminated national waterway. No pollutants removed pursuant to this paragraph shall be placed in any landfill unless the Administrator first determines that disposal of the pollutants in such landfill would provide a higher standard of protection of the public health, safety, and welfare than disposal of such pollutants by any other method including, but not limited to, incineration or a chemical destruction process.

(b) The Administrator is authorized to make grants to the State of New York to carry out this section from funds allotted to such State under section 1285(a) of this title, except that the amount of any such grant shall be equal to 75 per centum of the cost of the project and such grant shall be made on condition that non-Federal sources provide the remainder of the cost of such project. The authority of this section shall be available until September 30, 1983. Funds allotted to the State of New York under section 1285(a) of this title shall be available under this subsection only to the extent that funds are not available, as determined by the Administrator, to the State of New York for the work authorized by this section under section 1265 or 1321 of this title or a comprehensive hazardous substance response and clean up fund. Any funds used under the authority of this subsection shall be deducted from any estimate of the needs of the State of New York prepared under section 1375(b) of this title. The Administrator may not obligate or expend more than $20,000,000 to carry out this section.

(June 30, 1948, ch. 758, title I, § 116, as added Pub. L. 96–483, § 10, Oct. 21, 1980, 94 Stat. 2363; amended Pub. L. 105–362, title V, § 501(d)(2)(B), Nov. 10, 1998, 112 Stat. 3284; Pub. L. 107–303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–303 repealed Pub. L. 105–362, § 501(d)(2)(B). See 1998 Amendment note below.

1998—Subsec. (b). Pub. L. 105–362, § 501(d)(2)(B), which directed the substitution of ''section 1375 of this title'' for ''section 1375(b) of this title'' in penultimate sentence, was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

§ 1267. Chesapeake Bay

(a) Definitions

In this section, the following definitions apply:

(1) Administrative cost

The term ''administrative cost'' means the cost of salaries and fringe benefits incurred in administering a grant under this section.

(2) Chesapeake Bay Agreement

The term ''Chesapeake Bay Agreement'' means the formal, voluntary agreements executed to achieve the goal of restoring and protecting the Chesapeake Bay ecosystem and the living resources of the Chesapeake Bay ecosystem and signed by the Chesapeake Executive Council.

(3) Chesapeake Bay ecosystem

The term ''Chesapeake Bay ecosystem'' means the ecosystem of the Chesapeake Bay and its watershed.

(4) Chesapeake Bay Program

The term ''Chesapeake Bay Program'' means the program directed by the Chesapeake Exec-

utive Council in accordance with the Chesapeake Bay Agreement.

(5) Chesapeake Executive Council

The term ''Chesapeake Executive Council'' means the signatories to the Chesapeake Bay Agreement.

(6) Signatory jurisdiction

The term ''signatory jurisdiction'' means a jurisdiction of a signatory to the Chesapeake Bay Agreement.

(b) Continuation of Chesapeake Bay Program

(1) In general

In cooperation with the Chesapeake Executive Council (and as a member of the Council), the Administrator shall continue the Chesapeake Bay Program.

(2) Program Office

(A) In general

The Administrator shall maintain in the Environmental Protection Agency a Chesapeake Bay Program Office.

(B) Function

The Chesapeake Bay Program Office shall provide support to the Chesapeake Executive Council by—

(i) implementing and coordinating science, research, modeling, support services, monitoring, data collection, and other activities that support the Chesapeake Bay Program;

(ii) developing and making available, through publications, technical assistance, and other appropriate means, information pertaining to the environmental quality and living resources of the Chesapeake Bay ecosystem;

(iii) in cooperation with appropriate Federal, State, and local authorities, assisting the signatories to the Chesapeake Bay Agreement in developing and implementing specific action plans to carry out the responsibilities of the signatories to the Chesapeake Bay Agreement;

(iv) coordinating the actions of the Environmental Protection Agency with the actions of the appropriate officials of other Federal agencies and State and local authorities in developing strategies to—

(I) improve the water quality and living resources in the Chesapeake Bay ecosystem; and

(II) obtain the support of the appropriate officials of the agencies and authorities in achieving the objectives of the Chesapeake Bay Agreement; and

(v) implementing outreach programs for public information, education, and participation to foster stewardship of the resources of the Chesapeake Bay.

(c) Interagency agreements

The Administrator may enter into an interagency agreement with a Federal agency to carry out this section.

(d) Technical assistance and assistance grants

(1) In general

In cooperation with the Chesapeake Executive Council, the Administrator may provide technical assistance, and assistance grants, to nonprofit organizations, State and local governments, colleges, universities, and interstate agencies to carry out this section, subject to such terms and conditions as the Administrator considers appropriate.

(2) Federal share

(A) In general

Except as provided in subparagraph (B), the Federal share of an assistance grant provided under paragraph (1) shall be determined by the Administrator in accordance with guidance issued by the Administrator.

(B) Small watershed grants program

The Federal share of an assistance grant provided under paragraph (1) to carry out an implementing activity under subsection (g)(2) shall not exceed 75 percent of eligible project costs, as determined by the Administrator.

(3) Non-Federal share

An assistance grant under paragraph (1) shall be provided on the condition that non-Federal sources provide the remainder of eligible project costs, as determined by the Administrator.

(4) Administrative costs

Administrative costs shall not exceed 10 percent of the annual grant award.

(e) Implementation and monitoring grants

(1) In general

If a signatory jurisdiction has approved and committed to implement all or substantially all aspects of the Chesapeake Bay Agreement, on the request of the chief executive of the jurisdiction, the Administrator—

(A) shall make a grant to the jurisdiction for the purpose of implementing the management mechanisms established under the Chesapeake Bay Agreement, subject to such terms and conditions as the Administrator considers appropriate; and

(B) may make a grant to a signatory jurisdiction for the purpose of monitoring the Chesapeake Bay ecosystem.

(2) Proposals

(A) In general

A signatory jurisdiction described in paragraph (1) may apply for a grant under this subsection for a fiscal year by submitting to the Administrator a comprehensive proposal to implement management mechanisms established under the Chesapeake Bay Agreement.

(B) Contents

A proposal under subparagraph (A) shall include—

(i) a description of proposed management mechanisms that the jurisdiction commits to take within a specified time period, such as reducing or preventing pollution in the Chesapeake Bay and its watershed or meeting applicable water quality standards or established goals and objectives under the Chesapeake Bay Agreement; and

(ii) the estimated cost of the actions proposed to be taken during the fiscal year.

(3) Approval

If the Administrator finds that the proposal is consistent with the Chesapeake Bay Agreement and the national goals established under section 1251(a) of this title, the Administrator may approve the proposal for an award.

(4) Federal share

The Federal share of a grant under this subsection shall not exceed 50 percent of the cost of implementing the management mechanisms during the fiscal year.

(5) Non-Federal share

A grant under this subsection shall be made on the condition that non-Federal sources provide the remainder of the costs of implementing the management mechanisms during the fiscal year.

(6) Administrative costs

Administrative costs shall not exceed 10 percent of the annual grant award.

(7) Reporting

On or before October 1 of each fiscal year, the Administrator shall make available to the public a document that lists and describes, in the greatest practicable degree of detail—

(A) all projects and activities funded for the fiscal year;

(B) the goals and objectives of projects funded for the previous fiscal year; and

(C) the net benefits of projects funded for previous fiscal years.

(f) Federal facilities and budget coordination

(1) Subwatershed planning and restoration

A Federal agency that owns or operates a facility (as defined by the Administrator) within the Chesapeake Bay watershed shall participate in regional and subwatershed planning and restoration programs.

(2) Compliance with agreement

The head of each Federal agency that owns or occupies real property in the Chesapeake Bay watershed shall ensure that the property, and actions taken by the agency with respect to the property, comply with the Chesapeake Bay Agreement, the Federal Agencies Chesapeake Ecosystem Unified Plan, and any subsequent agreements and plans.

(3) Budget coordination

(A) In general

As part of the annual budget submission of each Federal agency with projects or grants related to restoration, planning, monitoring, or scientific investigation of the Chesapeake Bay ecosystem, the head of the agency shall submit to the President a report that describes plans for the expenditure of the funds under this section.

(B) Disclosure to the Council

The head of each agency referred to in subparagraph (A) shall disclose the report under that subparagraph with the Chesapeake Executive Council as appropriate.

(g) Chesapeake Bay Program

(1) Management strategies

The Administrator, in coordination with other members of the Chesapeake Executive Council, shall ensure that management plans are developed and implementation is begun by signatories to the Chesapeake Bay Agreement to achieve and maintain—

(A) the nutrient goals of the Chesapeake Bay Agreement for the quantity of nitrogen and phosphorus entering the Chesapeake Bay and its watershed;

(B) the water quality requirements necessary to restore living resources in the Chesapeake Bay ecosystem;

(C) the Chesapeake Bay Basinwide Toxins Reduction and Prevention Strategy goal of reducing or eliminating the input of chemical contaminants from all controllable sources to levels that result in no toxic or bioaccumulative impact on the living resources of the Chesapeake Bay ecosystem or on human health;

(D) habitat restoration, protection, creation, and enhancement goals established by Chesapeake Bay Agreement signatories for wetlands, riparian forests, and other types of habitat associated with the Chesapeake Bay ecosystem; and

(E) the restoration, protection, creation, and enhancement goals established by the Chesapeake Bay Agreement signatories for living resources associated with the Chesapeake Bay ecosystem.

(2) Small watershed grants program

The Administrator, in cooperation with the Chesapeake Executive Council, shall—

(A) establish a small watershed grants program as part of the Chesapeake Bay Program; and

(B) offer technical assistance and assistance grants under subsection (d) to local governments and nonprofit organizations and individuals in the Chesapeake Bay region to implement—

(i) cooperative tributary basin strategies that address the water quality and living resource needs in the Chesapeake Bay ecosystem; and

(ii) locally based protection and restoration programs or projects within a watershed that complement the tributary basin strategies, including the creation, restoration, protection, or enhancement of habitat associated with the Chesapeake Bay ecosystem.

(h) Study of Chesapeake Bay Program

(1) In general

Not later than April 22, 2003, and every 5 years thereafter, the Administrator, in coordination with the Chesapeake Executive Council, shall complete a study and submit to Congress a comprehensive report on the results of the study.

(2) Requirements

The study and report shall—

(A) assess the state of the Chesapeake Bay ecosystem;

(B) compare the current state of the Chesapeake Bay ecosystem with its state in 1975, 1985, and 1995;

(C) assess the effectiveness of management strategies being implemented on November 7, 2000, and the extent to which the priority needs are being met;

(D) make recommendations for the improved management of the Chesapeake Bay Program either by strengthening strategies being implemented on November 7, 2000, or by adopting new strategies; and

(E) be presented in such a format as to be readily transferable to and usable by other watershed restoration programs.

(i) Special study of living resource response

(1) In general

Not later than 180 days after November 7, 2000, the Administrator shall commence a 5-year special study with full participation of the scientific community of the Chesapeake Bay to establish and expand understanding of the response of the living resources of the Chesapeake Bay ecosystem to improvements in water quality that have resulted from investments made through the Chesapeake Bay Program.

(2) Requirements

The study shall—

(A) determine the current status and trends of living resources, including grasses, benthos, phytoplankton, zooplankton, fish, and shellfish;

(B) establish to the extent practicable the rates of recovery of the living resources in response to improved water quality condition;

(C) evaluate and assess interactions of species, with particular attention to the impact of changes within and among trophic levels; and

(D) recommend management actions to optimize the return of a healthy and balanced ecosystem in response to improvements in the quality and character of the waters of the Chesapeake Bay.

(3) Annual survey

The Administrator shall carry out an annual survey of sea grasses in the Chesapeake Bay.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out this section $40,000,000 for each of fiscal years 2001 through 2005. Such sums shall remain available until expended.

(June 30, 1948, ch. 758, title I, § 117, as added Pub. L. 100–4, title I, § 103, Feb. 4, 1987, 101 Stat. 10; amended Pub. L. 106–457, title II, § 203, Nov. 7, 2000, 114 Stat. 1967; Pub. L. 114–322, title IV, § 5007, Dec. 16, 2016, 130 Stat. 1896.)

CODIFICATION

November 7, 2000, referred to in subsecs. (h)(2)(C), (D), and (i)(1), was in the original ''the date of enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 106–457, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2016—Subsec. (i)(3). Pub. L. 114–322 added par. (3).

2000—Pub. L. 106–457 amended section generally, substituting subsecs. (a) to (j) for former subsecs. (a) to (d), which related to continuation of the Chesapeake Bay Program and establishment and maintenance in the Environmental Protection Agency of an office, division, or branch of Chesapeake Bay Programs, interstate development plan grants, progress reports from grant recipient States, and authorization of appropriations.

CHESAPEAKE BAY ACCOUNTABILITY AND RECOVERY

Pub. L. 113–273, Dec. 18, 2014, 128 Stat. 2967, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Chesapeake Bay Accountability and Recovery Act of 2014'.

''SEC. 2. DEFINITIONS.

''In this Act:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) CHESAPEAKE BAY STATE.—The term 'Chesapeake Bay State' or 'State' means any of—

''(A) the States of Maryland, West Virginia, Delaware, and New York;

''(B) the Commonwealths of Virginia and Pennsylvania; and

''(C) the District of Columbia.

''(3) CHESAPEAKE BAY WATERSHED.—The term 'Chesapeake Bay watershed' means all tributaries, backwaters, and side channels, including watersheds, draining into the Chesapeake Bay.

''(4) CHESAPEAKE EXECUTIVE COUNCIL.—The term 'Chesapeake Executive Council' has the meaning given the term by section 117(a) of the Federal Water Pollution Control Act (33 U.S.C. 1267(a)).

''(5) CHIEF EXECUTIVE.—The term 'chief executive' means, in the case of a State or Commonwealth, the Governor of the State or Commonwealth and, in the case of the District of Columbia, the Mayor of the District of Columbia.

''(6) DIRECTOR.—The term 'Director' means the Director of the Office of Management and Budget.

''(7) FEDERAL RESTORATION ACTIVITY.—

''(A) IN GENERAL.—The term 'Federal restoration activity' means a Federal program or project carried out under Federal authority in existence as of the date of enactment of this Act [Dec. 18, 2014] with the express intent to directly protect, conserve, or restore living resources, habitat, water resources, or water quality in the Chesapeake Bay watershed, including programs or projects that provide financial and technical assistance to promote responsible land use, stewardship, and community engagement in the Chesapeake Bay watershed.

''(B) CATEGORIZATION.—Federal restoration activities may be categorized as follows:

''(i) Physical restoration.

''(ii) Planning.

''(iii) Feasibility studies.

''(iv) Scientific research.

''(v) Monitoring.

''(vi) Education.

''(vii) Infrastructure development.

''(8) STATE RESTORATION ACTIVITY.—

''(A) IN GENERAL.—The term 'State restoration activity' means any State program or project carried out under State authority that directly or indirectly protect[s], conserve[s], or restore[s] living resources, habitat, water resources, or water quality in the Chesapeake Bay watershed, including programs or projects that promote responsible land use, stewardship, and community engagement in the Chesapeake Bay watershed.

''(B) CATEGORIZATION.—State restoration activities may be categorized as follows:

''(i) Physical restoration.

''(ii) Planning.

''(iii) Feasibility studies.

''(iv) Scientific research.
''(v) Monitoring.
''(vi) Education.
''(vii) Infrastructure development.

''SEC. 3. CHESAPEAKE BAY CROSSCUT BUDGET.

''(a) IN GENERAL.—The Director, in consultation with the Chesapeake Executive Council, the chief executive of each Chesapeake Bay State, and the Chesapeake Bay Commission, shall submit to Congress a financial report containing—

''(1) an interagency crosscut budget that displays, as applicable—

''(A) the proposed funding for any Federal restoration activity to be carried out in the succeeding fiscal year, including any planned interagency or intra-agency transfer, for each of the Federal agencies that carry out restoration activities;

''(B) to the extent that information is available, the estimated funding for any State restoration activity to be carried out in the succeeding fiscal year;

''(C) all expenditures for Federal restoration activities from the preceding 2 fiscal years, the current fiscal year, and the succeeding fiscal year;

''(D) all expenditures, to the extent that information is available, for State restoration activities during the equivalent time period described in subparagraph (C); and

''(E) a section that identifies and evaluates, based on need and appropriateness, specific opportunities to consolidate similar programs and activities within the budget and recommendations to Congress for legislative action to streamline, consolidate, or eliminate similar programs and activities within the budget;

''(2) a detailed accounting of all funds received and obligated by each Federal agency for restoration activities during the current and preceding fiscal years, including the identification of funds that were transferred to a Chesapeake Bay State for restoration activities;

''(3) to the extent that information is available, a detailed accounting from each State of all funds received and obligated from a Federal agency for restoration activities during the current and preceding fiscal years; and

''(4) a description of each of the proposed Federal and State restoration activities to be carried out in the succeeding fiscal year (corresponding to those activities listed in subparagraphs (A) and (B) of paragraph (1)), including—

''(A) the project description;
''(B) the current status of the project;
''(C) the Federal or State statutory or regulatory authority, program, or responsible agency;
''(D) the authorization level for appropriations;
''(E) the project timeline, including benchmarks;
''(F) references to project documents;
''(G) descriptions of risks and uncertainties of project implementation;
''(H) a list of coordinating entities;
''(I) a description of the funding history for the project;
''(J) cost sharing; and
''(K) alignment with the existing Chesapeake Bay Agreement, Chesapeake Executive Council goals and priorities, and Annual Action Plan required by section 205 of Executive Order 13508 (33 U.S.C. 1267 note; relating to Chesapeake Bay protection and restoration).

''(b) MINIMUM FUNDING LEVELS.—In describing restoration activities in the report required under subsection (a), the Director shall only include—

''(1) for the first 3 years that the report is required, descriptions of—

''(A) Federal restoration activities that have funding amounts greater than or equal to $300,000; and

''(B) State restoration activities that have funding amounts greater than or equal to $300,000; and

''(2) for every year thereafter, descriptions of—

''(A) Federal restoration activities that have funding amounts greater than or equal to $100,000; and

''(B) State restoration activities that have funding amounts greater than or equal to $100,000.

''(c) DEADLINE.—The Director shall submit to Congress the report required by subsection (a) not later than September 30 of each year.

''(d) REPORT.—Copies of the report required by subsection (a) shall be submitted to the Committees on Appropriations, Natural Resources, Energy and Commerce, and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations, Environment and Public Works, and Commerce, Science, and Transportation of the Senate.

''(e) EFFECTIVE DATE.—This section shall apply beginning with the first fiscal year after the date of enactment of this Act [Dec. 18, 2014].

''SEC. 4. INDEPENDENT EVALUATOR FOR THE CHESAPEAKE BAY PROGRAM.

''(a) IN GENERAL.—There shall be an Independent Evaluator for restoration activities in the Chesapeake Bay watershed, who shall review and report on—

''(1) restoration activities; and

''(2) any related topics that are suggested by the Chesapeake Executive Council.

''(b) APPOINTMENT.—

''(1) IN GENERAL.—Not later than 30 days after the date of submission of nominees by the Chesapeake Executive Council, the Independent Evaluator shall be appointed by the Administrator from among nominees submitted by the Chesapeake Executive Council with the consultation of the scientific community.

''(2) NOMINATIONS.—The Chesapeake Executive Council may nominate for consideration as Independent Evaluator a science-based institution of higher education.

''(3) REQUIREMENTS.—The Administrator shall only select as Independent Evaluator a nominee that the Administrator determines demonstrates excellence in marine science, policy evaluation, or other studies relating to complex environmental restoration activities.

''(c) REPORTS.—Not later than 180 days after the date of appointment and once every 2 years thereafter, the Independent Evaluator shall submit to Congress a report describing the findings and recommendations of reviews conducted under subsection (a).

''SEC. 5. PROHIBITION ON NEW FUNDING.

''No additional funds are authorized to be appropriated to carry out this Act.''

FINDINGS AND PURPOSES

Pub. L. 106–457, title II, §202, Nov. 7, 2000, 114 Stat. 1967, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the Chesapeake Bay is a national treasure and a resource of worldwide significance;

''(2) over many years, the productivity and water quality of the Chesapeake Bay and its watershed were diminished by pollution, excessive sedimentation, shoreline erosion, the impacts of population growth and development in the Chesapeake Bay watershed, and other factors;

''(3) the Federal Government (acting through the Administrator of the Environmental Protection Agency), the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, the Governor of the Commonwealth of Pennsylvania, the Chairperson of the Chesapeake Bay Commission, and the mayor of the District of Columbia, as Chesapeake Bay Agreement signatories, have committed to a comprehensive cooperative program to achieve improved water quality and improvements in the productivity of living resources of the Bay;

''(4) the cooperative program described in paragraph (3) serves as a national and international model for the management of estuaries; and

''(5) there is a need to expand Federal support for monitoring, management, and restoration activities in the Chesapeake Bay and the tributaries of the Bay in order to meet and further the original and subsequent goals and commitments of the Chesapeake Bay Program.

''(b) PURPOSES.—The purposes of this title [amending this section and enacting provisions set out as a note under section 1251 of this title] are—

''(1) to expand and strengthen cooperative efforts to restore and protect the Chesapeake Bay; and

''(2) to achieve the goals established in the Chesapeake Bay Agreement.''

NUTRIENT LOADING RESULTING FROM DREDGED MATERIAL DISPOSAL

Pub. L. 106–53, title IV, § 457, Aug. 17, 1999, 113 Stat. 332, provided that:

''(a) STUDY.—The Secretary shall conduct a study of nutrient loading that occurs as a result of discharges of dredged material into open-water sites in the Chesapeake Bay.

''(b) REPORT.—Not later than 18 months after the date of enactment of this Act [Aug. 17, 1999], the Secretary shall submit to Congress a report on the results of the study.''

EX. ORD. NO. 13508. CHESAPEAKE BAY PROTECTION AND RESTORATION

Ex. Ord. No. 13508, May 12, 2009, 74 F.R. 23099, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1972, as amended (33 U.S.C. 1251 *et seq.*), and other laws, and to protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed, it is hereby ordered as follows:

PART 1—PREAMBLE

The Chesapeake Bay is a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. The Federal Government has nationally significant assets in the Chesapeake Bay and its watershed in the form of public lands, facilities, military installations, parks, forests, wildlife refuges, monuments, and museums.

Despite significant efforts by Federal, State, and local governments and other interested parties, water pollution in the Chesapeake Bay prevents the attainment of existing State water quality standards and the ''fishable and swimmable'' goals of the Clean Water Act. At the current level and scope of pollution control within the Chesapeake Bay's watershed, restoration of the Chesapeake Bay is not expected for many years. The pollutants that are largely responsible for pollution of the Chesapeake Bay are nutrients, in the form of nitrogen and phosphorus, and sediment. These pollutants come from many sources, including sewage treatment plants, city streets, development sites, agricultural operations, and deposition from the air onto the waters of the Chesapeake Bay and the lands of the watershed.

Restoration of the health of the Chesapeake Bay will require a renewed commitment to controlling pollution from all sources as well as protecting and restoring habitat and living resources, conserving lands, and improving management of natural resources, all of which contribute to improved water quality and ecosystem health. The Federal Government should lead this effort. Executive departments and agencies (agencies), working in collaboration, can use their expertise and resources to contribute significantly to improving the health of the Chesapeake Bay. Progress in restoring the Chesapeake Bay also will depend on the support of State and local governments, the enterprise of the private sector, and the stewardship provided to the Chesapeake Bay by all the people who make this region their home.

PART 2—SHARED FEDERAL LEADERSHIP, PLANNING, AND ACCOUNTABILITY

SEC. 201. *Federal Leadership Committee.* In order to begin a new era of shared Federal leadership with respect to the protection and restoration of the Chesapeake Bay, a Federal Leadership Committee (Committee) for the Chesapeake Bay is established to oversee the development and coordination of programs and activities, including data management and reporting, of agencies participating in protection and restoration of the Chesapeake Bay. The Committee shall manage the development of strategies and program plans for the watershed and ecosystem of the Chesapeake Bay and oversee their implementation. The Committee shall be chaired by the Administrator of the Environmental Protection Agency (EPA), or the Administrator's designee, and include senior representatives of the Departments of Agriculture (USDA), Commerce (DOC), Defense (DOD), Homeland Security (DHS), the Interior (DOI), Transportation (DOT), and such other agencies as determined by the Committee. Representatives serving on the Committee shall be officers of the United States.

SEC. 202. *Reports on Key Challenges to Protecting and Restoring the Chesapeake Bay.* Within 120 days from the date of this order, the agencies identified in this section as the lead agencies shall prepare and submit draft reports to the Committee making recommendations for accomplishing the following steps to protect and restore the Chesapeake Bay:

(a) define the next generation of tools and actions to restore water quality in the Chesapeake Bay and describe the changes to be made to regulations, programs, and policies to implement these actions;

(b) target resources to better protect the Chesapeake Bay and its tributary waters, including resources under the Food Security Act of 1985 as amended, the Clean Water Act, and other laws;

(c) strengthen storm water management practices at Federal facilities and on Federal lands within the Chesapeake Bay watershed and develop storm water best practices guidance;

(d) assess the impacts of a changing climate on the Chesapeake Bay and develop a strategy for adapting natural resource programs and public infrastructure to the impacts of a changing climate on water quality and living resources of the Chesapeake Bay watershed;

(e) expand public access to waters and open spaces of the Chesapeake Bay and its tributaries from Federal lands and conserve landscapes and ecosystems of the Chesapeake Bay watershed;

(f) strengthen scientific support for decisionmaking to restore the Chesapeake Bay and its watershed, including expanded environmental research and monitoring and observing systems; and

(g) develop focused and coordinated habitat and research activities that protect and restore living resources and water quality of the Chesapeake Bay and its watershed.

The EPA shall be the lead agency for subsection (a) of this section and the development of the storm water best practices guide under subsection (c). The USDA shall be the lead agency for subsection (b). The DOD shall lead on storm water management practices at Federal facilities and on Federal lands under subsection (c). The DOI and the DOC shall share the lead on subsections (d), (f), and (g), and the DOI shall be lead on subsection (e). The lead agencies shall provide final reports to the Committee within 180 days of the date of this order.

SEC. 203. *Strategy for Protecting and Restoring the Chesapeake Bay.* The Committee shall prepare and publish a strategy for coordinated implementation of existing programs and projects to guide efforts to protect and restore the Chesapeake Bay. The strategy shall, to the extent permitted by law:

(a) define environmental goals for the Chesapeake Bay and describe milestones for making progress toward attainment of these goals;

(b) identify key measureable indicators of environmental condition and changes that are critical to effective Federal leadership;

(c) describe the specific programs and strategies to be implemented, including the programs and strategies described in draft reports developed under section 202 of this order;

(d) identify the mechanisms that will assure that governmental and other activities, including data collection and distribution, are coordinated and effective, relying on existing mechanisms where appropriate; and

(e) describe a process for the implementation of adaptive management principles, including a periodic evaluation of protection and restoration activities.

The Committee shall review the draft reports submitted by lead agencies under section 202 of this order and, in consultation with relevant State agencies, suggest appropriate revisions to the agency that provided the draft report. It shall then integrate these reports into a coordinated strategy for restoration and protection of the Chesapeake Bay consistent with the requirements of this order. Together with the final reports prepared by the lead agencies, the draft strategy shall be published for public review and comment within 180 days of the date of this order and a final strategy shall be published within 1 year. To the extent practicable and authorized under their existing authorities, agencies may begin implementing core elements of restoration and protection programs and strategies, in consultation with the Committee, as soon as possible and prior to release of a final strategy.

SEC. 204. *Collaboration with State Partners*. In preparing the reports under section 202 and the strategy under section 203, the lead agencies and the Committee shall consult extensively with the States of Virginia, Maryland, Pennsylvania, West Virginia, New York, and Delaware and the District of Columbia. The goal of this consultation is to ensure that Federal actions to protect and restore the Chesapeake Bay are closely coordinated with actions by State and local agencies in the watershed and that the resources, authorities, and expertise of Federal, State, and local agencies are used as efficiently as possible for the benefit of the Chesapeake Bay's water quality and ecosystem and habitat health and viability.

SEC. 205. *Annual Action Plan and Progress Report*. Beginning in 2010, the Committee shall publish an annual Chesapeake Bay Action Plan (Action Plan) describing how Federal funding proposed in the President's Budget will be used to protect and restore the Chesapeake Bay during the upcoming fiscal year. This plan will be accompanied by an Annual Progress Report reviewing indicators of environmental conditions in the Chesapeake Bay, assessing implementation of the Action Plan during the preceding fiscal year, and recommending steps to improve progress in restoring and protecting the Chesapeake Bay. The Committee shall consult with stakeholders (including relevant State agencies) and members of the public in developing the Action Plan and Annual Progress Report.

SEC. 206. *Strengthen Accountability*. The Committee, in collaboration with State agencies, shall ensure that an independent evaluator periodically reports to the Committee on progress toward meeting the goals of this order. The Committee shall ensure that all program evaluation reports, including data on practice or system implementation and maintenance funded through agency programs, as appropriate, are made available to the public by posting on a website maintained by the Chair of the Committee.

PART 3—RESTORE CHESAPEAKE BAY WATER QUALITY

SEC. 301. *Water Pollution Control Strategies*. In preparing the report required by subsection 202(a) of this order, the Administrator of the EPA (Administrator) shall, after consulting with appropriate State agencies, examine how to make full use of its authorities under the Clean Water Act to protect and restore the Chesapeake Bay and its tributary waters and, as appropriate, shall consider revising any guidance and regulations. The Administrator shall identify pollution control strategies and actions authorized by the EPA's existing authorities to restore the Chesapeake Bay that:

(a) establish a clear path to meeting, as expeditiously as practicable, water quality and environmental restoration goals for the Chesapeake Bay;

(b) are based on sound science and reflect adaptive management principles;

(c) are performance oriented and publicly accountable;

(d) apply innovative and cost-effective pollution control measures;

(e) can be replicated in efforts to protect other bodies of water, where appropriate; and

(f) build on the strengths and expertise of Federal, State, and local governments, the private sector, and citizen organizations.

SEC. 302. *Elements of EPA Reports*. The strategies and actions identified by the Administrator of the EPA in preparing the report under subsection 202(a) shall include, to the extent permitted by law:

(a) using Clean Water Act tools, including strengthening existing permit programs and extending coverage where appropriate;

(b) establishing new, minimum standards of performance where appropriate, including:

(i) establishing a schedule for the implementation of key actions in cooperation with States, local governments, and others;

(ii) constructing watershed-based frameworks that assign pollution reduction responsibilities to pollution sources and maximize the reliability and cost-effectiveness of pollution reduction programs; and

(iii) implementing a compliance and enforcement strategy.

PART 4—AGRICULTURAL PRACTICES TO PROTECT THE CHESAPEAKE BAY

SEC. 401. In developing recommendations for focusing resources to protect the Chesapeake Bay in the report required by subsection 202(b) of this order, the Secretary of Agriculture shall, as appropriate, concentrate the USDA's working lands and land retirement programs within priority watersheds in counties in the Chesapeake Bay watershed. These programs should apply priority conservation practices that most efficiently reduce nutrient and sediment loads to the Chesapeake Bay, as identified by USDA and EPA data and scientific analysis. The Secretary of Agriculture shall work with State agriculture and conservation agencies in developing the report.

PART 5—REDUCE WATER POLLUTION FROM FEDERAL LANDS AND FACILITIES

SEC. 501. Agencies with land, facilities, or installation management responsibilities affecting ten or more acres within the watershed of the Chesapeake Bay shall, as expeditiously as practicable and to the extent permitted by law, implement land management practices to protect the Chesapeake Bay and its tributary waters consistent with the report required by section 202 of this order and as described in guidance published by the EPA under section 502.

SEC. 502. The Administrator of the EPA shall, within 1 year of the date of this order and after consulting with the Committee and providing for public review and comment, publish guidance for Federal land management in the Chesapeake Bay watershed describing proven, cost-effective tools and practices that reduce water pollution, including practices that are available for use by Federal agencies.

PART 6—PROTECT CHESAPEAKE BAY AS THE CLIMATE CHANGES

SEC. 601. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, organize and

conduct research and scientific assessments to support development of the strategy to adapt to climate change impacts on the Chesapeake Bay watershed as required in section 202 of this order and to evaluate the impacts of climate change on the Chesapeake Bay in future years. Such research should include assessment of:

(a) the impact of sea level rise on the aquatic ecosystem of the Chesapeake Bay, including nutrient and sediment load contributions from stream banks and shorelines;

(b) the impacts of increasing temperature, acidity, and salinity levels of waters in the Chesapeake Bay;

(c) the impacts of changing rainfall levels and changes in rainfall intensity on water quality and aquatic life;

(d) potential impacts of climate change on fish, wildlife, and their habitats in the Chesapeake Bay and its watershed; and

(e) potential impacts of more severe storms on Chesapeake Bay resources.

PART 7—EXPAND PUBLIC ACCESS TO THE CHESAPEAKE BAY AND CONSERVE LANDSCAPES AND ECOSYSTEMS

SEC. 701. (a) Agencies participating in the Committee shall assist the Secretary of the Interior in development of the report addressing expanded public access to the waters of the Chesapeake Bay and conservation of landscapes and ecosystems required in subsection 202(e) of this order by providing to the Secretary:

(i) a list and description of existing sites on agency lands and facilities where public access to the Chesapeake Bay or its tributary waters is offered;

(ii) a description of options for expanding public access at these agency sites;

(iii) a description of agency sites where new opportunities for public access might be provided;

(iv) a description of safety and national security issues related to expanded public access to Department of Defense installations;

(v) a description of landscapes and ecosystems in the Chesapeake Bay watershed that merit recognition for their historical, cultural, ecological, or scientific values; and

(vi) options for conserving these landscapes and ecosystems.

(b) In developing the report addressing expanded public access on agency lands to the waters of the Chesapeake Bay and options for conserving landscapes and ecosystems in the Chesapeake Bay, as required in subsection 202(e) of this order, the Secretary of the Interior shall coordinate any recommendations with State and local agencies in the watershed and programs such as the Captain John Smith Chesapeake National Historic Trail, the Chesapeake Bay Gateways and Watertrails Network, and the Star-Spangled Banner National Historic Trail.

PART 8—MONITORING AND DECISION SUPPORT FOR ECOSYSTEM MANAGEMENT

SEC. 801. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, organize and conduct their monitoring, research, and scientific assessments to support decisionmaking for the Chesapeake Bay ecosystem and to develop the report addressing strengthening environmental monitoring of the Chesapeake Bay and its watershed required in section 202 of this order. This report will assess existing monitoring programs and gaps in data collection, and shall also include the following topics:

(a) the health of fish and wildlife in the Chesapeake Bay watershed;

(b) factors affecting changes in water quality and habitat conditions; and

(c) using adaptive management to plan, monitor, evaluate, and adjust environmental management actions.

PART 9—LIVING RESOURCES PROTECTION AND RESTORATION

SEC. 901. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, identify and prioritize critical living resources of the Chesapeake Bay and its watershed, conduct collaborative research and habitat protection activities that address expected outcomes for these species, and develop a report addressing these topics as required in section 202 of this order. The Secretaries of Commerce and the Interior shall coordinate agency activities related to living resources in estuarine waters to ensure maximum benefit to the Chesapeake Bay resources.

PART 10—EXCEPTIONS

SEC. 1001. The heads of agencies may authorize exceptions to this order, in the following circumstances:

(a) during time of war or national emergency;

(b) when necessary for reasons of national security;

(c) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or

(d) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of *force majeure* caused by stress of weather or other act of God.

PART 11—GENERAL PROVISIONS

SEC. 1101. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§ 1268. Great Lakes

(a) Findings, purpose, and definitions

(1) Findings

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, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments, with particular emphasis on goals related to toxic pollutants; and

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

(2) Purpose

It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments, 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.

(3) Definitions

For purposes of this section, the term—

(A) ''Agency'' means the Environmental Protection Agency;

(B) ''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);

(C) ''Great Lakes System'' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes;

(D) ''Program Office'' means the Great Lakes National Program Office established by this section;

(E) ''Research Office'' means the Great Lakes Research Office established by subsection (d);

(F) ''area of concern'' means a geographic area located within the Great Lakes, in which beneficial uses are impaired and which has been officially designated as such under Annex 2 of the Great Lakes Water Quality Agreement;

(G) ''Great Lakes States'' means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin;

(H) ''Great Lakes Water Quality Agreement'' means the bilateral agreement, between the United States and Canada which was signed in 1978 and amended by the Protocol of 1987;

(I) ''Lakewide Management Plan'' means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of the open waters of each of the Great Lakes, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement;

(J) ''Remedial Action Plan'' means a written document which embodies a systematic and comprehensive ecosystem approach to restoring and protecting the beneficial uses of areas of concern, in accordance with article VI and Annex 2 of the Great Lakes Water Quality Agreement;

(K) ''site characterization'' means a process for monitoring and evaluating the nature and extent of sediment contamination in accordance with the Environmental Protection Agency's guidance for the assessment of contaminated sediment in an area of concern located wholly or partially within the United States; and

(L) ''potentially responsible party'' means an individual or entity that may be liable under any Federal or State authority that is being used or may be used to facilitate the cleanup and protection of the Great Lakes.

(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) Functions

The Program Office shall—

(A) in cooperation with appropriate Federal, State, tribal, and international agencies, and in accordance with section 1251(e) of this title, develop and implement specific action plans to carry out the responsibilities of the United States under the Great Lakes Water Quality Agreement of 1978, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments,;[1]

(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;

(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;

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

(E) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to ensure 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.

(2) Great Lakes water quality guidance

(A) By June 30, 1991, the Administrator, after consultation with the Program Office, shall publish in the Federal Register for public notice and comment proposed water quality guidance for the Great Lakes System. Such guidance shall conform with the objectives and provisions of the Great Lakes Water Quality Agreement, shall be no less restrictive than the provisions of this chapter and national water quality criteria and guidance, shall specify numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life, and wildlife, and shall provide guidance to the Great Lakes States on minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System.

(B) By June 30, 1992, the Administrator, in consultation with the Program Office, shall publish in the Federal Register, pursuant to this section and the Administrator's authority under this chapter, final water quality guidance for the Great Lakes System.

(C) Within two years after such Great Lakes guidance is published, the Great Lakes States shall adopt water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System which are consistent with such guidance. If a Great Lakes State fails to adopt

[1] So in original.

such standards, policies, and procedures, the Administrator shall promulgate them not later than the end of such two-year period. When reviewing any Great Lakes State's water quality plan, the agency shall consider the extent to which the State has complied with the Great Lakes guidance issued pursuant to this section.

(3) Remedial Action Plans

(A) For each area of concern for which the United States has agreed to draft a Remedial Action Plan, the Program Office shall ensure that the Great Lakes State in which such area of concern is located—

(i) submits a Remedial Action Plan to the Program Office by June 30, 1991;

(ii) submits such Remedial Action Plan to the International Joint Commission by January 1, 1992; and

(iii) includes such Remedial Action Plans within the State's water quality plan by January 1, 1993.

(B) For each area of concern for which Canada has agreed to draft a Remedial Action Plan, the Program Office shall, pursuant to subparagraph (c)(1)(C) of this section, work with Canada to assure the submission of such Remedial Action Plans to the International Joint Commission by June 30, 1991, and to finalize such Remedial Action Plans by January 1, 1993.

(C) For any area of concern designated as such subsequent to November 16, 1990, the Program Office shall (i) if the United States has agreed to draft the Remedial Action Plan, ensure that the Great Lakes State in which such area of concern is located submits such Plan to the Program Office within two years of the area's designation, submits it to the International Joint Commission no later than six months after submitting it to the Program Office, and includes such Plan in the State's water quality plan no later than one year after submitting it to the Commission; and (ii) if Canada has agreed to draft the Remedial Action Plan, work with Canada, pursuant to subparagraph (c)(1)(C) of this section, to ensure the submission of such Plan to the International Joint Commission within two years of the area's designation and the finalization of such Plan no later than eighteen months after submitting it to such Commission.

(D) The Program Office shall compile formal comments on individual Remedial Action Plans made by the International Joint Commission pursuant to section 4(d) of Annex 2 of the Great Lakes Water Quality Agreement and, upon request by a member of the public, shall make such comments available for inspection and copying. The Program Office shall also make available, upon request, formal comments made by the Environmental Protection Agency on individual Remedial Action Plans.

(E) REPORT.—Not later than 1 year after November 27, 2002, the Administrator shall submit to Congress a report on such actions, time periods, and resources as are necessary to fulfill the duties of the Agency relating to oversight of Remedial Action Plans under—

(i) this paragraph; and

(ii) the Great Lakes Water Quality Agreement.

(4) Lakewide Management Plans

The Administrator, in consultation with the Program Office shall—

(A) by January 1, 1992, publish in the Federal Register a proposed Lakewide Management Plan for Lake Michigan and solicit public comments;

(B) by January 1, 1993, submit a proposed Lakewide Management Plan for Lake Michigan to the International Joint Commission for review; and

(C) by January 1, 1994, publish in the Federal Register a final Lakewide Management Plan for Lake Michigan and begin implementation.

Nothing in this subparagraph[2] shall preclude the simultaneous development of Lakewide Management Plans for the other Great Lakes.

(5) Spills of oil and hazardous materials

The Program Office, in consultation with the Coast Guard, shall identify areas within the Great Lakes which are likely to experience numerous or voluminous spills of oil or other hazardous materials from land based facilities, vessels, or other sources and, in consultation with the Great Lakes States, shall identify weaknesses in Federal and State programs and systems to prevent and respond to such spills. This information shall be included on at least a biennial basis in the report required by this section.

(6) 5-year plan and program

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 1329 of this title and shall include a program for monitoring nutrient runoff into, and ambient levels in, the Great Lakes.

(7) Great Lakes Restoration Initiative

(A) Establishment

There is established in the Agency a Great Lakes Restoration Initiative (referred to in this paragraph as the ''Initiative'') to carry out programs and projects for Great Lakes protection and restoration.

(B) Focus areas

In carrying out the Initiative, the Administrator shall prioritize programs and projects, to be carried out in coordination with non-Federal partners, that address the priority areas described in the Initiative Action Plan, including—

(i) the remediation of toxic substances and areas of concern;

(ii) the prevention and control of invasive species and the impacts of invasive species;

(iii) the protection and restoration of nearshore health and the prevention and mitigation of nonpoint source pollution;

[2] So in original. Probably should be ''paragraph''.

(iv) habitat and wildlife protection and restoration, including wetlands restoration and preservation; and

(v) accountability, monitoring, evaluation, communication, and partnership activities.

(C) Projects

(i) In general

In carrying out the Initiative, the Administrator shall collaborate with other Federal partners, including the Great Lakes Interagency Task Force established by Executive Order No. 13340 (69 Fed. Reg. 29043), to select the best combination of programs and projects for Great Lakes protection and restoration using appropriate principles and criteria, including whether a program or project provides—

(I) the ability to achieve strategic and measurable environmental outcomes that implement the Initiative Action Plan and the Great Lakes Water Quality Agreement;

(II) the feasibility of—

(aa) prompt implementation;

(bb) timely achievement of results; and

(cc) resource leveraging; and

(III) the opportunity to improve interagency, intergovernmental, and interorganizational coordination and collaboration to reduce duplication and streamline efforts.

(ii) Outreach

In selecting the best combination of programs and projects for Great Lakes protection and restoration under clause (i), the Administrator shall consult with the Great Lakes States and Indian tribes and solicit input from other non-Federal stakeholders.

(iii) Harmful algal bloom coordinator

The Administrator shall designate a point person from an appropriate Federal partner to coordinate, with Federal partners and Great Lakes States, Indian tribes, and other non-Federal stakeholders, projects and activities under the Initiative involving harmful algal blooms in the Great Lakes.

(D) Implementation of projects

(i) In general

Subject to subparagraph (J)(ii), funds made available to carry out the Initiative shall be used to strategically implement—

(I) Federal projects;

(II) projects carried out in coordination with States, Indian tribes, municipalities, institutions of higher education, and other organizations; and

(III) operations and activities of the Program Office, including remediation of sediment contamination in areas of concern.

(ii) Transfer of funds

With amounts made available for the Initiative each fiscal year, the Administrator may—

(I) transfer not more than the total amount appropriated under subparagraph (J)(i) for the fiscal year to the head of any Federal department or agency, with the concurrence of the department or agency head, to carry out activities to support the Initiative and the Great Lakes Water Quality Agreement; and

(II) enter into an interagency agreement with the head of any Federal department or agency to carry out activities described in subclause (I).

(iii) Agreements with non-Federal entities

(I) In general

The Administrator, or the head of any other Federal department or agency receiving funds under clause (ii)(I), may make a grant to, or otherwise enter into an agreement with, a qualified non-Federal entity, as determined by the Administrator or the applicable head of the other Federal department or agency receiving funds, for planning, research, monitoring, outreach, or implementation of a project selected under subparagraph (C), to support the Initiative Action Plan or the Great Lakes Water Quality Agreement.

(II) Qualified non-Federal entity

For purposes of this clause, a qualified non-Federal entity may include a governmental entity, nonprofit organization, institution, or individual.

(E) Scope

(i) In general

Projects may be carried out under the Initiative on multiple levels, including—

(I) locally;

(II) Great Lakes-wide; or

(III) Great Lakes basin-wide.

(ii) Limitation

No funds made available to carry out the Initiative may be used for any water infrastructure activity (other than a green infrastructure project that improves habitat and other ecosystem functions in the Great Lakes) for which financial assistance is received—

(I) from a State water pollution control revolving fund established under subchapter VI;

(II) from a State drinking water revolving loan fund established under section 300j–12 of title 42; or

(III) pursuant to the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3901 et seq.).

(F) Activities by other Federal agencies

Each relevant Federal department or agency shall, to the maximum extent practicable—

(i) maintain the base level of funding for the Great Lakes activities of that department or agency without regard to funding under the Initiative; and

(ii) identify new activities and projects to support the environmental goals of the Initiative.

(G) Revision of Initiative Action Plan

(i) In general

Not less often than once every 5 years, the Administrator, in conjunction with the Great Lakes Interagency Task Force, shall review, and revise as appropriate, the Initiative Action Plan to guide the activities of the Initiative in addressing the restoration and protection of the Great Lakes system.

(ii) Outreach

In reviewing and revising the Initiative Action Plan under clause (i), the Administrator shall consult with the Great Lakes States and Indian tribes and solicit input from other non-Federal stakeholders.

(H) Monitoring and reporting

The Administrator shall—

(i) establish and maintain a process for monitoring and periodically reporting to the public on the progress made in implementing the Initiative Action Plan;

(ii) make information about each project carried out under the Initiative Action Plan available on a public website; and

(iii) provide to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a yearly detailed description of the progress of the Initiative and amounts transferred to participating Federal departments and agencies under subparagraph (D)(ii).

(I) Initiative Action Plan defined

In this paragraph, the term ''Initiative Action Plan'' means the comprehensive, multiyear action plan for the restoration of the Great Lakes, first developed pursuant to the Joint Explanatory Statement of the Conference Report accompanying the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Public Law 111–88).

(J) Funding

(i) In general

There is authorized to be appropriated to carry out this paragraph $300,000,000 for each of fiscal years 2017 through 2021.

(ii) Limitation

Nothing in this paragraph creates, expands, or amends the authority of the Administrator to implement programs or projects under—

(I) this section;

(II) the Initiative Action Plan; or

(III) the Great Lakes Water Quality Agreement.

(8) Administrator's responsibility

The Administrator shall ensure that the Program Office enters into agreements with the various organizational elements of the Agency involved in Great Lakes activities and the appropriate State agencies specifically delineating—

(A) the duties and responsibilities of each such element in the Agency 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.

(9) Budget item

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

(10) Confined disposal facilities

(A) The Administrator, in consultation with the Assistant Secretary of the Army for Civil Works, shall develop and implement, within one year of November 16, 1990, management plans for every Great Lakes confined disposal facility.

(B) The plan shall provide for monitoring of such facilities, including—

(i) water quality at the site and in the area of the site;

(ii) sediment quality at the site and in the area of the site;

(iii) the diversity, productivity, and stability of aquatic organisms at the site and in the area of the site; and

(iv) such other conditions as the Administrator deems appropriate.

(C) The plan shall identify the anticipated use and management of the site over the following twenty-year period including the expected termination of dumping at the site, the anticipated need for site management, including pollution control, following the termination of the use of the site.

(D) The plan shall identify a schedule for review and revision of the plan which shall not be less frequent than five years after adoption of the plan and every five years thereafter.

(11) Remediation of sediment contamination in areas of concern

(A) In general

In accordance with this paragraph, the Administrator, acting through the Program Office, may carry out projects that meet the requirements of subparagraph (B).

(B) Eligible projects

A project meets the requirements of this subparagraph if the project is to be carried out in an area of concern located wholly or partially in the United States and the project—

(i) monitors or evaluates contaminated sediment;

(ii) subject to subparagraph (D), implements a plan to remediate contaminated sediment, including activities to restore aquatic habitat that are carried out in conjunction with a project for the remediation of contaminated sediment; or

(iii) prevents further or renewed contamination of sediment.

(C) Priority

In selecting projects to carry out under this paragraph, the Administrator shall give priority to a project that—

(i) constitutes remedial action for contaminated sediment;

(ii)(I) has been identified in a Remedial Action Plan submitted under paragraph (3); and

(II) is ready to be implemented;

(iii) will use an innovative approach, technology, or technique that may provide greater environmental benefits, or equivalent environmental benefits at a reduced cost; or

(iv) includes remediation to be commenced not later than 1 year after the date of receipt of funds for the project.

(D) Limitations

The Administrator may not carry out a project under this paragraph for remediation of contaminated sediments located in an area of concern—

(i) if an evaluation of remedial alternatives for the area of concern has not been conducted, including a review of the short-term and long-term effects of the alternatives on human health and the environment;

(ii) if the Administrator determines that the area of concern is likely to suffer significant further or renewed contamination from existing sources of pollutants causing sediment contamination following completion of the project;

(iii) unless each non-Federal sponsor for the project has entered into a written project agreement with the Administrator under which the party agrees to carry out its responsibilities and requirements for the project; or

(iv) unless the Administrator provides assurance that the Agency has conducted a reasonable inquiry to identify potentially responsible parties connected with the site.

(E) Non-Federal share

(i) In general

The non-Federal share of the cost of a project carried out under this paragraph shall be at least 35 percent.

(ii) In-kind contributions

(I) In general

The non-Federal share of the cost of a project carried out under this paragraph may include the value of an in-kind contribution provided by a non-Federal sponsor.

(II) Credit

A project agreement described in subparagraph (D)(iii) may provide, with respect to a project, that the Administrator shall credit toward the non-Federal share of the cost of the project the value of an in-kind contribution made by the non-Federal sponsor, if the Administrator determines that the material or service provided as the in-kind contribution is integral to the project.

(III) Work performed before project agreement

In any case in which a non-Federal sponsor is to receive credit under subclause (II) for the cost of work carried out by the non-Federal sponsor and such work has not been carried out by the non-Federal sponsor as of October 8, 2008, the Administrator and the non-Federal sponsor shall enter into an agreement under which the non-Federal sponsor shall carry out such work, and only work carried out following the execution of the agreement shall be eligible for credit.

(IV) Limitation

Credit authorized under this clause for a project carried out under this paragraph—

(aa) shall not exceed the non-Federal share of the cost of the project; and

(bb) shall not exceed the actual and reasonable costs of the materials and services provided by the non-Federal sponsor, as determined by the Administrator.

(V) Inclusion of certain contributions

In this subparagraph, the term ''in-kind contribution'' may include the costs of planning (including data collection), design, construction, and materials that are provided by the non-Federal sponsor for implementation of a project under this paragraph.

(iii) Treatment of credit between projects

Any credit provided under this subparagraph towards the non-Federal share of the cost of a project carried out under this paragraph may be applied towards the non-Federal share of the cost of any other project carried out under this paragraph by the same non-Federal sponsor for a site within the same area of concern.

(iv) Non-Federal share

The non-Federal share of the cost of a project carried out under this paragraph—

(I) may include monies paid pursuant to, or the value of any in-kind contribution performed under, an administrative order on consent or judicial consent decree; but

(II) may not include any funds paid pursuant to, or the value of any in-kind contribution performed under, a unilateral administrative order or court order.

(v) Operation and maintenance

The non-Federal share of the cost of the operation and maintenance of a project carried out under this paragraph shall be 100 percent.

(F) Site characterization

(i) In general

The Administrator, in consultation with any affected State or unit of local government, shall carry out at Federal expense the site characterization of a project under this paragraph for the remediation of contaminated sediment.

(ii) Limitation

For purposes of clause (i), the Administrator may carry out one site assessment

per discrete site within a project at Federal expense.

(G) Coordination

In carrying out projects under this paragraph, the Administrator shall coordinate with the Secretary of the Army, and with the Governors of States in which the projects are located, to ensure that Federal and State assistance for remediation in areas of concern is used as efficiently as practicable.

(H) Authorization of appropriations

(i) In general

In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph $50,000,000 for each of fiscal years 2004 through 2010.

(ii) Availability

Funds made available under clause (i) shall remain available until expended.

(iii) Allocation of funds

Not more than 20 percent of the funds appropriated pursuant to clause (i) for a fiscal year may be used to carry out subparagraph (F).

(12) Public information program

(A) In general

The Administrator, acting through the Program Office and in coordination with States, Indian tribes, local governments, and other entities, may carry out a public information program to provide information relating to the remediation of contaminated sediment to the public in areas of concern that are located wholly or partially in the United States.

(B) Authorization of appropriations

There is authorized to be appropriated to carry out this paragraph $1,000,000 for each of fiscal years 2004 through 2010.

(d) Great Lakes research

(1) Establishment of Research Office

There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

(2) Identification of issues

The Research Office shall identify issues relating to the Great Lakes resources on which research is needed. The Research Office shall submit a report to Congress on such issues before the end of each fiscal year which shall identify any changes in the Great Lakes system[3] with respect to such issues.

(3) Inventory

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,[3] and shall update that inventory every four years.

(4) Research exchange

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 ongoing or completed and which affect the Great Lakes System.

(5) Research program

The Research Office shall develop, in cooperation with the Coordination Office, a comprehensive environmental research program and data base for the Great Lakes system.[3] The data base shall include, but not be limited to, data relating to water quality, fisheries, and biota.

(6) Monitoring

The Research Office shall conduct, through the Great Lakes Environmental Research Laboratory, the National Sea Grant College program, 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) Location

The Research Office shall be located in a Great Lakes State.

(e) Research and management coordination

(1) Joint plan

Before October 1 of each year, the Program Office and the Research Office shall prepare a joint research plan for the fiscal year which begins in the following calendar year.

(2) Contents of plan

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, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments,;[1]

(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.

(3) Health research report

(A) Not later than September 30, 1994, the Program Office, in consultation with the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States shall submit to the Congress a report assessing the adverse effects of water pollutants in the Great Lakes System on the health of persons in Great Lakes States and the health of fish, shellfish, and wildlife in the Great Lakes System. In conducting research in support of this report, the Administrator may, where appropriate, provide for research to be conducted under cooperative agreements with Great Lakes States.

(B) There is authorized to be appropriated to the Administrator to carry out this section

[3] So in original. Probably should be capitalized.

not to exceed $3,000,000 for each of fiscal years 1992, 1993, and 1994.

(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, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments,.[1]

(g) Relationship to existing Federal and State laws and international treaties

Nothing in this section shall be construed—

(1) 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 any international body created by treaty with authority relating to the Great Lakes; or

(2) to affect any other Federal or State authority that is being used or may be used to facilitate the cleanup and protection of the Great Lakes.

(h) Authorizations of Great Lakes appropriations

There are authorized to be appropriated to the Administrator to carry out this section not to exceed—

(1) $11,000,000 per fiscal year for the fiscal years 1987, 1988, 1989, and 1990, and $25,000,000 for fiscal year 1991;

(2) such sums as are necessary for each of fiscal years 1992 through 2003; and

(3) $25,000,000 for each of fiscal years 2004 through 2008.

(June 30, 1948, ch. 758, title I, §118, as added Pub. L. 100–4, title I, §104, Feb. 4, 1987, 101 Stat. 11; amended Pub. L. 100–688, title I, §1008, Nov. 18, 1988, 102 Stat. 4151; Pub. L. 101–596, title I, §§101–106, Nov. 16, 1990, 104 Stat. 3000–3004; Pub. L. 107–303, title I, §§102–105, Nov. 27, 2002, 116 Stat. 2355–2358; Pub. L. 110–365, §§2, 3, Oct. 8, 2008, 122 Stat. 4021; Pub. L. 113–188, title VII, §701, Nov. 26, 2014, 128 Stat. 2019; Pub. L. 114–113, div. G, title IV, §426, Dec. 18, 2015, 129 Stat. 2581; Pub. L. 114–322, title IV, §5005, Dec. 16, 2016, 130 Stat. 1889.)

REFERENCES IN TEXT

Executive Order No. 13340, referred to in subsec. (c)(7)(C)(i), is Ex. Ord. No. 13340, May 18, 2004, 69 F.R. 29043, which is set out as a note under section 1268 of this title.

The Water Infrastructure Finance and Innovation Act of 2014, referred to in subsec. (c)(7)(E)(ii)(III), is subtitle C (§§5021–5035) of title V of Pub. L. 113–121, June 10, 2014, 128 Stat. 1332, which is classified generally to chapter 52 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

The Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, referred to in subsec. (c)(7)(I), is Pub. L. 111–88, div. A, Oct. 30, 2009, 123 Stat. 2904. The Conference Report accompanying the Act (H.R. 2996) is H. Rept. No. 111–316, 111th Cong., 1st Sess.

CODIFICATION

November 16, 1990, referred to in subsec. (c)(3)(C), was in the original ''the enactment of this Act'', and ''the date of the enactment of this title'' which were translated as meaning the date of enactment of Pub. L. 101–596, title I of which enacted subsec. (c)(3), to reflect the probable intent of Congress.

AMENDMENTS

2016—Subsec. (c)(7)(B), (C). Pub. L. 114–322, §5005(1), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which related to focus areas in which the Initiative should prioritize programs and projects, and the selection of programs and projects for Great Lakes protection and restoration.

Subsec. (c)(7)(D)(i). Pub. L. 114–322, §5005(2)(A), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: ''Subject to subparagraph (G)(ii), funds made available to carry out the Initiative shall be used to strategically implement—

''(I) Federal projects; and

''(II) projects carried out in coordination with States, Indian tribes, municipalities, institutions of higher education, and other organizations.''

Subsec. (c)(7)(D)(ii)(I). Pub. L. 114–322, §5005(2)(B), substituted ''(J)(i)'' for ''(G)(i)''.

Subsec. (c)(7)(D)(iii). Pub. L. 114–322, §5005(2)(C), added cl. (iii).

Subsec. (c)(7)(E) to (J). Pub. L. 114–322, §5005(3), added subpars. (E) to (J) and struck out former subpars. (E) to (G) which related to scope of projects, activities by other Federal agencies, and funding for fiscal year 2016.

2015—Subsec. (c)(7). Pub. L. 114–113 added par. (7) and struck out former par. (7), which required a five-year study and demonstration projects relating to the control and removal of toxic pollutants in the Great Lakes.

2014—Subsec. (c)(10) to (13). Pub. L. 113–188 redesignated pars. (11) to (13) as (10) to (12), respectively, and struck out former par. (10) which required submission of annual comprehensive reports.

2008—Subsec. (a)(3)(K), (L). Pub. L. 110–365, §2, added subpars. (K) and (L).

Subsec. (c)(12)(B)(ii). Pub. L. 110–365, §3(a), substituted ''sediment, including activities to restore aquatic habitat that are carried out in conjunction with a project for the remediation of contaminated sediment'' for ''sediment''.

Subsec. (c)(12)(D). Pub. L. 110–365, §3(b)(1), substituted ''Limitations'' for ''Limitation'' in heading.

Subsec. (c)(12)(D)(iii), (iv). Pub. L. 110–365, §3(b)(2)–(4), added cls. (iii) and (iv).

Subsec. (c)(12)(E)(ii). Pub. L. 110–365, §3(c), amended cl. (ii) generally. Prior to amendment, text read as follows: ''The non-Federal share of the cost of a project carried out under this paragraph may include the value of in-kind services contributed by a non-Federal sponsor.''

Subsec. (c)(12)(E)(iii). Pub. L. 110–365, §3(d)(2), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (c)(12)(E)(iv). Pub. L. 110–365, §3(d)(1), (3), redesignated cl. (iii) as (iv) and substituted ''contribution'' for ''service'' in two places. Former cl. (iv) redesignated (v).

Subsec. (c)(12)(E)(v). Pub. L. 110–365, §3(d)(1), redesignated cl. (iv) as (v).

Subsec. (c)(12)(F). Pub. L. 110–365, §3(e), amended subpar. (F) generally. Prior to amendment, text read as follows: ''The Administrator may not carry out a

project under this paragraph unless the non-Federal sponsor enters into such agreements with the Administrator as the Administrator may require to ensure that the non-Federal sponsor will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the project is located at or above the average level of such expenditures in the 2 fiscal years preceding the date on which the project is initiated.''

Subsec. (c)(12)(H)(i). Pub. L. 110–365, § 3(f)(1), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: ''In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph $50,000,000 for each of fiscal years 2004 through 2008.''

Subsec. (c)(12)(H)(iii). Pub. L. 110–365, § 3(f)(2), added cl. (iii).

Subsec. (c)(13)(B). Pub. L. 110–365, § 3(g), substituted ''2010'' for ''2008''.

2002—Subsec. (c)(3)(E). Pub. L. 107–303, § 102, added subpar. (E).

Subsec. (c)(12), (13). Pub. L. 107–303, § 103, added pars. (12) and (13).

Subsec. (g). Pub. L. 107–303, § 104, substituted ''construed—'' for ''construed to affect'', inserted ''(1) to affect'' before ''the jurisdiction'', substituted ''Lakes; or'' for ''Lakes.'', and added par. (2).

Subsec. (h). Pub. L. 107–303, § 105, substituted ''not to exceed—'' for ''not to exceed $11,000,000'', inserted ''(1) $11,000,000'' before ''per fiscal year for'', substituted ''1991;'' for ''1991.'', added pars. (2) and (3), and struck out former last sentence which read as follows: ''Of the amounts appropriated each fiscal year—

''(1) 40 percent shall be used by the Great Lakes National Program Office on demonstration projects on the feasibility of controlling and removing toxic pollutants;

''(2) 7 percent shall be used by the Great Lakes National Program Office for the program of nutrient monitoring; and

''(3) 30 percent or $3,300,000, whichever is the lesser, shall be transferred to the National Oceanic and Atmospheric Administration for use by the Great Lakes Research Office.''

1990—Subsec. (a)(3)(F) to (J). Pub. L. 101–596, § 103, added subpars. (F) to (J).

Subsec. (c)(2) to (11). Pub. L. 101–596, §§ 101, 102, 104, added pars. (2) to (5) after par. (1) and renumbered existing paragraphs accordingly, which was executed by renumbering pars. (2) to (6) as (6) to (10), respectively, redesignated existing provisions of par. (7) as subpar. (A) and added subpars. (B) and (C), and added par. (11).

Subsec. (e)(3). Pub. L. 101–596, § 106, added par. (3).

Subsec. (h). Pub. L. 101–596, § 105, substituted ''and 1990, and $25,000,000 for fiscal year 1991'' for ''1990, and 1991'' in introductory provisions and inserted ''or $3,300,000, whichever is the lesser,'' after ''30 percent'' in par. (3).

1988—Subsecs. (a)(1)(B), (2), (c)(1)(A), (6)(A), (D), (e)(2)(A), (f). Pub. L. 100–688 inserted '', as amended by the Water Quality Agreement of 1987 and any other agreements and amendments,'' after ''the Great Lakes Water Quality Agreement of 1978''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NOTIFICATION REQUIREMENTS

Pub. L. 114–113, div. G, title IV, § 425, Dec. 18, 2015, 129 Stat. 2580, provided that:

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) AFFECTED STATE.—The term 'affected State' means any of the Great Lakes States (as defined in section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3))).

''(3) DISCHARGE.—The term 'discharge' means a discharge as defined in section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362).

''(4) GREAT LAKES.—The term 'Great Lakes' means any of the waters as defined in section 118(a)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1268(a)(3)).

''(5) TREATMENT WORKS.—The term 'treatment works' has the meaning given the term in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292).

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—The Administrator shall work with affected States having publicly owned treatment works that discharge to the Great Lakes to create public notice requirements for a combined sewer overflow discharge to the Great Lakes.

''(2) NOTICE REQUIREMENTS.—The notice requirements referred to in paragraph (1) shall provide for—

''(i) the method of the notice;

''(ii) the contents of the notice, in accordance with paragraph (3); and

''(iii) requirements for public availability of the notice.

''(3) MINIMUM REQUIREMENTS.—

''(A) IN GENERAL.—The contents of the notice under paragraph (1) shall include—

''(i) the dates and times of the applicable discharge;

''(ii) the volume of the discharge; and

''(iii) a description of any public access areas impacted by the discharge.

''(B) CONSISTENCY.—The minimum requirements under this paragraph shall be consistent for all affected States.

''(4) ADDITIONAL REQUIREMENTS.—The Administrator shall work with the affected States to include—

''(A) follow-up notice requirements that provide a description of—

''(i) each applicable discharge;

''(ii) the cause of the discharge; and

''(iii) plans to prevent a reoccurrence of a combined sewer overflow discharge to the Great Lakes consistent with section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) or an administrative order or consent decree under such Act; and

''(B) annual publication requirements that list each treatment works from which the Administrator or the affected State receive a follow-up notice.

''(5) TIMING.—

''(A) The notice and publication requirements described in this subsection shall be implemented by not later than 2 years after the date of enactment of this Act [Dec. 18, 2015].

''(B) The Administrator of the EPA may extend the implementation deadline for individual communities if the Administrator determines the community needs additional time to comply in order to avoid undue economic hardship.

''(6) STATE ACTION.—Nothing in this subsection prohibits an affected State from establishing a State notice requirement in the event of a discharge that is more stringent than the requirements described in this subsection.''

FUNDS CONTRIBUTED BY A NON-FEDERAL SPONSOR

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3332, provided in part that: ''The Administrator [of the Environmental Protection Agency] may hereafter receive and use funds contributed by a non-Federal sponsor as its share of the cost of a project to carry out a

project under paragraph (c)(12) [now (c)(11)] of section 118 of the Federal Water Pollution Control Act [33 U.S.C. 1268(c)(11)], as amended.''

GREAT LAKES REMEDIAL ACTION PLANS AND SEDIMENT REMEDIATION

Pub. L. 101–640, title IV, § 401, Nov. 28, 1990, 104 Stat. 4644, as amended by Pub. L. 104–303, title V, § 515, Oct. 12, 1996, 110 Stat. 3763; Pub. L. 106–53, title V, § 505, Aug. 17, 1999, 113 Stat. 338; Pub. L. 106–541, title III, § 344, Dec. 11, 2000, 114 Stat. 2613; Pub. L. 110–114, title V, § 5012, Nov. 8, 2007, 121 Stat. 1195, provided that:

''(a) GREAT LAKES REMEDIAL ACTION PLANS.—

''(1) IN GENERAL.—The Secretary may provide technical, planning, and engineering assistance to State and local governments and nongovernmental entities designated by a State or local government in the development and implementation of remedial action plans for Areas of Concern in the Great Lakes identified under the Great Lakes Water Quality Agreement of 1978.

''(2) NON-FEDERAL SHARE.—

''(A) IN GENERAL.—Non-Federal interests shall contribute, in cash or by providing in-kind contributions, 35 percent of costs of activities for which assistance is provided under paragraph (1).

''(B) CONTRIBUTIONS BY ENTITIES.—Nonprofit public or private entities may contribute all or a portion of the non-Federal share.

''(b) SEDIMENT REMEDIATION PROJECTS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency (acting through the Great Lakes National Program Office), may conduct pilot- and full-scale projects of promising technologies to remediate contaminated sediments in freshwater coastal regions in the Great Lakes basin. The Secretary shall conduct not fewer than 3 full-scale projects under this subsection.

''(2) SITE SELECTION FOR PROJECTS.—In selecting the sites for the technology projects, the Secretary shall give priority consideration to Saginaw Bay, Michigan, Sheboygan Harbor, Wisconsin, Grand Calumet River, Indiana, Ashtabula River, Ohio, Buffalo River, New York, and Duluth-Superior Harbor, Minnesota and Wisconsin.

''(3) NON-FEDERAL SHARE.—Non-Federal interests shall contribute 35 percent of costs of projects under this subsection. Such costs may be paid in cash or by providing in-kind contributions.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to carry out this section $10,000,000 for each of fiscal years 2001 through 2012.''

EX. ORD. NO. 13340. ESTABLISHMENT OF GREAT LAKES INTERAGENCY TASK FORCE AND PROMOTION OF A REGIONAL COLLABORATION OF NATIONAL SIGNIFICANCE FOR THE GREAT LAKES

Ex. Ord. No. 13340, May 18, 2004, 69 F.R. 29043, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to help establish a regional collaboration of national significance for the Great Lakes, it is hereby ordered as follows:

SECTION 1. *Policy*. The Great Lakes are a national treasure constituting the largest freshwater system in the world. The United States and Canada have made great progress addressing past and current environmental impacts to the Great Lakes ecology. The Federal Government is committed to making progress on the many significant challenges that remain. Along with numerous State, tribal, and local programs, over 140 Federal programs help fund and implement environmental restoration and management activities throughout the Great Lakes system. A number of intergovernmental bodies are providing leadership in the region to address environmental and resource management issues in the Great Lakes system. These activities would benefit substantially from more systematic collaboration and better integration of effort. It is the policy of the Federal Government to support local and regional efforts to address environmental challenges and to encourage local citizen and community stewardship. To this end, the Federal Government will partner with the Great Lakes States, tribal and local governments, communities, and other interests to establish a regional collaboration to address nationally significant environmental and natural resource issues involving the Great Lakes. It is the further policy of the Federal Government that its executive departments and agencies will ensure that their programs are funding effective, coordinated, and environmentally sound activities in the Great Lakes system.

SEC. 2. *Definitions*. For purposes of this order:

(a) ''Great Lakes'' means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Marys River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border).

(b) ''Great Lakes system'' means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.

SEC. 3. *Great Lakes Interagency Task Force*.

(a) Task Force Purpose. To further the policy described in section 1 of this order, there is established, within the Environmental Protection Agency for administrative purposes, the ''Great Lakes Interagency Task Force'' (Task Force) to:

(i) Help convene and establish a process for collaboration among the members of the Task Force and the members of the Working Group that is established in paragraph b(ii) of this section, with the Great Lakes States, local communities, tribes, regional bodies, and other interests in the Great Lakes region regarding policies, strategies, plans, programs, projects, activities, and priorities for the Great Lakes system.

(ii) Collaborate with Canada and its provinces and with bi-national bodies involved in the Great Lakes region regarding policies, strategies, projects, and priorities for the Great Lakes system.

(iii) Coordinate the development of consistent Federal policies, strategies, projects, and priorities for addressing the restoration and protection of the Great Lakes system and assisting in the appropriate management of the Great Lakes system.

(iv) Develop outcome-based goals for the Great Lakes system relying upon, among other things, existing data and science-based indicators of water quality and related environmental factors. These goals shall focus on outcomes such as cleaner water, sustainable fisheries, and biodiversity of the Great Lakes system and ensure that Federal policies, strategies, projects, and priorities support measurable results.

(v) Exchange information regarding policies, strategies, projects, and activities of the agencies represented on the Task Force related to the Great Lakes system.

(vi) Work to coordinate government action associated with the Great Lakes system.

(vii) Ensure coordinated Federal scientific and other research associated with the Great Lakes system.

(viii) Ensure coordinated government development and implementation of the Great Lakes portion of the Global Earth Observation System of Systems.

(ix) Provide assistance and support to agencies represented on the Task Force in their activities related to the Great Lakes system.

(x) Submit a report to the President by May 31, 2005, and thereafter as appropriate, that summarizes the activities of the Task Force and provides any recommendations that would, in the judgment of the Task Force, advance the policy set forth in section 1 of this order.

(b) Membership and Operation.

(i) The Task Force shall consist exclusively of the following officers of the United States: the Administrator of the Environmental Protection Agency (who shall chair the Task Force), the Secretary of State, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Homeland Security, the Secretary of the Army, and the Chairman of the Council on Environmental Quality. A member of the Task Force may designate, to perform the Task Force functions of the member, any person who is part of the member's department, agency, or office and who is either an officer of the United States appointed by the President or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS–15 of the General Schedule. The Task Force shall report to the President through the Chairman of the Council on Environmental Quality.

(ii) The Task Force shall establish a ''Great Lakes Regional Working Group'' (Working Group) composed of the appropriate regional administrator or director with programmatic responsibility for the Great Lakes system for each agency represented on the Task Force including: the Great Lakes National Program Office of the Environmental Protection Agency; the United States Fish and Wildlife Service, National Park Service, and United States Geological Survey within the Department of the Interior; the Natural Resources Conservation Service and the Forest Service of the Department of Agriculture; the National Oceanic and Atmospheric Administration of the Department of Commerce; the Department of Housing and Urban Development; the Department of Transportation; the Coast Guard within the Department of Homeland Security; and the Army Corps of Engineers within the Department of the Army. The Working Group will coordinate and make recommendations on how to implement the policies, strategies, projects, and priorities of the Task Force.

(c) Management Principles for Regional Collaboration of National Significance. To further the policy described in section 1, the Task Force shall recognize and apply key principles and foster conditions to ensure successful collaboration. To that end, the Environmental Protection Agency will coordinate the development of a set of principles of successful collaboration.

SEC. 4. *Great Lakes National Program Office*. The Great Lakes National Program Office of the Environmental Protection Agency shall assist the Task Force and the Working Group in the performance of their functions. The Great Lakes National Program Manager shall serve as chair of the Working Group.

SEC. 5. *Preservation of Authority*. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, regulatory, and legislative proposals. Nothing in this order shall be construed to affect the statutory authority or obligations of any Federal agency or any bi-national agreement with Canada.

SEC. 6. *Judicial Review*. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 1268a. Great Lakes restoration activities report

(a) For purposes of this section the following definitions apply:

(1) The terms ''Great Lakes'' and ''Great Lakes State'' have the same meanings as such terms have in section 1962d–22 of title 42.

(2) The term ''Great Lakes restoration activities'' means any Federal or State activity primarily or entirely within the Great Lakes watershed that seeks to improve the overall health of the Great Lakes ecosystem.

(b) Hereafter, not later than 45 days after submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor of each Great Lakes State and the Great Lakes Interagency Task Force, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report, certified by the Secretary of each agency that has budget authority for Great Lakes restoration activities, containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any planned interagency or intra-agency transfer, for each of the Federal agencies that carries out Great Lakes restoration activities in the upcoming fiscal year, separately reporting the amount of funding to be provided under existing laws pertaining to the Great Lakes ecosystem; and

(B) identifies all expenditures in each of the 5 prior fiscal years by the Federal Government and State governments for Great Lakes restoration activities;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and, to the extent available, State agencies using Federal funds, for Great Lakes restoration activities during the current and previous fiscal years;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities; and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities.

(Pub. L. 113–76, div. E, title VII, § 738, Jan. 17, 2014, 128 Stat. 238.)

CODIFICATION

Section was enacted as part of the Financial Services and General Government Appropriations Act, 2014, and also as part of the Consolidated Appropriations Act, 2014, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1269. Long Island Sound

(a) Office of Management Conference of the Long Island Sound Study

The Administrator shall continue the Management Conference of the Long Island Sound Study (hereinafter referred to as the ''Conference'') as established pursuant to section 1330 of this title, and shall establish an office (hereinafter referred to as the ''Office'') to be located on or near Long Island Sound.

(b) Administration and staffing of Office

The Office shall be headed by a Director, who shall be detailed by the Administrator, following consultation with the Administrators of

EPA regions I and II, from among the employees of the Agency who are in civil service. The Administrator shall delegate to the Director such authority and detail such additional staff as may be necessary to carry out the duties of the Director under this section.

(c) Duties of Office

The Office shall assist the conference study in carrying out its goals. Specifically, the Office shall—

(1) assist and support the implementation of the Comprehensive Conservation and Management Plan for Long Island Sound developed pursuant to section 1330 of this title, including efforts to establish, within the process for granting watershed general permits, a system for promoting innovative methodologies and technologies that are cost-effective and consistent with the goals of the Plan;

(2) conduct or commission studies deemed necessary for strengthened implementation of the Comprehensive Conservation and Management Plan including, but not limited to—

(A) population growth and the adequacy of wastewater treatment facilities;

(B) the use of biological methods for nutrient removal in sewage treatment plants;

(C) contaminated sediments, and dredging activities;

(D) nonpoint source pollution abatement and land use activities in the Long Island Sound watershed;

(E) wetland protection and restoration;

(F) atmospheric deposition of acidic and other pollutants into Long Island Sound;

(G) water quality requirements to sustain fish, shellfish, and wildlife populations, and the use of indicator species to assess environmental quality;

(H) State water quality programs, for their adequacy pursuant to implementation of the Comprehensive Conservation and Management Plan;

(I) options for long-term financing of wastewater treatment projects and water pollution control programs;

(J) environmental vulnerabilities of the Long Island Sound watershed, including—

(i) the identification and assessment of such vulnerabilities in the watershed;

(ii) the development and implementation of adaptation strategies to reduce such vulnerabilities; and

(iii) the identification and assessment of the effects of sea level rise on water quality, habitat, and infrastructure; and[1]

(3) coordinate the grant, research and planning programs authorized under this section;

(4) develop and implement strategies to increase public education and awareness with respect to the ecological health and water quality conditions of Long Island Sound;

(5) provide administrative and technical support to the conference study;

(6) collect and make available to the public (including on a publicly accessible website) publications, and other forms of information the conference study determines to be appropriate, relating to the environmental quality of Long Island Sound;

(7) monitor the progress made toward meeting the identified goals, actions, and schedules of the Comprehensive Conservation and Management Plan, including through the implementation and support of a monitoring system for the ecological health and water quality conditions of Long Island Sound; and

(8) convene conferences and meetings for legislators from State governments and political subdivisions thereof for the purpose of making recommendations for coordinating legislative efforts to facilitate the environmental restoration of Long Island Sound and the implementation of the Comprehensive Conservation and Management Plan.

(d) Grants

(1) The Administrator is authorized to make grants for projects and studies which will help implement the Long Island Sound Comprehensive Conservation and Management Plan. Special emphasis shall be given to implementation, research and planning, enforcement, and citizen involvement and education.

(2) State, interstate, and regional water pollution control agencies, and other public or nonprofit private agencies, institutions, and organizations held to be eligible for grants pursuant to this subsection.

(3) Citizen involvement and citizen education grants under this subsection shall not exceed 95 per centum of the costs of such work. All other grants under this subsection shall not exceed 60 percent of the research, studies, or work. All grants shall be made on the condition that the non-Federal share of such costs are provided from non-Federal sources.

(e) Assistance to distressed communities

(1) Eligible communities

For the purposes of this subsection, a distressed community is any community that meets affordability criteria established by the State in which the community is located, if such criteria are developed after public review and comment.

(2) Priority

In making assistance available under this section for the upgrading of wastewater treatment facilities, the Administrator may give priority to a distressed community.

(f) Report

(1) In general

Not later than 2 years after the date of enactment of this Act, and biennially thereafter, the Director of the Office, in consultation with the Governor of each Long Island Sound State, shall submit to Congress a report that—

(A) summarizes and assesses the progress made by the Office and the Long Island Sound States in implementing the Long Island Sound Comprehensive Conservation and Management Plan, including an assessment of the progress made toward meeting the performance goals and milestones contained in the Plan;

(B) assesses the key ecological attributes that reflect the health of the ecosystem of the Long Island Sound watershed;

[1] So in original.

(C) describes any substantive modifications to the Long Island Sound Comprehensive Conservation and Management Plan made during the 2-year period preceding the date of submission of the report;

(D) provides specific recommendations to improve progress in restoring and protecting the Long Island Sound watershed, including, as appropriate, proposed modifications to the Long Island Sound Comprehensive Conservation and Management Plan;

(E) identifies priority actions for implementation of the Long Island Sound Comprehensive Conservation and Management Plan for the 2-year period following the date of submission of the report; and

(F) describes the means by which Federal funding and actions will be coordinated with the actions of the Long Island Sound States and other entities.

(2) Public availability

The Administrator shall make the report described in paragraph (1) available to the public, including on a publicly accessible website.

(g) Federal entities

(1) Coordination

The Administrator shall coordinate the actions of all Federal departments and agencies that affect water quality in the Long Island Sound watershed in order to improve the water quality and living resources of the watershed.

(2) Methods

In carrying out this section, the Administrator, acting through the Director of the Office, may—

(A) enter into interagency agreements; and

(B) make intergovernmental personnel appointments.

(4) Consistency with comprehensive conservation and management plan

To the maximum extent practicable, the head of each Federal department or agency that owns or occupies real property, or carries out activities, within the Long Island Sound watershed shall ensure that the property and all activities carried out by the department or agency are consistent with the Long Island Sound Comprehensive Conservation and Management Plan (including any related subsequent agreements and plans).

(h) Authorization of appropriations

There is authorized to be appropriated to the Administrator to carry out this section $40,000,000 for each of fiscal years 2019 through 2023.

(June 30, 1948, ch. 758, title I, § 119, as added Pub. L. 101–596, title II, § 202, Nov. 16, 1990, 104 Stat. 3004; amended Pub. L. 104–303, title V, § 583, Oct. 12, 1996, 110 Stat. 3791; Pub. L. 106–457, title IV, §§ 402—404, Nov. 7, 2000, 114 Stat. 1973; Pub. L. 109–137, § 1, Dec. 22, 2005, 119 Stat. 2646; Pub. L. 115–270, title IV, § 4104(a), (c)(1), Oct. 23, 2018, 132 Stat. 3873, 3875.)

REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (f)(1), probably means the date of enactment of Pub. L. 115–270, which was approved Oct. 23, 2018.

AMENDMENTS

2018—Subsec. (c). Pub. L. 115–270, § 4104(a)(1)(A), substituted ''conference study'' for ''Management Conference of the Long Island Sound Study'' in introductory provisions.

Subsec. (c)(2). Pub. L. 115–270, § 4104(a)(1)(B), substituted semicolons for commas at end of subpars. (A) to (G) and added subpar. (J).

Subsec. (c)(4). Pub. L. 115–270, § 4104(a)(1)(C), added par. (4) and struck out former par. (4) which read as follows: ''coordinate activities and implementation responsibilities with other Federal agencies which have jurisdiction over Long Island Sound and with national and regional marine monitoring and research programs established pursuant to the Marine Protection, Research, and Sanctuaries Act;''.

Subsec. (c)(5). Pub. L. 115–270, § 4104(a)(1)(D), inserted ''study'' after ''conference''.

Subsec. (c)(6). Pub. L. 115–270, § 4104(a)(1)(E), inserted ''(including on a publicly accessible website)'' after ''the public'' and ''study'' after ''conference''.

Subsec. (c)(7). Pub. L. 115–270, § 4104(a)(1)(F), added par. (7) and struck out former par. (7) which related to a report to Congress on the Comprehensive Conservation and Management Plan.

Subsec. (d)(3). Pub. L. 115–270, § 4104(a)(2), substituted ''60 percent'' for ''50 per centum''.

Subsecs. (f), (g). Pub. L. 115–270, § 4104(a)(4), added subsecs. (f) and (g). Former subsec. (f) redesignated (h).

Subsec. (h). Pub. L. 115–270, § 4104(c)(1), amended subsec. (h) generally. Prior to amendment text related to authorizations.

Pub. L. 115–270, § 4104(a)(3), redesignated subsec. (f) as (h).

2005—Subsec. (f). Pub. L. 109–137 substituted ''2010'' for ''2005'' in pars. (1) and (2).

2000—Subsec. (c)(1). Pub. L. 106–457, § 402, inserted before semicolon at end '', including efforts to establish, within the process for granting watershed general permits, a system for promoting innovative methodologies and technologies that are cost-effective and consistent with the goals of the Plan''.

Subsec. (e). Pub. L. 106–457, § 403(2), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–457, §§ 403(1), 404, redesignated subsec. (e) as (f) and substituted ''2001 through 2005'' for ''1991 through 2001'' in par. (1) and ''not to exceed $40,000,000 for each of fiscal years 2001 through 2005'' for ''not to exceed $3,000,000 for each of the fiscal years 1991 through 2001'' in par. (2).

1996—Subsec. (e). Pub. L. 104–303 substituted ''2001'' for ''1996'' in pars. (1) and (2).

LONG ISLAND SOUND STEWARDSHIP

Pub. L. 109–359, Oct. 16, 2006, 120 Stat. 2049, as amended by Pub. L. 115–270, title IV, § 4104(b), (c)(2), Oct. 23, 2018, 132 Stat. 3875, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Long Island Sound Stewardship Act of 2006'.

''SEC. 2. FINDINGS AND PURPOSE.

''(a) FINDINGS.—Congress finds that—

''(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

''(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

''(3) activities that depend on the environmental health of Long Island Sound contribute more than $5,000,000,000 each year to the regional economy;

''(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is not adequate to serve the needs of the people living in the area;

''(5) existing shoreline facilities are in many cases overburdened and underfunded;

''(6) large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources;

''(7) approximately 1/3 of the tidal marshes of Long Island Sound have been filled, and much of the remaining marshes have been ditched, diked, or impounded, reducing the ecological value of the marshes; and

''(8) much of the remaining exemplary natural landscape is vulnerable to further development.

''(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance upland sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

''SEC. 3. DEFINITIONS.

''In this Act, the following definitions apply:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) ADVISORY COMMITTEE.—The term 'Advisory Committee' means the Long Island Sound Stewardship Advisory Committee established by section 8.

''(3) REGION.—The term 'Region' means the Long Island Sound Stewardship Initiative Region established by section 4(a).

''(4) STATE.—The term 'State' means each of the States of Connecticut and New York.

''(5) STEWARDSHIP.—The term 'stewardship' means land acquisition, land conservation agreements, site planning, plan implementation, land and habitat management, public access improvements, site monitoring, and other activities designed to enhance and preserve natural resource-based recreation and ecological function of upland areas.

''(6) STEWARDSHIP SITE.—The term 'stewardship site' means any area of State, local, or tribal government, or privately owned land within the Region that is designated by the Administrator under section 5(a).

''(7) SYSTEMATIC SITE SELECTION.—The term 'systematic site selection' means a process of selecting stewardship sites that—

''(A) has explicit goals, methods, and criteria;

''(B) produces feasible, repeatable, and defensible results;

''(C) provides for consideration of natural, physical, and biological patterns;

''(D) addresses replication, connectivity, species viability, location, and public recreation values;

''(E) uses geographic information systems technology and algorithms to integrate selection criteria; and

''(F) will result in achieving the goals of stewardship site selection at the lowest cost.

''(8) QUALIFIED APPLICANTS.—The term 'qualified applicant' means a non-Federal person that owns title to property located within the borders of the Region.

''(9) THREAT.—The term 'threat' means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

''SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.

''(a) ESTABLISHMENT.—There is established in the States of Connecticut and New York the Long Island Sound Stewardship Initiative Region.

''(b) BOUNDARIES.—The Region consists of the immediate coastal upland areas along—

''(1) Long Island Sound between mean high water and the inland boundary, as described on the map entitled 'Long Island Sound Stewardship Region' and dated April 21, 2004; and

''(2) the Peconic Estuary as described on the map entitled 'Peconic Estuary Program Study Area Boundaries' and included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

''SEC. 5. DESIGNATION OF STEWARDSHIP SITES.

''(a) IN GENERAL.—The Administrator may designate a stewardship site in accordance with this Act any area that contributes to accomplishing the purpose of this Act.

''(b) PUBLICATION OF LIST OF RECOMMENDED SITES.—The Administrator shall—

''(1) publish in the Federal Register and make available in general circulation in the States of Connecticut and New York the list of sites recommended by the Advisory Committee; and

''(2) provide a 90-day period for—

''(A) the submission of public comment on the list; and

''(B) an opportunity for owners of such sites to decline designation of such sites as stewardship sites.

''(c) OPINION REGARDING OWNER'S RESPONSIBILITIES.—The Administrator may not designate an area as a stewardship site under this Act unless the Administrator provides to the owner of the area, and the owner acknowledges to the Administrator receipt of, a comprehensive opinion in plain English setting forth expressly the responsibility of the owner that arises from such designation.

''(d) DESIGNATION OF STEWARDSHIP SITES.—Not later than 150 days after receiving from the Advisory Committee its list of recommended sites, the Administrator—

''(1) shall review the recommendations of the Advisory Committee; and

''(2) may designate as a stewardship site any site included in the list.

''SEC. 6. RECOMMENDATIONS BY ADVISORY COMMITTEE.

''(a) IN GENERAL.—The Advisory Committee shall—

''(1) in accordance with this section, evaluate applications—

''(A) for designation of areas as stewardship sites;

''(B) to develop management plans to address threats to stewardship sites; and

''(C) to act on opportunities to protect and enhance stewardship sites;

''(2) develop recommended guidelines, criteria, schedules, and due dates for the submission of applications and the evaluation by the Advisory Committee of information to recommend areas for designation as stewardship sites that fulfill terms of a multiyear management plan;

''(3) recommend to the Administrator a list of sites for designation as stewardship sites that further the purpose of this Act;

''(4) develop management plans to address threats to stewardship sites;

''(5) raise awareness of the values of and threats to stewardship sites;

''(6) recommend that the Administrator award grants to qualified applicants; and

''(7) recommend to the Administrator ways to leverage additional resources for improved stewardship of the Region.

''(b) IDENTIFICATION OF SITES.—

''(1) IN GENERAL.—Any qualified applicant may submit an application to the Advisory Committee to have a site recommended to the Administrator for designation as a stewardship site.

''(2) IDENTIFICATION.—The Advisory Committee shall review each application submitted under this subsection to determine whether the site exhibits values that promote the purpose of this Act.

''(3) NATURAL RESOURCE-BASED RECREATION AREAS.—In reviewing an application for recommendation of a recreation area for designation as a stewardship site, the Advisory Committee may use a selection technique that includes consideration of—

''(A) public access;

''(B) community support;

''(C) high population density;

''(D) environmental justice (as defined in section 385.3 of title 33, Code of Federal Regulations (or successor regulations));

''(E) open spaces; and

''(F) cultural, historic, and scenic characteristics.

''(4) NATURAL AREAS WITH ECOLOGICAL VALUE.—In reviewing an application for recommendation of a natural area with ecological value for designation as a stewardship site, the Advisory Committee may use a selection technique that includes consideration of—

''(A) measurable conservation targets for the Region; and

''(B) prioritizing new sites using systematic site selection, which shall include consideration of—

''(i) ecological uniqueness;

''(ii) species viability;

''(iii) habitat heterogeneity;

''(iv) size;

''(v) quality;

''(vi) open spaces;

''(vii) land cover;

''(viii) scientific, research, or educational value; and

''(ix) threats.

''(5) DEVIATION FROM PROCESS.—The Advisory Committee may accept an application to recommend a site other than as provided in this subsection, if the Advisory Committee—

''(A) determines that the site makes significant ecological or recreational contributions to the Region; and

''(B) provides to the Administrator the reasons for deviating from the process otherwise described in this subsection.

''(c) SUBMISSION OF LIST OF RECOMMENDED SITES.—

''(1) IN GENERAL.—After completion of the site identification process set forth in subsection (b), the Advisory Committee shall submit to the Administrator its list of sites recommended for designation as stewardship sites.

''(2) LIMITATION.—The Advisory Committee shall not include a site in the list submitted under this subsection unless, prior to submission of the list, the owner of the site is—

''(A) notified of the inclusion of the site in the list; and

''(B) allowed to decline inclusion of the site in the list.

''(3) PUBLIC COMMENT.—In identifying sites for inclusion in the list, the Advisory Committee shall provide an opportunity for submission of, and consider, public comments.

''SEC. 7. GRANTS AND ASSISTANCE.

''(a) IN GENERAL.—The Administrator may provide grants, subject to the availability of appropriations, and other assistance for projects to fulfill the purpose of this Act.

''(b) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using any assistance or grant under this Act shall not exceed 60 percent of the total cost of the activity.

''SEC. 8. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

''(a) ESTABLISHMENT.—There is established a committee to be known as the 'Long Island Sound Stewardship Advisory Committee'.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Administrator may appoint the members of the Advisory Committee in accordance with this subsection and the guidance in section 320(c) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)), except that the Governor of each State may appoint 2 members of the Advisory Committee.

''(2) ADDITIONAL MEMBERS.—In addition to the other members appointed under this subsection, the Advisory Committee may include—

''(A) a representative of the Regional Plan Association;

''(B) a representative of marine trade organizations; and

''(C) a representative of private landowner interests.

''(3) CONSIDERATION OF INTERESTS.—In appointing members of the Advisory Committee, the Administrator shall consider—

''(A) Federal, State, and local government interests and tribal interests;

''(B) the interests of nongovernmental organizations;

''(C) academic interests;

''(D) private interests including land, agriculture, and business interests; and

''(E) recreational and commercial fishing interests.

''(4) CHAIRPERSON.—In addition to the other members appointed under this subsection, the Administrator may appoint as a member of the Advisory Committee an individual to serve as the Chairperson, who may be the Director of the Long Island Sound Office of the Environmental Protection Agency.

''(5) COMPLETION OF APPOINTMENTS.—The Administrator shall complete the appointment of all members of the Advisory Committee by not later than 180 days after the date of enactment of this Act [Oct. 16, 2006].

''(A) [sic] VACANCIES.—A vacancy on the Advisory Committee—

''(i) shall be filled not later than 90 days after the vacancy occurs;

''(ii) shall not affect the powers of the Advisory Committee; and

''(iii) shall be filled in the same manner as the original appointment was made.

''(c) TERM.—

''(1) IN GENERAL.—A member of the Advisory Committee shall be appointed for a term of 4 years.

''(2) MULTIPLE TERMS.—An individual may be appointed as a member of the Advisory Committee for more than 1 term.

''(d) POWERS.—The Advisory Committee may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Advisory Committee considers advisable to carry out this Act.

''(e) MEETINGS.—

''(1) IN GENERAL.—The Advisory Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.

''(2) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Advisory Committee have been appointed, the Chairperson shall call the initial meeting of the Advisory Committee.

''(3) QUORUM.—A majority of the members of the Advisory Committee shall constitute a quorum, but a lesser number of members may hold hearings.

''(f) ADAPTIVE MANAGEMENT.—

''(1) IN GENERAL.—The Advisory Committee shall use an adaptive management framework to identify the best policy initiatives and actions through—

''(A) definition of strategic goals;

''(B) definition of policy options for methods to achieve strategic goals;

''(C) establishment of measures of success;

''(D) identification of uncertainties;

''(E) development of informative models of policy implementation;

''(F) separation of the landscape into geographic units;

''(G) monitoring key responses at different spatial and temporal scales; and

''(H) evaluation of outcomes and incorporation into management strategies.

''(2) APPLICATION OF ADAPTIVE MANAGEMENT FRAMEWORK.—The Advisory Committee shall apply the adaptive management framework to the process for making recommendations under subsections (b) through (f) of section 6 to the Administrator regarding sites that should be designated as stewardship sites.

''(3) ADAPTIVE MANAGEMENT.—The adaptive management framework required by this subsection shall consist of a scientific process—

''(A) for—

''(i) developing predictive models;

''(ii) making management policy decisions based upon the model outputs;

''(iii) revising the management policies as data become available with which to evaluate the policies; and

''(iv) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

''(B) that requires that management be viewed as experimental.

''(g) TERMINATION OF ADVISORY COMMITTEE.—The Advisory Committee shall terminate on December 31, 2021.

''SEC. 9. REPORTS.

''(a) ADMINISTRATOR.—The Administrator shall publish and make available to the public on the Internet and in paper form—

''(1) not later than 1 year after the date of enactment of this Act [Oct. 16, 2006], a report that—

''(A) assesses the role of this Act in protecting the Long Island Sound;

''(B) establishes in coordination with the Advisory Committee guidelines, criteria, schedules, and due dates for evaluating information to designate stewardship sites;

''(C) includes information about any grants that are available for the purchase of land or property rights to protect stewardship sites; and

''(D) accounts for funds received and expended during the previous fiscal year;

''(2) an update of such report, at least every other year; and

''(3) information on funding and any new stewardship sites more frequently than every other year.

''(b) ADVISORY COMMITTEE.—

''(1) REPORT.—For each of fiscal years 2007 through 2011, the Advisory Committee shall submit to the Administrator and the decisionmaking body of the Long Island Sound Study Management Conference established under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330), an annual report that contains—

''(A) a detailed statement of the findings and conclusions of the Advisory Committee since the last report under this subsection;

''(B) a description of all sites recommended by the Advisory Committee to the Administrator for designation as stewardship sites;

''(C) the recommendations of the Advisory Committee for such legislation and administrative actions as the Advisory Committee considers appropriate; and

''(D) in accordance with paragraph (2), the recommendations of the Advisory Committee for the awarding of grants.

''(2) RECOMMENDATION FOR GRANTS.—

''(A) IN GENERAL.—The Advisory Committee shall recommend that the Administrator award grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

''(i) purchase of the property of a stewardship site;

''(ii) purchase of relevant property rights to a stewardship site; or

''(iii) entering into any other binding legal arrangement that ensures that the values of a stewardship site are sustained, including entering into an arrangement with a land manager or property owner to develop or implement a management plan that is necessary for the conservation of natural resources.

''(B) EQUITABLE DISTRIBUTION OF FUNDS.—The Advisory Committee shall exert due diligence to ensure that its recommendations result in an equitable distribution of funds between the States.

''SEC. 10. PRIVATE PROPERTY PROTECTION; NO REGULATORY AUTHORITY.

''(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

''(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

''(2) modifies the application of any provision of Federal, State, or local law with regard to public access to or use of private property, except as entered into by voluntary agreement of the owner or custodian of the property.

''(b) LIABILITY.—Establishment of the Region does not create any liability, or have any effect on any liability under any other law, of any private property owner with respect to any person injured on the private property.

''(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local governments to regulate land use.

''(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS NOT REQUIRED.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in any land conservation, financial or technical assistance, or other programs established under this Act.

''(e) PURCHASE OF LAND OR INTEREST IN LAND FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act may be used to purchase land or interests in land only from willing sellers.

''(f) MANNER OF ACQUISITION.—All acquisitions of land under this Act shall be made in a voluntary manner and shall not be the result of forced takings.

''(g) EFFECT OF ESTABLISHMENT.—

''(1) IN GENERAL.—The boundaries of the Region represent the area within which Federal funds appropriated for the purpose of this Act may be expended.

''(2) REGULATORY AUTHORITY.—The establishment of the Region and the boundaries of the Region do not provide any regulatory authority not in existence immediately before the enactment of this Act [Oct. 16, 2006] on land use in the Region by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including public lands donated by a State or local government).

''SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There is authorized to be appropriated to the Administrator $25,000,000 for each of fiscal years 2019 through 2023 to carry out this Act, including for—

''(1) acquisition of land and interests in land;

''(2) development and implementation of site management plans;

''(3) site enhancements to reduce threats or promote stewardship; and

''(4) administrative expenses of the Advisory Committee and the Administrator.

''(b) USE OF FUNDS.—Amounts made available to the Administrator under this section each fiscal year shall be used by the Administrator after reviewing the recommendations included in the annual reports of the Advisory Committee under section 9.

''(c) AUTHORIZATION OF GIFTS, DEVISES, AND BEQUESTS FOR SYSTEM.—In furtherance of the purpose of this Act, the Administrator may accept and use any gift, devise, or bequest of real or personal property, proceeds therefrom, or interests therein, to carry out this Act. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude, if such terms are considered by the Administrator to be in accordance with law and compatible with the purpose for which acceptance is sought.

''(d) LIMITATION ON ADMINISTRATIVE COSTS.—Of the amount available each fiscal year to carry out this Act, not more than 8 percent may be used for administrative costs.''

§ 1270. Lake Champlain Basin Program

(a) Establishment

(1) In general

There is established a Lake Champlain Management Conference to develop a comprehen-

sive pollution prevention, control, and restoration plan for Lake Champlain. The Administrator shall convene the management conference within ninety days of November 16, 1990.

(2) Implementation

The Administrator—

(A) may provide support to the State of Vermont, the State of New York, and the New England Interstate Water Pollution Control Commission for the implementation of the Lake Champlain Basin Program; and

(B) shall coordinate actions of the Environmental Protection Agency under subparagraph (A) with the actions of other appropriate Federal agencies.

(b) Membership

The Members of the Management Conference shall be comprised of—

(1) the Governors of the States of Vermont and New York;

(2) each interested Federal agency, not to exceed a total of five members;

(3) the Vermont and New York Chairpersons of the Vermont, New York, Quebec Citizens Advisory Committee for the Environmental Management of Lake Champlain;

(4) four representatives of the State legislature of Vermont;

(5) four representatives of the State legislature of New York;

(6) six persons representing local governments having jurisdiction over any land or water within the Lake Champlain basin, as determined appropriate by the Governors; and

(7) eight persons representing affected industries, nongovernmental organizations, public and private educational institutions, and the general public, as determined appropriate by the trigovernmental Citizens Advisory Committee for the Environmental Management of Lake Champlain, but not to be current members of the Citizens Advisory Committee.

(c) Technical Advisory Committee

(1) The Management Conference shall, not later than one hundred and twenty days after November 16, 1990, appoint a Technical Advisory Committee.

(2) Such Technical Advisory Committee shall consist of officials of: appropriate departments and agencies of the Federal Government; the State governments of New York and Vermont; and governments of political subdivisions of such States; and public and private research institutions.

(d) Research program

The Management Conference shall establish a multi-disciplinary environmental research program for Lake Champlain. Such research program shall be planned and conducted jointly with the Lake Champlain Research Consortium.

(e) Pollution prevention, control, and restoration plan

(1) Not later than three years after November 16, 1990, the Management Conference shall publish a pollution prevention, control, and restoration plan for Lake Champlain.

(2) The Plan developed pursuant to this section shall—

(A) identify corrective actions and compliance schedules addressing point and nonpoint sources of pollution necessary to restore and maintain the chemical, physical, and biological integrity of water quality, a balanced, indigenous population of shellfish, fish and wildlife, recreational, and economic activities in and on the lake;

(B) incorporate environmental management concepts and programs established in State and Federal plans and programs in effect at the time of the development of such plan;

(C) clarify the duties of Federal and State agencies in pollution prevention and control activities, and to the extent allowable by law, suggest a timetable for adoption by the appropriate Federal and State agencies to accomplish such duties within a reasonable period of time;

(D) describe the methods and schedules for funding of programs, activities, and projects identified in the Plan, including the use of Federal funds and other sources of funds;

(E) include a strategy for pollution prevention and control that includes the promotion of pollution prevention and management practices to reduce the amount of pollution generated in the Lake Champlain basin; and

(F) be reviewed and revised, as necessary, at least once every 5 years, in consultation with the Administrator and other appropriate Federal agencies.

(3) The Administrator, in cooperation with the Management Conference, shall provide for public review and comment on the draft Plan. At a minimum, the Management Conference shall conduct one public meeting to hear comments on the draft plan in the State of New York and one such meeting in the State of Vermont.

(4) Not less than one hundred and twenty days after the publication of the Plan required pursuant to this section, the Administrator shall approve such plan if the plan meets the requirements of this section and the Governors of the States of New York and Vermont concur.

(5) Upon approval of the plan, such plan shall be deemed to be an approved management program for the purposes of section 1329(h) of this title and such plan shall be deemed to be an approved comprehensive conservation and management plan pursuant to section 1330 of this title.

(f) Grant assistance

(1) The Administrator may, in consultation with participants in the Lake Champlain Basin Program, make grants to State, interstate, and regional water pollution control agencies, and public or nonprofit agencies, institutions, and organizations.

(2) Grants under this subsection shall be made for assisting research, surveys, studies, and modeling and technical and supporting work necessary for the development and implementation of the Plan.

(3) The amount of grants to any person under this subsection for a fiscal year shall not exceed 75 per centum of the costs of such research, survey, study and work and shall be made available on the condition that non-Federal share of such costs are provided from non-Federal sources.

(4) The Administrator may establish such requirements for the administration of grants as he determines to be appropriate.

(g) Definitions

In this section:

(1) Lake Champlain Basin Program

The term ''Lake Champlain Basin Program'' means the coordinated efforts among the Federal Government, State governments, and local governments to implement the Plan.

(2) Lake Champlain drainage basin

The term ''Lake Champlain drainage basin'' means all or part of Clinton, Franklin, Hamilton, Warren, Essex, and Washington counties in the State of New York and all or part of Franklin, Grand Isle, Chittenden, Addison, Rutland, Bennington, Lamoille, Orange, Washington, Orleans, and Caledonia counties in Vermont, that contain all of the streams, rivers, lakes, and other bodies of water, including wetlands, that drain into Lake Champlain.

(3) Plan

The term ''Plan'' means the plan developed under subsection (e).

(h) No effect on certain authority

Nothing in this section—

(1) affects the jurisdiction or powers of—

(A) any department or agency of the Federal Government or any State government; or

(B) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory;

(2) provides new regulatory authority for the Environmental Protection Agency; or

(3) affects section 304 of the Great Lakes Critical Programs Act of 1990 (Public Law 101–596; 33 U.S.C. 1270 note).

(i) Authorization

There are authorized to be appropriated to the Environmental Protection Agency to carry out this section—

(1) $2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995;

(2) such sums as are necessary for each of fiscal years 1996 through 2003; and

(3) $11,000,000 for each of fiscal years 2004 through 2008.

(June 30, 1948, ch. 758, title I, §120, as added Pub. L. 101–596, title III, §303, Nov. 16, 1990, 104 Stat. 3006; amended Pub. L. 107–303, title II, §202, Nov. 27, 2002, 116 Stat. 2358.)

AMENDMENTS

2002—Pub. L. 107–303, §202(1), substituted ''Lake Champlain Basin Program'' for ''Lake Champlain Management Conference'' in section catchline.

Subsec. (a). Pub. L. 107–303, §202(1), (2), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (d). Pub. L. 107–303, §202(3), struck out par. (1) designation before ''The Management''.

Subsec. (e)(1). Pub. L. 107–303, §202(4)(A), struck out ''(hereafter in this section referred to as the 'Plan')'' after ''restoration plan''.

Subsec. (e)(2)(F). Pub. L. 107–303, §202(4)(B), added subpar. (F).

Subsec. (f)(1). Pub. L. 107–303, §202(5)(A), substituted ''participants in the Lake Champlain Basin Program,'' for ''the Management Conference,''.

Subsec. (f)(2). Pub. L. 107–303, §202(5)(B), substituted ''development and implementation of the Plan'' for ''development of the Plan and for retaining expert consultants in support of litigation undertaken by the State of New York and the State of Vermont to compel cleanup or obtain cleanup damage costs from persons responsible for pollution of Lake Champlain''.

Subsec. (g). Pub. L. 107–303, §202(6)(A), substituted ''Definitions'' for '' 'Lake Champlain drainage basin' defined'' in subsec. heading, inserted introductory provisions, added par. (1), inserted par. (2) designation and heading after par. (1) and inserted ''The term'' before '' 'Lake Champlain drainage''.

Subsec. (g)(2). Pub. L. 107–303, §202(6)(B), inserted ''Hamilton,'' after ''Franklin,'' and ''Bennington,'' after ''Rutland,''.

Subsec. (g)(3). Pub. L. 107–303, §202(6)(C), added par. (3).

Subsec. (h). Pub. L. 107–303, §202(7), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows: ''Nothing in this section shall be construed so as to affect the jurisdiction or powers of—

''(1) any department or agency of the Federal Government or any State government; or

''(2) any international organization or entity related to Lake Champlain created by treaty or memorandum to which the United States is a signatory.''

Subsec. (i). Pub. L. 107–303, §202(8), substituted ''section—'' for ''section $2,000,000'', inserted ''(1) $2,000,000'' before ''for each of fiscal years 1991,'', substituted ''1995;'' for ''1995.'', and added pars. (2) and (3).

FEDERAL PROGRAM COORDINATION

Pub. L. 101–596, title III, §304, Nov. 16, 1990, 104 Stat. 3008, as amended by Pub. L. 104–127, title III, §336(a)(2)(F), Apr. 4, 1996, 110 Stat. 1005; Pub. L. 115–334, title II, §2301(d)(2)(F), Dec. 20, 2018, 132 Stat. 4555, provided that:

''(a) DESIGNATION OF LAKE CHAMPLAIN AS A PRIORITY AREA UNDER THE ENVIRONMENTAL QUALITY INCENTIVES PROGRAM.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Lake Champlain basin, as defined under section 120(h) of the Federal Water Pollution Control Act [33 U.S.C. 1270(h)], shall be designated by the Secretary of Agriculture as a priority area under the environmental quality incentives program established under subchapter A of chapter 4 of subtitle D of title XII of the Food Security Act of 1985 [16 U.S.C. 3839aa et seq.].

''(2) TECHNICAL ASSISTANCE REIMBURSEMENT.—To carry out the purposes of this subsection, the technical assistance reimbursement from the Agricultural Stabilization and Conservation Service authorized under the Soil Conservation and Domestic Allotment Act [16 U.S.C. 590a et seq.], shall be increased from 5 per centum to 10 per centum.

''(3) COMPREHENSIVE AGRICULTURAL MONITORING.—The Secretary, in consultation with the Management Conference and appropriate State and Federal agencies, shall develop a comprehensive agricultural monitoring and evaluation network for all major drainages within the Lake Champlain basin.

''(4) ALLOCATION OF FUNDS.—In allocating funds under this subsection, the Secretary of Agriculture shall consult with the Management Conference established under section 120 of the Federal Water Pollution Control Act and to the extent allowable by law, allocate funds to those agricultural enterprises located at sites that the Management Conference determines to be priority sites, on the basis of a concern for ensuring implementation of nonpoint source pollution controls throughout the Lake Champlain basin.

''(b) COOPERATION OF THE UNITED STATES GEOLOGICAL SURVEY OF THE DEPARTMENT OF THE INTERIOR.—For the purpose of enhancing and expanding basic data collec-

tion and monitoring in operation in the Lake Champlain basin, as defined under section 120 of the Federal Water Pollution Control Act [33 U.S.C. 1270], the Secretary of the Interior, acting through the heads of water resources divisions of the New York and New England districts of the United States Geological Survey, shall—

''(1) in cooperation with appropriate universities and private research institutions, and the appropriate officials of the appropriate departments and agencies of the States of New York and Vermont, develop an integrated geographic information system of the Lake Champlain basin;

''(2) convert all partial recording sites in the Lake Champlain basin to continuous monitoring stations with full gauging capabilities and status; and

''(3) establish such additional continuous monitoring station sites in the Lake Champlain basin as are necessary to carry out basic data collection and monitoring, as defined by the Secretary of the Interior, including groundwater mapping, and water quality and sediment data collection.

''(c) COOPERATION OF THE UNITED STATES FISH AND WILDLIFE SERVICE OF THE DEPARTMENT OF THE INTERIOR.—

''(1) RESOURCE CONSERVATION PROGRAM.—The Secretary of the Interior, acting through the United States Fish and Wildlife Service, in cooperation with the Lake Champlain Fish and Wildlife Management Cooperative and the Management Conference established pursuant to this subsection shall—

''(A) establish and implement a fisheries resources restoration, development and conservation program, including dedicating a level of hatchery production within the Lake Champlain basin at or above the level that existed immediately preceding the date of enactment of this Act [Nov. 16, 1990]; and

''(B) conduct a wildlife species and habitat assessment survey in the Lake Champlain basin, including—

''(i) a survey of Federal threatened and endangered species, listed or proposed for listing under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), New York State and State of Vermont threatened and endangered species and other species of special concern, migratory nongame species of management concern, and national resources plan species;

''(ii) a survey of wildlife habitats such as islands, wetlands, and riparian areas; and

''(iii) a survey of migratory bird populations breeding, migrating and wintering within the Lake Champlain basin.

''(2) To accomplish the purposes of paragraph (1), the Director of the United States Fish and Wildlife Service is authorized to carry out activities related to—

''(A) controlling sea lampreys and other nonindigenous aquatic animal nuisances;

''(B) improving the health of fishery resources;

''(C) conducting investigations about and assessing the status of fishery resources, and disseminating that information to all interested parties; and

''(D) conducting and periodically updating a survey of the fishery resources and their habitats and food chains in the Lake Champlain basin.

''(d) AUTHORIZATIONS.—(1) There is authorized to be appropriated to the Department of Agriculture $2,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to carry out subsection (a) of this section.

''(2) There is authorized to be appropriated to the Department of [the] Interior $1,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995 to carry out subsections (b) and (c) of this section.''

§ 1271. Sediment survey and monitoring

(a) Survey

(1) In general

The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive national survey of data regarding aquatic sediment quality in the United States. The Administrator shall compile all existing information on the quantity, chemical and physical composition, and geographic location of pollutants in aquatic sediment, including the probable source of such pollutants and identification of those sediments which are contaminated pursuant to section 501(b)(4).[1]

(2) Report

Not later than 24 months after October 31, 1992, the Administrator shall report to the Congress the findings, conclusions, and recommendations of such survey, including recommendations for actions necessary to prevent contamination of aquatic sediments and to control sources of contamination.

(b) Monitoring

(1) In general

The Administrator, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Secretary, shall conduct a comprehensive and continuing program to assess aquatic sediment quality. The program conducted pursuant to this subsection shall, at a minimum—

(A) identify the location of pollutants in aquatic sediment;

(B) identify the extent of pollutants in sediment and those sediments which are contaminated pursuant to section 501(b)(4);[1]

(C) establish methods and protocols for monitoring the physical, chemical, and biological effects of pollutants in aquatic sediment and of contaminated sediment;

(D) develop a system for the management, storage, and dissemination of data concerning aquatic sediment quality;

(E) provide an assessment of aquatic sediment quality trends over time;

(F) identify locations where pollutants in sediment may pose a threat to the quality of drinking water supplies, fisheries resources, and marine habitats; and

(G) establish a clearing house for information on technology, methods, and practices available for the remediation, decontamination, and control of sediment contamination.

(2) Report

The Administrator shall submit to Congress a report on the findings of the monitoring under paragraph (1) on the date that is 2 years after the date specified in subsection (a)(2) and biennially thereafter.

(Pub. L. 102–580, title V, § 503, Oct. 31, 1992, 106 Stat. 4865.)

REFERENCES IN TEXT

Section 501(b)(4), referred to in subsecs. (a)(1) and (b)(1)(B), means section 501(b)(4) of Pub. L. 102–580, which is set out below.

CODIFICATION

Section was enacted as part of the Water Resources Development Act of 1992 and also as part of the Na-

[1] See References in Text note below.

tional Contaminated Sediment Assessment and Management Act, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

AVAILABILITY OF CONTAMINATED SEDIMENTS INFORMATION

Pub. L. 102–580, title III, §327, Oct. 31, 1992, 106 Stat. 4851, directed Secretary to conduct national study on information that was currently available on contaminated sediments of surface waters of United States and compile information obtained for the purpose of identifying location and nature of contaminated sediments and, not later than 1 year after Oct. 31, 1992, to transmit to Congress a report on the results of the study.

NATIONAL CONTAMINATED SEDIMENT ASSESSMENT AND MANAGEMENT; SHORT TITLE; DEFINITIONS; TASK FORCE

Pub. L. 102–580, title V, §§501, 502, Oct. 31, 1992, 106 Stat. 4864, provided that:

''SEC. 501. SHORT TITLE AND DEFINITIONS.

''(a) SHORT TITLE.—This title [enacting this section, amending sections 1412 to 1416, 1420, and 1421 of this title, and enacting provisions set out below] may be cited as the 'National Contaminated Sediment Assessment and Management Act'.

''(b) DEFINITIONS.—For the purposes of sections 502 and 503 of this title [enacting this section and provisions set out below]—

''(1) the term 'aquatic sediment' means sediment underlying the navigable waters of the United States;

''(2) the term 'navigable waters' has the same meaning as in section 502(7) of the Federal Water Pollution Control Act (33 U.S.C. 1362(7));

''(3) the term 'pollutant' has the same meaning as in section 502(6) of the Federal Water Pollution Control Act (33 U.S.C. 1362(6)); except that such term does not include dredge spoil, rock, sand, or cellar dirt;

''(4) the term 'contaminated sediment' means aquatic sediment which—

''(A) contains chemical substances in excess of appropriate geochemical, toxicological or sediment quality criteria or measures; or

''(B) is otherwise considered by the Administrator to pose a threat to human health or the environment; and

''(5) the term 'Administrator' means the Administrator of the Environmental Protection Agency.

''SEC. 502. NATIONAL CONTAMINATED SEDIMENT TASK FORCE.

''(a) ESTABLISHMENT.—There is established a National Contaminated Sediment Task Force (hereinafter referred to in this section as the 'Task Force'). The Task Force shall—

''(1) advise the Administrator and the Secretary in the implementation of this title;

''(2) review and comment on reports concerning aquatic sediment quality and the extent and seriousness of aquatic sediment contamination throughout the Nation;

''(3) review and comment on programs for the research and development of aquatic sediment restoration methods, practices, and technologies;

''(4) review and comment on the selection of pollutants for development of aquatic sediment criteria and the schedule for the development of such criteria;

''(5) advise appropriate officials in the development of guidelines for restoration of contaminated sediment;

''(6) make recommendations to appropriate officials concerning practices and measures—

''(A) to prevent the contamination of aquatic sediments; and

''(B) to control sources of sediment contamination; and

''(7) review and assess the means and methods for locating and constructing permanent, cost-effective long-term disposal sites for the disposal of dredged material that is not suitable for ocean dumping (as determined under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) [also 16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 2801 et seq.]).

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The membership of the Task Force shall include 1 representative of each of the following:

''(A) The Administrator.

''(B) The Secretary.

''(C) The National Oceanic and Atmospheric Administration.

''(D) The United States Fish and Wildlife Service.

''(E) The Geological Survey [now United States Geological Survey].

''(F) The Department of Agriculture.

''(2) ADDITIONAL MEMBERS.—Additional members of the Task Force shall be jointly selected by the Administrator and the Secretary, and shall include—

''(A) not more than 3 representatives of States;

''(B) not more than 3 representatives of ports, agriculture, and manufacturing; and

''(C) not more than 3 representatives of public interest organizations with a demonstrated interest in aquatic sediment contamination.

''(3) COCHAIRMEN.—The Administrator and the Secretary shall serve as cochairmen of the Task Force.

''(4) CLERICAL AND TECHNICAL ASSISTANCE.—Such clerical and technical assistance as may be necessary to discharge the duties of the Task Force shall be provided by the personnel of the Environmental Protection Agency and the Army Corps of Engineers.

''(5) COMPENSATION FOR ADDITIONAL MEMBERS.—The additional members of the Task Force selected under paragraph (2) shall, while attending meetings or conferences of the Task Force, be compensated at a rate to be fixed by the cochairmen, but not to exceed the daily equivalent of the base rate of pay in effect for grade GS–15 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force. While away from their homes or regular places of business in the performance of services for the Task Force, such members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

''(c) REPORT.—Within 2 years after the date of the enactment of this Act [Oct. 31, 1992], the Task Force shall submit to Congress a report stating the findings and recommendations of the Task Force.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 102–580, title V, §509(b), Oct. 31, 1992, 106 Stat. 4870, provided that: ''There is authorized to be appropriated to the Administrator to carry out sections 502 and 503 [enacting this section and provisions set out above] such sums as may be necessary.''

''SECRETARY'' DEFINED

Secretary means the Secretary of the Army, see section 3 of Pub. L. 102–580, set out as a note under section 2201 of this title.

§ 1271a. Research and development program

(a) In general

In coordination with other Federal, State, and local officials, the Administrator of the Environmental Protection Agency may conduct research on the development and use of innovative approaches, technologies, and techniques for the remediation of sediment contamination in areas of concern that are located wholly or partially in the United States.

(b) Authorization of appropriations

(1) In general

In addition to any amounts authorized under other provisions of law, there is authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2004 through 2010.

(2) Availability

Funds appropriated under paragraph (1) shall remain available until expended.

(Pub. L. 107–303, title I, § 106, Nov. 27, 2002, 116 Stat. 2358; Pub. L. 110–365, § 4, Oct. 8, 2008, 122 Stat. 4023.)

CODIFICATION

Section was enacted as part of the Great Lakes Legacy Act of 2002, and also as part of the Great Lakes and Lake Champlain Act of 2002, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–365 added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: ''In addition to amounts authorized under other laws, there is authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2004 through 2008.''

§ 1272. Environmental dredging

(a) Operation and maintenance of navigation projects

Whenever necessary to meet the requirements of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Secretary, in consultation with the Administrator of the Environmental Protection Agency, may remove and remediate, as part of operation and maintenance of a navigation project, contaminated sediments outside the boundaries of and adjacent to the navigation channel.

(b) Nonproject specific

(1) In general

The Secretary may remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement if such removal and remediation is requested by a non-Federal sponsor and the sponsor agrees to pay 35 percent of the cost of such removal and remediation.

(2) Maximum amount

The Secretary may not expend more than $50,000,000 in a fiscal year to carry out this subsection.

(c) Joint plan requirement

The Secretary may only remove and remediate contaminated sediments under subsection (b) in accordance with a joint plan developed by the Secretary and interested Federal, State, and local government officials. Such plan must include an opportunity for public comment, a description of the work to be undertaken, the method to be used for dredged material disposal, the roles and responsibilities of the Secretary and non-Federal sponsors, and identification of sources of funding.

(d) Disposal costs

Costs of disposal of contaminated sediments removed under this section shall be a[1] shared as a cost of construction.

(e) Limitation on statutory construction

Nothing in this section shall be construed to affect the rights and responsibilities of any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.].

(f) Priority work

In carrying out this section, the Secretary shall give priority to work in the following areas:

(1) Brooklyn Waterfront, New York.
(2) Buffalo Harbor and River, New York.
(3) Ashtabula River, Ohio.
(4) Mahoning River, Ohio.
(5) Lower Fox River, Wisconsin.
(6) Passaic River and Newark Bay, New Jersey.
(7) Snake Creek, Bixby, Oklahoma.
(8) Willamette River, Oregon.

(g) Nonprofit entities

Notwithstanding section 1962d–5b of title 42, for any project carried out under this section, a non-Federal sponsor may include a nonprofit entity, with the consent of the affected local government.

(Pub. L. 101–640, title III, § 312, Nov. 28, 1990, 104 Stat. 4639; Pub. L. 104–303, title II, § 205, Oct. 12, 1996, 110 Stat. 3679; Pub. L. 106–53, title II, § 224, Aug. 17, 1999, 113 Stat. 297; Pub. L. 106–541, title II, § 210(a), Dec. 11, 2000, 114 Stat. 2592.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter (§ 1251 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (e), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

CODIFICATION

Section was formerly set out as a note under section 1252 of this title.

Section was enacted as part of the Water Resources Development Act of 1990, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–541 added subsec. (g).

1999—Subsec. (b)(1). Pub. L. 106–53, § 224(1)(A), substituted ''35 percent'' for ''50 percent''.

Subsec. (b)(2). Pub. L. 106–53, § 224(1)(B), substituted ''$50,000,000'' for ''$20,000,000''.

Subsec. (d). Pub. L. 106–53, § 224(2), substituted ''shared as a cost of construction'' for ''non-Federal responsibility''.

[1] So in original. The word ''a'' probably should not appear.

Subsec. (f)(6) to (8). Pub. L. 106–53, § 224(3), added pars. (6) to (8).

1996—Subsec. (a). Pub. L. 104–303, § 205(1), inserted ''and remediate'' after ''remove''.

Subsec. (b)(1). Pub. L. 104–303, § 205(1), (2)(A), inserted ''and remediate'' after ''remove'' and inserted ''and remediation'' after ''removal'' in two places.

Subsec. (b)(2). Pub. L. 104–303, § 205(2)(B), substituted ''$20,000,000'' for ''$10,000,000''.

Subsec. (c). Pub. L. 104–303, § 205(1), inserted ''and remediate'' after ''remove''.

Subsec. (f). Pub. L. 104–303, § 205(3), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: ''This section shall not be effective after the last day of the 5-year period beginning on November 28, 1990; except that the Secretary may complete any project commenced under this section on or before such last day.''

§ 1273. Lake Pontchartrain Basin

(a) Establishment of restoration program

The Administrator shall establish within the Environmental Protection Agency the Lake Pontchartrain Basin Restoration Program.

(b) Purpose

The purpose of the program shall be to restore the ecological health of the Basin by developing and funding restoration projects and related scientific and public education projects.

(c) Duties

In carrying out the program, the Administrator shall—

(1) provide administrative and technical assistance to a management conference convened for the Basin under section 1330 of this title;

(2) assist and support the activities of the management conference, including the implementation of recommendations of the management conference;

(3) support environmental monitoring of the Basin and research to provide necessary technical and scientific information;

(4) develop a comprehensive research plan to address the technical needs of the program;

(5) coordinate the grant, research, and planning programs authorized under this section; and

(6) collect and make available to the public publications, and other forms of information the management conference determines to be appropriate, relating to the environmental quality of the Basin.

(d) Grants

The Administrator may make grants to pay not more than 75 percent of the costs—

(1) for restoration projects and studies recommended by a management conference convened for the Basin under section 1330 of this title; and

(2) for public education projects recommended by the management conference.

(e) Definitions

In this section, the following definitions apply:

(1) Basin

The term ''Basin'' means the Lake Pontchartrain Basin, a 5,000 square mile watershed encompassing 16 parishes in the State of Louisiana and 4 counties in the State of Mississippi.

(2) Program

The term ''program'' means the Lake Pontchartrain Basin Restoration Program established under subsection (a).

(f) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2001 through 2012 and the amount appropriated for fiscal year 2009 for each of fiscal years 2013 through 2017. Such sums shall remain available until expended.

(2) Public education projects

Not more than 15 percent of the amount appropriated pursuant to paragraph (1) in a fiscal year may be expended on grants for public education projects under subsection (d)(2).

(June 30, 1948, ch. 758, title I, § 121, as added Pub. L. 106–457, title V, § 502, Nov. 7, 2000, 114 Stat. 1973; amended Pub. L. 109–392, § 1, Dec. 12, 2006, 120 Stat. 2703; Pub. L. 112–237, § 1, Dec. 28, 2012, 126 Stat. 1628.)

PRIOR PROVISIONS

Another section 121 of act June 30, 1948, was renumbered section 122 and is classified to section 1274 of this title.

AMENDMENTS

2012—Subsec. (d). Pub. L. 112–237, § 1(1), inserted ''to pay not more than 75 percent of the costs'' after ''make grants'' in introductory provisions.

Subsec. (f)(1). Pub. L. 112–237, § 1(2), substituted ''2012 and the amount appropriated for fiscal year 2009 for each of fiscal years 2013 through 2017'' for ''2011''.

2006—Subsec. (f)(1). Pub. L. 109–392 substituted ''2011'' for ''2005''.

MANAGEMENT CONFERENCE

Pub. L. 110–114, title V, § 5084, Nov. 8, 2007, 121 Stat. 1228, provided that: ''For purposes of carrying out section 121 of the Federal Water Pollution Control Act (33 U.S.C. 1273), the Lake Pontchartrain, Louisiana, basin stakeholders conference convened by the Environmental Protection Agency, National Oceanic and Atmospheric Administration, and United States Geological Survey on February 25, 2002, shall be treated as being a management conference convened under section 320 of such Act (33 U.S.C. 1330).''

§ 1274. Watershed pilot projects

(a) In general

The Administrator, in coordination with the States, may provide technical assistance and grants to a municipality or municipal entity to carry out pilot projects relating to the following areas:

(1) Watershed management of wet weather discharges

The management of municipal combined sewer overflows, sanitary sewer overflows, and stormwater discharges, on an integrated watershed or subwatershed basis for the purpose of demonstrating the effectiveness of a unified wet weather approach.

(2) Stormwater best management practices

The control of pollutants from municipal separate storm sewer systems for the purpose

of demonstrating and determining controls that are cost-effective and that use innovative technologies to manage, reduce, treat, recapture, or reuse municipal stormwater, including techniques that utilize infiltration, evapotranspiration, and reuse of stormwater onsite.

(3) Watershed partnerships

Efforts of municipalities and property owners to demonstrate cooperative ways to address nonpoint sources of pollution to reduce adverse impacts on water quality.

(4) Integrated water resource plan

The development of an integrated water resource plan for the coordinated management and protection of surface water, ground water, and stormwater resources on a watershed or subwatershed basis to meet the objectives, goals, and policies of this chapter.

(5) Municipality-wide stormwater management planning

The development of a municipality-wide plan that identifies the most effective placement of stormwater technologies and management approaches, to reduce water quality impairments from stormwater on a municipality-wide basis.

(6) Increased resilience of treatment works

Efforts to assess future risks and vulnerabilities of publicly owned treatment works to manmade or natural disasters, including extreme weather events and sea-level rise, and to carry out measures, on a systemwide or area-wide basis, to increase the resiliency of publicly owned treatment works.

(b) Administration

The Administrator, in coordination with the States, shall provide municipalities participating in a pilot project under this section the ability to engage in innovative practices, including the ability to unify separate wet weather control efforts under a single permit.

(c) Report to Congress

Not later than October 1, 2015, the Administrator shall transmit to Congress a report on the results of the pilot projects conducted under this section and their possible application nationwide.

(June 30, 1948, ch. 758, title I, § 122, formerly § 121, as added Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 112(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–225; renumbered § 122, Pub. L. 109–392, § 2, Dec. 12, 2006, 120 Stat. 2703; amended Pub. L. 113–121, title V, § 5011, June 10, 2014, 128 Stat. 1327.)

AMENDMENTS

2014—Pub. L. 113–121, § 5011(1), struck out ''Wet weather'' before ''Watershed'' in section catchline.

Subsec. (a). Pub. L. 113–121, § 5011(2)(A), in introductory provisions, substituted ''to a municipality or municipal entity'' for ''for treatment works'' and struck out ''of wet weather discharge control'' after ''the following areas''.

Subsec. (a)(2). Pub. L. 113–121, § 5011(2)(B), substituted ''to manage, reduce, treat, recapture, or reuse municipal stormwater, including techniques that utilize infiltration, evapotranspiration, and reuse of stormwater onsite'' for ''in reducing such pollutants from stormwater discharges''.

Subsec. (a)(3) to (6). Pub. L. 113–121, § 5011(2)(C), added pars. (3) to (6).

Subsecs. (c), (d). Pub. L. 113–121, § 5011(3)–(5), redesignated subsec. (d) as (c), substituted ''October 1, 2015,'' for ''5 years after December 21, 2000,'', and struck out former subsec. (c) which authorized appropriations to carry out this section.

§ 1275. Columbia River Basin Restoration

(a) Definitions

In this section, the following definitions apply:

(1) Columbia River Basin

The term ''Columbia River Basin'' means the entire United States portion of the Columbia River watershed.

(2) Estuary Partnership

The term ''Estuary Partnership'' means the Lower Columbia Estuary Partnership, an entity created by the States of Oregon and Washington and the Environmental Protection Agency under section 1330 of this title.

(3) Estuary Plan

(A) In general

The term ''Estuary Plan'' means the Estuary Partnership Comprehensive Conservation and Management Plan adopted by the Environmental Protection Agency and the Governors of Oregon and Washington on October 20, 1999, under section 1330 of this title.

(B) Inclusion

The term ''Estuary Plan'' includes any amendments to the plan.

(4) Lower Columbia River Estuary

The term ''Lower Columbia River Estuary'' means the mainstem Columbia River from the Bonneville Dam to the Pacific Ocean and tidally influenced portions of tributaries to the Columbia River in that region.

(5) Middle and Upper Columbia River Basin

The term ''Middle and Upper Columbia River Basin'' means the region consisting of the United States portion of the Columbia River Basin above Bonneville Dam.

(6) Program

The term ''Program'' means the Columbia River Basin Restoration Program established under subsection (b)(1)(A).

(b) Columbia River Basin Restoration Program

(1) Establishment

(A) In general

The Administrator shall establish within the Environmental Protection Agency a Columbia River Basin Restoration Program.

(B) Effect

(i) The establishment of the Program does not modify any legal or regulatory authority or program in effect as of December 16, 2016, including the roles of Federal agencies in the Columbia River Basin.

(ii) This section does not create any new regulatory authority.

(2) Scope of Program

The Program shall consist of a collaborative stakeholder-based program for environmental

protection and restoration activities throughout the Columbia River Basin.

(3) Duties

The Administrator shall—

(A) assess trends in water quality, including trends that affect uses of the water of the Columbia River Basin;

(B) collect, characterize, and assess data on water quality to identify possible causes of environmental problems; and

(C) provide grants in accordance with subsection (d) for projects that assist in—

(i) eliminating or reducing pollution;

(ii) cleaning up contaminated sites;

(iii) improving water quality;

(iv) monitoring to evaluate trends;

(v) reducing runoff;

(vi) protecting habitat; or

(vii) promoting citizen engagement or knowledge.

(c) Stakeholder Working Group

(1) Establishment

The Administrator shall establish a Columbia River Basin Restoration Working Group (referred to in this subsection as the ''Working Group'').

(2) Membership

(A) In general

Membership in the Working Group shall be on a voluntary basis and any person invited by the Administrator under this subsection may decline membership.

(B) Invited representatives

The Administrator shall invite, at a minimum, representatives of—

(i) each State located in whole or in part in the Columbia River Basin;

(ii) the Governors of each State located in whole or in part in the Columbia River Basin;

(iii) each federally recognized Indian tribe in the Columbia River Basin;

(iv) local governments in the Columbia River Basin;

(v) industries operating in the Columbia River Basin that affect or could affect water quality;

(vi) electric, water, and wastewater utilities operating in the Columba[1] River Basin;

(vii) private landowners in the Columbia River Basin;

(viii) soil and water conservation districts in the Columbia River Basin;

(ix) nongovernmental organizations that have a presence in the Columbia River Basin;

(x) the general public in the Columbia River Basin; and

(xi) the Estuary Partnership.

(3) Geographic representation

The Working Group shall include representatives from—

(A) each State located in whole or in part in the Columbia River Basin; and

(B) each of the lower, middle, and upper basins of the Columbia River.

(4) Duties and responsibilities

The Working Group shall—

(A) recommend and prioritize projects and actions; and

(B) review the progress and effectiveness of projects and actions implemented.

(5) Lower Columbia River Estuary

(A) Estuary Partnership

The Estuary Partnership shall perform the duties and fulfill the responsibilities of the Working Group described in paragraph (4) as those duties and responsibilities relate to the Lower Columbia River Estuary for such time as the Estuary Partnership is the management conference for the Lower Columbia River National Estuary Program under section 1330 of this title.

(B) Designation

If the Estuary Partnership ceases to be the management conference for the Lower Columbia River National Estuary Program under section 1330 of this title, the Administrator may designate the new management conference to assume the duties and responsibilities of the Working Group described in paragraph (4) as those duties and responsibilities relate to the Lower Columbia River Estuary.

(C) Incorporation

If the Estuary Partnership is removed from the National Estuary Program, the duties and responsibilities for the lower 146 miles of the Columbia River pursuant to this section shall be incorporated into the duties of the Working Group.

(d) Grants

(1) In general

The Administrator shall establish a voluntary, competitive Columbia River Basin program to provide grants to State governments, tribal governments, regional water pollution control agencies and entities, local government entities, nongovernmental entities, or soil and water conservation districts to develop or implement projects authorized under this section for the purpose of environmental protection and restoration activities throughout the Columbia River Basin.

(2) Federal share

(A) In general

Except as provided in subparagraph (B), the Federal share of the cost of any project or activity carried out using funds from a grant provided to any person (including a State, tribal, or local government or interstate or regional agency) under this subsection for a fiscal year—

(i) shall not exceed 75 percent of the total cost of the project or activity; and

(ii) shall be made on condition that the non-Federal share of such total cost shall be provided from non-Federal sources.

(B) Exceptions

With respect to cost-sharing for a grant provided under this subsection—

[1] So in original. Probably should be ''Columbia''.

(i) a tribal government may use Federal funds for the non-Federal share; and

(ii) the Administrator may increase the Federal share under such circumstances as the Administrator determines to be appropriate.

(3) Allocation

In making grants using funds appropriated to carry out this section, the Administrator shall—

(A) provide not less than 25 percent of the funds to make grants for projects, programs, and studies in the Lower Columbia River Estuary;

(B) provide not less than 25 percent of the funds to make grants for projects, programs, and studies in the Middle and Upper Columbia River Basin, including the Snake River Basin; and

(C) retain not more than 5 percent of the funds for the Environmental Protection Agency for purposes of implementing this section.

(4) Reporting

(A) In general

Each grant recipient under this subsection shall submit to the Administrator reports on progress being made in achieving the purposes of this section.

(B) Requirements

The Administrator shall establish requirements and timelines for recipients of grants under this subsection to report on progress made in achieving the purposes of this section.

(5) Relationship to other funding

(A) In general

Nothing in this subsection limits the eligibility of the Estuary Partnership to receive funding under section 1330(g) of this title.

(B) Limitation

None of the funds made available under this subsection may be used for the administration of a management conference under section 1330 of this title.

(6) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $30,000,000 for each of fiscal years 2020 and 2021.

(e) Annual budget plan

The President, as part of the annual budget submission of the President to Congress under section 1105(a) of title 31, shall submit information regarding each Federal agency involved in protection and restoration of the Columbia River Basin, including an interagency crosscut budget that displays for each Federal agency—

(1) the amounts obligated for the preceding fiscal year for protection and restoration projects, programs, and studies relating to the Columbia River Basin;

(2) the estimated budget for the current fiscal year for protection and restoration projects, programs, and studies relating to the Columbia River Basin; and

(3) the proposed budget for protection and restoration projects, programs, and studies relating to the Columbia River Basin.

(June 30, 1948, ch. 758, title I, § 123, as added Pub. L. 114–322, title IV, § 5010, Dec. 16, 2016, 130 Stat. 1898; amended Pub. L. 115–270, title IV, § 4105, Oct. 23, 2018, 132 Stat. 3875.)

AMENDMENTS

2018—Subsec. (d)(6). Pub. L. 115–270 added par. (6).

SUBCHAPTER II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

§ 1281. Congressional declaration of purpose

(a) Development and implementation of waste treatment management plans and practices

It is the purpose of this subchapter to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this chapter.

(b) Application of technology: confined disposal of pollutants; consideration of advanced techniques

Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) Waste treatment management area and scope

To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) Waste treatment management construction of revenue producing facilities

The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) Waste treatment management integration of facilities

The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

(f) Waste treatment management "open space" and recreational considerations

The Administrator shall encourage waste treatment management which combines ''open space'' and recreational considerations with such management.

(g) Grants to construct publicly owned treatment works

(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works. On and after October 1, 1984, grants under this subchapter shall be made only for projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-in-flow correction. Notwithstanding the preceding sentences, the Administrator may make grants on and after October 1, 1984, for (A) any project within the definition set forth in section 1292(2) of this title, other than for a project referred to in the preceding sentence, and (B) any purpose for which a grant may be made under sections[1] 1329(h) and (i) of this title (including any innovative and alternative approaches for the control of nonpoint sources of pollution), except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 1285 of this title for any fiscal year shall be obligated in such State under authority of this sentence.

(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this subchapter; and

(B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after October 18, 1972.

(5) The Administrator shall not make grants from funds authorized for any fiscal year beginning after September 30, 1978, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that innovative and alternative wastewater treatment processes and techniques which provide for the reclaiming and reuse of water, otherwise eliminate the discharge of pollutants, and utilize recycling techniques, land treatment, new or improved methods of waste treatment management for municipal and industrial waste (discharged into municipal systems) and the confined disposal of pollutants, so that pollutants will not migrate to cause water or other environmental pollution, have been fully studied and evaluated by the applicant taking into account subsection (d) of this section and taking into account and allowing to the extent practicable the more efficient use of energy and resources.

(6) The Administrator shall not make grants from funds authorized for any fiscal year beginning after September 30, 1978, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that the applicant has analyzed the potential recreation and open space opportunities in the planning of the proposed treatment works.

(h) Grants to construct privately owned treatment works

A grant may be made under this section to construct a privately owned treatment works serving one or more principal residences or small commercial establishments constructed prior to, and inhabited on, December 27, 1977, where the Administrator finds that—

(1) a public body otherwise eligible for a grant under subsection (g) has applied on behalf of a number of such units and certified that public ownership of such works is not feasible;

(2) such public body has entered into an agreement with the Administrator which guarantees that such treatment works will be properly operated and maintained and will comply with all other requirements of section 1284 of this title and includes a system of charges to assure that each recipient of waste treatment services under such a grant will pay its proportionate share of the cost of operation and maintenance (including replacement); and

(3) the total cost and environmental impact of providing waste treatment services to such residences or commercial establishments will be less than the cost of providing a system of

[1] So in original. Probably should be ''section''.

collection and central treatment of such wastes.

(i) Waste treatment management methods, processes, and techniques to reduce energy requirements

The Administrator shall encourage waste treatment management methods, processes, and techniques which will reduce total energy requirements.

(j) Grants for treatment works utilizing processes and techniques of guidelines under section 1314(d)(3) of this title

The Administrator is authorized to make a grant for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title, if the Administrator determines it is in the public interest and if in the cost effectiveness study made of the construction grant application for the purpose of evaluating alternative treatment works, the life cycle cost of the treatment works for which the grant is to be made does not exceed the life cycle cost of the most cost effective alternative by more than 15 per centum.

(k) Limitation on use of grants for publicly owned treatment works

No grant made after November 15, 1981, for a publicly owned treatment works, other than for facility planning and the preparation of construction plans and specifications, shall be used to treat, store, or convey the flow of any industrial user into such treatment works in excess of a flow per day equivalent to fifty thousand gallons per day of sanitary waste. This subsection shall not apply to any project proposed by a grantee which is carrying out an approved project to prepare construction plans and specifications for a facility to treat wastewater, which received its grant approval before May 15, 1980. This subsection shall not be in effect after November 15, 1981.

***(l)* Grants for facility plans, or plans, specifications, and estimates for proposed project for construction of treatment works; limitations, allotments, advances, etc.**

(1) After December 29, 1981, Federal grants shall not be made for the purpose of providing assistance solely for facility plans, or plans, specifications, and estimates for any proposed project for the construction of treatment works. In the event that the proposed project receives a grant under this section for construction, the Administrator shall make an allowance in such grant for non-Federal funds expended during the facility planning and advanced engineering and design phase at the prevailing Federal share under section 1282(a) of this title, based on the percentage of total project costs which the Administrator determines is the general experience for such projects.

(2)(A) Each State shall use a portion of the funds allotted to such State each fiscal year, but not to exceed 10 per centum of such funds, to advance to potential grant applicants under this subchapter the costs of facility planning or the preparation of plans, specifications, and estimates.

(B) Such an advance shall be limited to the allowance for such costs which the Administrator establishes under paragraph (1) of this subsection, and shall be provided only to a potential grant applicant which is a small community and which in the judgment of the State would otherwise be unable to prepare a request for a grant for construction costs under this section.

(C) In the event a grant for construction costs is made under this section for a project for which an advance has been made under this paragraph, the Administrator shall reduce the amount of such grant by the allowance established under paragraph (1) of this subsection. In the event no such grant is made, the State is authorized to seek repayment of such advance on such terms and conditions as it may determine.

(m) Grants for State of California projects

(1) Notwithstanding any other provisions of this subchapter, the Administrator is authorized to make a grant from any funds otherwise allotted to the State of California under section 1285 of this title to the project (and in the amount) specified in Order WQG 81–1 of the California State Water Resources Control Board.

(2) Notwithstanding any other provision of this chapter, the Administrator shall make a grant from any funds otherwise allotted to the State of California to the city of Eureka, California, in connection with project numbered C–06–2772, for the purchase of one hundred and thirty-nine acres of property as environmental mitigation for siting of the proposed treatment plant.

(3) Notwithstanding any other provision of this chapter, the Administrator shall make a grant from any funds otherwise allotted to the State of California to the city of San Diego, California, in connection with that city's aquaculture sewage process (total resources recovery system) as an innovative and alternative waste treatment process.

(n) Water quality problems; funds, scope, etc.

(1) On and after October 1, 1984, upon the request of the Governor of an affected State, the Administrator is authorized to use funds available to such State under section 1285 of this title to address water quality problems due to the impacts of discharges from combined storm water and sanitary sewer overflows, which are not otherwise eligible under this subsection, where correction of such discharges is a major priority for such State.

(2) Beginning fiscal year 1983, the Administrator shall have available $200,000,000 per fiscal year in addition to those funds authorized in section 1287 of this title to be utilized 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, not otherwise eligible under this subsection. Such sums may be used as deemed appropriate by the Administrator as provided in paragraphs (1) and (2) of this subsection, upon the request of and demonstration of water quality benefits by the Governor of an affected State.

***(o)* Capital financing plan**

The Administrator shall encourage and assist applicants for grant assistance under this sub-

chapter to develop and file with the Administrator a capital financing plan which, at a minimum—

(1) projects the future requirements for waste treatment services within the applicant's jurisdiction for a period of no less than ten years;

(2) projects the nature, extent, timing, and costs of future expansion and reconstruction of treatment works which will be necessary to satisfy the applicant's projected future requirements for waste treatment services; and

(3) sets forth with specificity the manner in which the applicant intends to finance such future expansion and reconstruction.

(p) Time limit on resolving certain disputes

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 subchapter and a party to such dispute files an appeal with the Administrator under this subchapter for resolution of such dispute, the Administrator shall make a final decision on such appeal within 90 days of the filing of such appeal.

(June 30, 1948, ch. 758, title II, §201, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 833; amended Pub. L. 95–217, §§12–16, Dec. 27, 1977, 91 Stat. 1569, 1570; Pub. L. 96–483, §§2(d), 3, Oct. 21, 1980, 94 Stat. 2361; Pub. L. 97–117, §§2(a), 3(a), 4–6, 10(c), Dec. 29, 1981, 95 Stat. 1623–1626; Pub. L. 100–4, title II, §201, title III, §316(c), Feb. 4, 1987, 101 Stat. 15, 60.)

AMENDMENTS

1987—Subsec. (g)(1). Pub. L. 100–4, §316(c), substituted ''sentences, the Administrator'' for ''sentence, the Administrator'' and inserted ''(A)'' after ''October 1, 1984, for'' and ''and (B) any purpose for which a grant may be made under sections 1329(h) and (i) of this title (including any innovative and alternative approaches for the control of nonpoint sources of pollution),'' before ''except that''.

Subsec. (p). Pub. L. 100–4, §201, added subsec. (p).

1981—Subsec. (g)(1). Pub. L. 97–117, §2(a), inserted provisions restricting, on or after Oct. 1, 1984, the categories of projects eligible for grants under this subchapter and providing an exception to the restriction for projects, other than specified projects, within the definition set forth in section 1292(2) of this title, but limiting such exception to not more than 20 per centum, as determined by the Governor of the State, of the amount allotted to a State under section 1285 of this title for any fiscal year.

Subsec. (k). Pub. L. 97–117, §10(c), inserted provision that subsection not be in effect after Nov. 15, 1981.

Subsec. (*l*). Pub. L. 97–117, §3(a), added subsec. (*l*).

Subsec. (m). Pub. L. 97–117, §4, added subsec. (m).

Subsec. (n). Pub. L. 97–117, §5, added subsec. (n).

Subsec. (*o*). Pub. L. 97–117, §6, added subsec. (*o*).

1980—Subsec. (h). Pub. L. 96–483, §2(d), struck out text following par. (3), relating to payment to the United States by commercial users of that portion of the cost of construction applicable to treatment of commercial wastes to the extent attributable to the Federal share of the cost of construction.

Subsec. (k). Pub. L. 96–483, §3, added subsec. (k).

1977—Subsec. (g)(5). Pub. L. 95–217, §12, added par. (5).

Subsec. (g)(6). Pub. L. 95–217, §13, added par. (6).

Subsec. (h). Pub. L. 95–217, §14, added subsec. (h).

Subsec. (i). Pub. L. 95–217, §15, added subsec. (i).

Subsec. (j). Pub. L. 95–217, §16, added subsec. (j).

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–483, §2(g), Oct. 21, 1980, 94 Stat. 2361, provided that: ''The amendments made by this section [amending sections 1281, 1284, and 1293 of this title, enacting provisions set out as notes under section 1284 of this title, and amending provisions set out as a note under section 1284 of this title] shall take effect on December 27, 1977.''

ENVIRONMENTAL PROTECTION AGENCY STATE AND TRIBAL ASSISTANCE GRANTS

Pub. L. 105–174, title III, May 1, 1998, 112 Stat. 92, provided that: ''Notwithstanding any other provision of law, eligible recipients of the funds appropriated to the Environmental Protection Agency in the State and Tribal Assistance Grants account since fiscal year 1997 and hereafter for multi-media or single media grants, other than Performance Partnership Grants authorized pursuant to Public Law 104–134 and Public Law 105–65 [see Grants to Indian Tribes for Pollution Prevention, Control, and Abatement notes set out below], for pollution prevention, control, and abatement and related activities have been and shall be those entities eligible for grants under the Agency's organic statutes.''

PRIVATIZATION OF INFRASTRUCTURE ASSETS

Pub. L. 104–303, title V, §586, Oct. 12, 1996, 110 Stat. 3791, provided that:

''(a) IN GENERAL.—Notwithstanding the provisions of title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.), Executive Order 12803 [5 U.S.C. 601 note], or any other law or authority, an entity that received Federal grant assistance for an infrastructure asset under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] shall not be required to repay any portion of the grant upon the lease or concession of the asset only if—

''(1) ownership of the asset remains with the entity that received the grant; and

''(2) the Administrator of the Environmental Protection Agency determines that the lease or concession furthers the purposes of such Act and approves the lease or concession.

''(b) LIMITATION.—The Administrator shall not approve a total of more than 5 leases and concessions under this section.''

GRANTS TO STATES TO ADMINISTER COMPLETION AND CLOSEOUT OF CONSTRUCTION GRANTS PROGRAM

Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2912, provided in part: ''That notwithstanding any other provision of law, beginning in fiscal year 1997 the Administrator may make grants to States, from funds available for obligation in the State under title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.], as amended, for administering the completion and closeout of the State's construction grants program, based on a budget annually negotiated with the State''.

WASTEWATER ASSISTANCE TO COLONIAS

Pub. L. 104–182, title III, §307, Aug. 6, 1996, 110 Stat. 1688, provided that:

''(a) DEFINITIONS.—As used in this section:

''(1) BORDER STATE.—The term 'border State' means Arizona, California, New Mexico, and Texas.

''(2) ELIGIBLE COMMUNITY.—The term 'eligible community' means a low-income community with economic hardship that—

''(A) is commonly referred to as a colonia;

''(B) is located along the United States-Mexico border (generally in an unincorporated area); and

''(C) lacks basic sanitation facilities such as household plumbing or a proper sewage disposal system.

''(3) TREATMENT WORKS.—The term 'treatment works' has the meaning provided in section 212(2) of the Federal Water Pollution Control Act (33 U.S.C. 1292(2)).

''(b) GRANTS FOR WASTEWATER ASSISTANCE.—The Administrator of the Environmental Protection Agency and the heads of other appropriate Federal agencies are authorized to award grants to a border State to provide

assistance to eligible communities for the planning, design, and construction or improvement of sewers, treatment works, and appropriate connections for wastewater treatment.

''(c) USE OF FUNDS.—Each grant awarded pursuant to subsection (b) shall be used to provide assistance to one or more eligible communities with respect to which the residents are subject to a significant health risk (as determined by the Administrator or the head of the Federal agency making the grant) attributable to the lack of access to an adequate and affordable treatment works for wastewater.

''(d) COST SHARING.—The amount of a grant awarded pursuant to this section shall not exceed 50 percent of the costs of carrying out the project that is the subject of the grant.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for each of the fiscal years 1997 through 1999.''

GRANTS TO INDIAN TRIBES FOR POLLUTION PREVENTION, CONTROL AND ABATEMENT

Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1373, provided in part that: ''$745,000,000 for grants to States, federally recognized tribes, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities pursuant to the provisions set forth under this heading in Public Law 104–134 [see below], provided that eligible recipients of these funds and the funds made available for this purpose since fiscal year 1996 and hereafter include States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies, as provided in authorizing statutes, subject to such terms and conditions as the Administrator shall establish, and for making grants under section 103 of the Clean Air Act [42 U.S.C. 7403] for particulate matter monitoring and data collection activities''.

Pub. L. 105–65, title III, Oct. 27, 1997, 111 Stat. 1374, provided in part: ''That, hereafter from funds appropriated under this heading [''ENVIRONMENTAL PROTECTION AGENCY'' and ''STATE AND TRIBAL ASSISTANCE GRANTS''], the Administrator is authorized to make grants to federally recognized Indian governments for the development of multi-media environmental programs: *Provided further*, That, hereafter, the funds available under this heading for grants to States, federally recognized tribes, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities may also be used for the direct implementation by the Federal Government of a program required by law in the absence of an acceptable State or tribal program''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–204, title III, Sept. 26, 1996, 110 Stat. 2912.

Pub. L. 104–134, title I, §101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–299, renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 103–327, title III, Sept. 28, 1994, 108 Stat. 2320.

Pub. L. 103–124, title III, Oct. 28, 1993, 107 Stat. 1293.

Pub. L. 102–389, title III, Oct. 6, 1992, 106 Stat. 1597.

Pub. L. 102–139, title III, Oct. 28, 1991, 105 Stat. 762.

Pub. L. 101–507, title III, Nov. 5, 1990, 104 Stat. 1372.

Pub. L. 104–134, title I, §101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–299; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That beginning in fiscal year 1996 and each fiscal year thereafter, and notwithstanding any other provision of law, the Administrator is authorized to make grants annually from funds appropriated under this heading [''ENVIRONMENTAL PROTECTION AGENCY'' and ''STATE AND TRIBAL ASSISTANCE GRANTS''], subject to such terms and conditions as the Administrator shall establish, to any State or federally recognized Indian tribe for multimedia or single media pollution prevention, control and abatement and related environmental activities at the request of the Governor or other appropriate State official or the tribe''.

STATE MANAGEMENT OF CONSTRUCTION GRANT ACTIVITIES

Pub. L. 104–134, title I, §101(e) [title III], Apr. 26, 1996, 110 Stat. 1321–257, 1321–299; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided in part: ''That of the funds appropriated in the Construction Grants and Water Infrastructure/State Revolving Funds accounts since the appropriation for the fiscal year ending September 30, 1992, and hereafter, for making grants for wastewater treatment works construction projects, portions may be provided by the recipients to States for managing construction grant activities, on condition that the States agree to reimburse the recipients from State funding sources''.

GRANTS TO TRUST TERRITORY OF THE PACIFIC ISLANDS, AMERICAN SAMOA, GUAM, NORTHERN MARIANA ISLANDS, AND VIRGIN ISLANDS; WAIVER OF COLLECTOR SEWERS LIMITATION

Pub. L. 99–396, §12(b), Aug. 27, 1986, 100 Stat. 841, provided that: ''In awarding grants to the Trust Territory of the Pacific Islands, American Samoa, Guam, the Northern Mariana Islands and the Virgin Islands under section 201(g)(1) of the Clean Water Act (33 U.S.C. 1251 et seq.) [subsec. (g)(1) of this section], the Administrator of the Environmental Protection Agency may waive limitations regarding grant eligibility for sewerage facilities and related appurtenances, insofar as such limitations relate to collector sewers, based upon a determination that applying such limitations could hinder the alleviation of threats to public health and water quality. In making such a determination, the Administrator shall take into consideration the public health and water quality benefits to be derived and the availability of alternate funding sources. The Administrator shall not award grants under this section for the operation and maintenance of sewerage facilities, for construction of facilities which are not an essential component of the sewerage facilities, or any other activities or facilities which are not concerned with the management of wastewater to alleviate threats to public health and water quality.'' [For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

ENVIRONMENTAL FINANCING AUTHORITY

Pub. L. 92–500, §12, Oct. 18, 1972, 86 Stat. 899, as amended by Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, provided that:

''(a) [Short Title] This section may be cited as the Environmental Financing Act of 1972.

''(b) [Establishment] There is hereby created a body corporate to be known as the Environmental Financing Authority, which shall have succession until dissolved by Act of Congress. The Authority shall be subject to the general supervision and direction of the Secretary of the Treasury. The Authority shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

''(c) [Congressional Declaration of Purpose] The purpose of this section is to assure that inability to borrow necessary funds on reasonable terms does not prevent any State or local public body from carrying out any project for construction of waste treatment works determined eligible for assistance pursuant to subsection (e) of this section.

''(d) [Board of Directors] (1) The Authority shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury or his designee as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Authority or of any department or agency of the United States Government.

''(2) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Authority. The Chairman of the Board shall select and ef-

fect the appointment of qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Authority and shall discharge all such executive functions, powers, and duties. The members of the Board, as such, shall not receive compensation for their services.

''(e) [Purchase of State and Local Obligations] (1) Until July 1, 1975, the Authority is authorized to make commitments to purchase, and to purchase on terms and conditions determined by the Authority, any obligation or participation therein which is issued by a State or local public body to finance the non-Federal share of the cost of any project for the construction of waste treatment works which the Administrator of the Environmental Protection Agency has determined to be eligible for Federal financial assistance under the Federal Water Pollution Control Act [this chapter].

''(2) No commitment shall be entered into, and no purchase shall be made, unless the Administrator of the Environmental Protection Agency (A) has certified that the public body is unable to obtain on reasonable terms sufficient credit to finance its actual needs; (B) has approved the project as eligible under the Federal Water Pollution Control Act [this chapter], and (C) has agreed to guarantee timely payment of principal and interest on the obligation. The Administrator is authorized to guarantee such timely payments and to issue regulations as he deems necessary and proper to protect such guarantees. Appropriations are hereby authorized to be made to the Administrator in such sums as are necessary to make payments under such guarantees, and such payments are authorized to be made from such appropriations.

''(3) No purchase shall be made of obligations issued to finance projects, the permanent financing of which occurred prior to the enactment of this section [Oct. 18, 1972].

''(4) Any purchase by the Authority shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury taking into consideration (A) the current average yield on outstanding marketable obligations of the United States of comparable maturity or in its stead whenever the Authority has sufficient of its own long-term obligations outstanding, the current average yield on outstanding obligations of the Authority of comparable maturity; and (B) the market yields on municipal bonds.

''(5) The Authority is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves and such fees shall be included in the aggregate project costs.

''(f) [Initial Capital] To provide initial capital to the Authority the Secretary of the Treasury is authorized to advance the funds necessary for this purpose. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed $100,000,000, which shall be available for the purposes of this subsection.

''(g) [Issuance of Obligations] (1) The Authority is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Authority. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein.

''(2) As authorized in appropriation Acts, and such authorizations may be without fiscal year limitations, the Secretary of the Treasury may in his discretion purchase or agree to purchase any obligations issued pursuant to paragraph (1) of this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, as now or hereafter in force, and the purposes for which securities may be issued under chapter 31 of title 31, as now or hereafter in force, are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this paragraph. All purchases and sales by the Secretary of the Treasury of such obligations under this paragraph shall be treated as public debt transactions of the United States. (As amended Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067.)

''(h) [Interest Differential] The Secretary of the Treasury is authorized and directed to make annual payments to the Authority in such amounts as are necessary to equal the amount by which the dollar amount of interest expense accrued by the Authority on account of its obligations exceeds the dollar amount of interest income accrued by the Authority on account of obligations purchased by it pursuant to subsection (e) of this section.

''(i) [Powers] The Authority shall have power—

''(1) to sue and be sued, complain and defend, in its corporate name;

''(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

''(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

''(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this section in any State without regard to any qualification or similar statute in any State;

''(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

''(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

''(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

''(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof; and

''(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

''(j) [Tax Exemption, Exemptions] The Authority, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (A) any real property and any tangible personal property of the Authority shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (B) any and all obligations issued by the Authority shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

''(k) [Nature of Obligations] All obligations issued by the Authority shall be lawful investments, and may be

accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All obligations issued by the Authority pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are issued by the United States.

''(*l*) [Preparation of Obligations by Secretary of the Treasury] In order to furnish obligations for delivery by the Authority, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Authority may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authority. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Authority shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations.

''(m) [Annual Report to Congress] The Authority shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

''(n) [Subsec. (n) amended section 24 of Title 12, Banks and Banking, and is not set out herein.]

''(*o*) [Financial Controls] The budget and audit provisions of chapter 91 of title 31 shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations. (As amended Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067.)

''(p) [Subsec. (p) amended section 711 of former Title 31, Money and Finance, and is not set out herein.]''

§ 1281a. Total treatment system funding

Notwithstanding any other provision of law, in any case where the Administrator of the Environmental Protection Agency finds that the total of all grants made under section 201 of the Federal Water Pollution Control Act [33 U.S.C. 1281] for the same treatment works exceeds the actual construction costs for such treatment works (as defined in that Act [33 U.S.C. 1251 et seq.]) such excess amount shall be a grant of the Federal share (as defined in that Act) of the cost of construction of a sewage collection system if—

(1) such sewage collection system was constructed as part of the same total treatment system as the treatment works for which such section 201 [33 U.S.C. 1281] grants were approved, and

(2) an application for assistance for the construction of such sewage collection system was filed in accordance with section 3102 of title 42 before all such section 201 grants were made and such grant under section 3102 of title 42 could not be approved due to lack of funding under such section 3102 of title 42.

The total of all grants for sewage collection systems made under this section shall not exceed $2,800,000.

(Pub. L. 95–217, § 78, Dec. 27, 1977, 91 Stat. 1611.)

REFERENCES IN TEXT

That Act, meaning the Federal Water Pollution Control Act, referred to in text, is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

Section 3102 of title 42, referred to in par. (2), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated the authority to make grants or loans under that section after Jan. 1, 1975.

CODIFICATION

Section was enacted as part of the Clean Water Act of 1977, Pub. L. 95–217, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1281b. Availability of Farmers Home Administration funds for non-Federal share

Notwithstanding any other provision of law, Federal assistance made available by the Farmers Home Administration to any political subdivision of a State may be used to provide the non-Federal share of the cost of any construction project carried out under section 1281 of this title.

(Pub. L. 100–4, title II, § 202(f), Feb. 4, 1987, 101 Stat. 16.)

CODIFICATION

Section was enacted as part of the Water Quality Act of 1987, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1282. Federal share

(a) Amount of grants for treatment works

(1) The amount of any grant for treatment works made under this chapter 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 October 21, 1980, 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 1285 of this title, the need for assistance under this subchapter 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 October 18, 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, intercep-

tors, and project for infiltration-in-flow correction shall be eligible for grants at 75 per centum of the cost of construction thereof for any grant made pursuant to a State obligation which obligation occurred before October 1, 1990. Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this subchapter 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 percent of the cost of construction thereof. Notwithstanding the first sentence of this paragraph, in the case of the Wyoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, and a project for wastewater treatment for Altoona, Pennsylvania, such projects shall be eligible for grants at 75 percent of the cost of construction thereof.

(2) The amount of any grant made after September 30, 1978, and before October 1, 1981, for any eligible treatment works or significant portion thereof utilizing innovative or alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title shall be 85 per centum of the cost of construction thereof, unless modified by the Governor of the State with the concurrence of the Administrator to a percentage rate no less than 15 per centum greater than the modified uniform percentage rate in which the Administrator has concurred pursuant to paragraph (1) of this subsection. The amount of any grant made after September 30, 1981, for any eligible treatment works or unit processes and techniques thereof utilizing innovative or alternative wastewater treatment processes and techniques referred to in section 1281(g)(5) of this title shall be a percentage of the cost of construction thereof equal to 20 per centum greater than the percentage in effect under paragraph (1) of this subsection for such works or unit processes and techniques, but in no event greater than 85 per centum of the cost of construction thereof. No grant shall be made under this paragraph for construction of a treatment works in any State unless the proportion of the State contribution to the non-Federal share of construction costs for all treatment works in such State receiving a grant under this paragraph is the same as or greater than the proportion of the State contribution (if any) to the non-Federal share of construction costs for all treatment works receiving grants in such State under paragraph (1) of this subsection.

(3) In addition to any grant made pursuant to paragraph (2) of this subsection, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of any facilities constructed with a grant made pursuant to paragraph (2) if the Administrator finds that such facilities have 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. 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 failed to meet 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.

(4) For the purposes of this section, the term ''eligible treatment works'' means those treatment works in each State which meet the requirements of section 1281(g)(5) of this title and which can be fully funded from funds available for such purpose in such State.

(b) Amount of grants for construction of treatment works not commenced prior to July 1, 1971

The amount of the grant for any project approved by the Administrator after January 1, 1971, and before July 1, 1971, for the construction of treatment works, the actual erection, building or acquisition of which was not commenced prior to July 1, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under subsection (a) of this section for grants for treatment works from funds for fiscal years beginning after June 30, 1971, with respect to the cost of such actual erection, building, or acquisition. Such increased amount shall be paid from any funds allocated to the State in which the treatment works is located without regard to the fiscal year for which such funds were authorized. Such increased amount shall be paid for such project only if—

(1) a sewage collection system that is a part of the same total waste treatment system as the treatment works for which such grant was approved is under construction or is to be constructed for use in conjunction with such treatment works, and if the cost of such sewage collection system exceeds the cost of such treatment works, and

(2) the State water pollution control agency or other appropriate State authority certifies that the quantity of available ground water will be insufficient, inadequate, or unsuitable for public use, including the ecological preservation and recreational use of surface water bodies, unless effluents from publicly-owned treatment works after adequate treatment are returned to the ground water consistent with acceptable technological standards.

(c) Availability of sums allotted to Puerto Rico

Notwithstanding any other provision of law, sums allotted to the Commonwealth of Puerto Rico under section 1285 of this title for fiscal year 1981 shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twenty-four months. Such sums and any unobligated funds available to Puerto Rico from allotments for fiscal years ending prior to October 1, 1981, shall be available for obligation by the Administrator of the Environmental Protection Agency only to fund the following systems: Aguadilla, Arecibo, Mayaguez, Carolina, and Camuy Hatillo. These funds may be used by the commonwealth of Puerto Rico to fund the non-Federal share of the costs of such projects. To the extent that these funds are used to pay the non-Federal share, the Commonwealth of Puerto Rico shall repay to

the Environmental Protection Agency such amounts on terms and conditions developed and approved by the Administrator in consultation with the Governor of the Commonwealth of Puerto Rico. Agreement on such terms and conditions, including the payment of interest to be determined by the Secretary of the Treasury, shall be reached prior to the use of these funds for the Commonwealth's non-Federal share. No Federal funds awarded under this provision shall be used to replace local governments funds previously expended on these projects.

(June 30, 1948, ch. 758, title II, § 202, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 834; amended Pub. L. 95–217, § 17, Dec. 27, 1977, 91 Stat. 1571; Pub. L. 96–483, § 9, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 97–117, §§ 7, 8(a), (b), Dec. 29, 1981, 95 Stat. 1625; Pub. L. 97–357, title V, § 501, Oct. 19, 1982, 96 Stat. 1712; Pub. L. 100–4, title II, § 202(a)–(d), Feb. 4, 1987, 101 Stat. 15, 16.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–4, § 202(a), inserted ''for any grant made pursuant to a State obligation which obligation occurred before October 1, 1990'' before period at end of last sentence.

Pub. L. 100–4, § 202(b), inserted at end ''Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this subchapter 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 percent of the cost of construction thereof.''

Pub. L. 100–4, § 202(c), inserted at end ''Notwithstanding the first sentence of this paragraph, in the case of the Wyoming Valley Sanitary Authority project mandated by judicial order under a proceeding begun prior to October 1, 1984, and a project for wastewater treatment for Altoona, Pennsylvania, such projects shall be eligible for grants at 75 percent of the cost of construction thereof.''

Subsec. (a)(3). Pub. L. 100–4, § 202(d), inserted at end ''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 failed to meet 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.''

1982—Subsec. (c). Pub. L. 97–357 added subsec. (c).

1981—Subsec. (a)(1). Pub. L. 97–117, § 7, inserted ''and ending before October 30, 1984,'' after ''June 30, 1971,'' and ''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),'' after ''(as approved by the Administrator),'' and provision that notwithstanding first sentence of this paragraph, in any case where primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction has received a grant for building, acquisition, etc., before Oct. 1, 1984, all segments and phases be eligible for grants at 75 per centum of the cost of construction.

Subsec. (a)(2). Pub. L. 97–117, § 8(a), inserted provision that the amount of any grant made after Sept. 30, 1981, for any eligible treatment works or unit processes or techniques, utilizing innovative or alternative wastewater treatment processes or techniques referred to in section 1281(g)(5) of this title be a percentage of the cost of construction equal to 20 per centum greater than the percentage in effect under par. (1) of this subsection, but in no event greater than 85 per centum of the cost of construction.

Subsec. (a)(4). Pub. L. 97–117, § 8(b), struck out ''in the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981'' after ''purpose in such State'' and provision that excluded from term ''eligible treatment works'' collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation.

1980—Subsec. (a)(1). Pub. L. 96–483, § 9(a), inserted provisions relating to modification to a lower percentage rate by the Governor of the State and issuance of guidelines by the Administrator for the concurrence in any such modification.

Subsec. (a)(2). Pub. L. 96–483, § 9(b), inserted provision relating to the modification by the Governor of the State to a percentage rate no less than 15 per centum greater than the modified uniform rate in which the Administrator has concurred.

1977—Subsec. (a). Pub. L. 95–217 designated existing provisions as par. (1) and added pars. (2) to (4).

PROMULGATION OF FEDERAL SHARES

Act July 9, 1956, ch. 518, § 4, 70 Stat. 507, authorized the Surgeon General to promulgate Federal shares under the Federal Water Pollution Control Grant Program as soon as possible after July 9, 1956, in the manner specified in the Water Pollution Control Act, act June 30, 1948, ch. 758, 62 Stat. 1155, and provided that such shares were to be conclusive for the purposes of section 5 of act June 30, 1948.

§ 1283. Plans, specifications, estimates, and payments

(a) Submission; contractual nature of approval by Administrator; agreement on eligible costs; single grant

(1) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 1281(g)(1) of this title from funds allotted to the State under section 1285 of this title and which otherwise meets the requirements of this chapter. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(2) AGREEMENT ON ELIGIBLE COSTS.—

(A) LIMITATION ON MODIFICATIONS.—Before taking final action on any plans, specifications, and estimates submitted under this subsection after the 60th day following February 4, 1987, 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 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.

(B) LIMITATION ON EFFECT.—Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 1361 of this title, 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 1342 of this title for such project.

(3) In the case of a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.

(b) Periodic payments

The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(c) Final payments

After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

(d) Projects eligible

Nothing in this chapter shall be construed to require, or to authorize the Administrator to require, that grants under this chapter for construction of treatment works be made only for projects which are operable units usable for sewage collection, transportation, storage, waste treatment, or for similar purposes without additional construction.

(e) Technical and legal assistance in administration and enforcement of contracts; intervention in civil actions

At the request of a grantee under this subchapter, the Administrator is authorized to provide technical and legal assistance in the administration and enforcement of any contract in connection with treatment works assisted under this subchapter, and to intervene in any civil action involving the enforcement of such a contract.

(f) Design/build projects

(1) Agreement

Consistent with State law, an applicant 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) Limitation on projects

Agreements under this subsection shall be limited to projects under an approved facility plan which projects are—

(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) Required terms

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 1282 of this title;

(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 subchapter; and (iii) not later than 1 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 1342 of this title;

(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 subchapter (except as provided in paragraph (4) of this subsection).

(4) Limitation on application

Subsections (a), (b), and (c) of this section shall not apply to grants made pursuant to this subsection.

(5) Reservation to assure compliance

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) Limitation on obligations

The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 1285 of this title for grants pursuant to this subsection.

(7) Allowance

The Administrator shall determine an allowance for facilities planning for projects con-

structed under this subsection in accordance with section 1281(*l*) of this title.

(8) Limitation on Federal contributions

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 (3).

(9) Recovery action

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 amount of the Federal contribution to the project.

(10) Prevention of double benefits

A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this subchapter for the same project.

(June 30, 1948, ch. 758, title II, § 203, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 835; amended Pub. L. 93–243, § 2, Jan. 2, 1974, 87 Stat. 1069; Pub. L. 95–217, §§ 18, 19, Dec. 27, 1977, 91 Stat. 1571, 1572; Pub. L. 96–483, § 6, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 97–117, § 9, Dec. 29, 1981, 95 Stat. 1626; Pub. L. 100–4, title II, §§ 203, 204, Feb. 4, 1987, 101 Stat. 16, 17.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–4, § 203, designated provision relating to submission of plans, specifications, and estimates, and provision relating to contractual nature of approval by Administrator as par. (1), designated provision relating to requirements for awarding single grant for combined Federal share of cost of preparing plans and specifications, and building and erection of treatment works as par. (3), and added par. (2).

Subsec. (f). Pub. L. 100–4, § 204, added subsec. (f).

1981—Subsec. (a). Pub. L. 97–117 substituted ''$8,000,000'' for ''$4,000,000'' and struck out provision that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed $5,000,000.

1980—Subsec. (a). Pub. L. 96–483 substituted ''$4,000,000'' and ''$5,000,000'' for ''$2,000,000'' and ''$3,000,000'', respectively.

1977—Subsec. (a). Pub. L. 95–217, § 18, provided that, in the case of a treatment works that has an estimated total cost of $2,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works, and that, if any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant where the estimated total cost of the treatment works does not exceed $3,000,000.

Subsec. (e). Pub. L. 95–217, § 19, added subsec. (e).

1974—Subsec. (d). Pub. L. 93–243 added subsec. (d).

§ 1284. Limitations and conditions

(a) Determinations by Administrator

Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that any required areawide waste treatment management plan under section 1288 of this title (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;

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 1313(e) of this title 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 1315(b) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 1313(e) of this title, except that any priority list developed pursuant to section 1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.[1]

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capac-

[1] So in original. The period probably should be a semicolon.

ity will be required, after taking into account, in accordance with regulations promulgated by the Administrator, efforts to reduce total flow of sewage and unnecessary water consumption. The amount of reserve capacity eligible for a grant under this subchapter shall be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development. For the purpose of this paragraph, section 1288 of this title, and any such plan, projected population shall be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate. Beginning October 1, 1984, no grant shall be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs (including existing needs of residential, commercial, industrial, and other users) on the date of approval of a grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on October 1, 1990. In any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity shall be paid by the applicant;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment. When in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

(b) Additional determinations; issuance of guidelines; approval by Administrator; system of charges

(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of December 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. 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.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress.

(4) A system of charges which meets the requirement of clause (A) of paragraph (1) of this subsection may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment

services, including ad valorem taxes. If the system of charges is based on something other than metering the Administrator shall require (A) the applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and (B) the applicant to establish a procedure under which the residential user will be notified as to that portion of his total payment which will be allocated to the cost of the waste treatment services.

(c) Applicability of reserve capacity restrictions to primary, secondary, or advanced waste treatment facilities or related interceptors

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 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 December 29, 1981, such interceptors shall be funded based on the approved reserve capacity not to exceed 40 years.

(d) Engineering requirements; certification by owner and operator; contractual assurances, etc.

(1) A grant for the construction of treatment works under this subchapter shall provide that the engineer or engineering firm supervising construction or providing architect engineering services during construction shall continue its relationship to the grant applicant for a period of one year after the completion of construction and initial operation of such treatment works. During such period such engineer or engineering firm shall supervise operation of the treatment works, train operating personnel, and prepare curricula and training material for operating personnel. Costs associated with the implementation of this paragraph shall be eligible for Federal assistance in accordance with this subchapter.

(2) On the date one year after the completion of construction and initial operation of such treatment works, the owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit pursuant to section 1342 of this title for such works. If the owner and operator of such treatment works cannot certify that such treatment works meet such design specifications and effluent limitations, any failure to meet such design specifications and effluent limitations shall be corrected in a timely manner, to allow such affirmative certification, at other than Federal expense.

(3) Nothing in this section shall be construed to prohibit a grantee under this subchapter from requiring more assurances, guarantees, or indemnity or other contractual requirements from any party to a contract pertaining to a project assisted under this subchapter, than those provided under this subsection.

(June 30, 1948, ch. 758, title II, § 204, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 835; amended Pub. L. 95–217, §§ 20–24, Dec. 27, 1977, 91 Stat. 1572, 1573; Pub. L. 96–483, § 2(a), (b), Oct. 21, 1980, 94 Stat. 2360, 2361; Pub. L. 97–117, §§ 10(a), (b), 11, 12, Dec. 29, 1981, 95 Stat. 1626, 1627; Pub. L. 100–4, title II, § 205(a)–(c), Feb. 4, 1987, 101 Stat. 18.)

AMENDMENTS

1987—Subsec. (a)(1). Pub. L. 100–4, § 205(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''that such works are included in any applicable areawide waste treatment management plan developed under section 1288 of this title;''.

Subsec. (a)(2). Pub. L. 100–4, § 205(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''that such works are in conformity with any applicable State plan under section 1313(e) of this title;''.

Subsec. (b)(1). Pub. L. 100–4, § 205(c), inserted at end ''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.''

1981—Subsec. (a)(5). Pub. L. 97–117, § 10(a), inserted provision that beginning Oct. 1, 1984, no grant be made under this subchapter to construct that portion of any treatment works providing reserve capacity in excess of existing needs on the date of approval of a grant for the erection, building, etc., of a project for secondary treatment or more stringent treatment or new interceptors and appurtenances, except that in no event shall reserve capacity of a facility and its related interceptors to which this subsection applies be in excess of existing needs on Oct. 1, 1990, and that in any case in which an applicant proposes to provide reserve capacity greater than that eligible for Federal financial assistance under this subchapter, the incremental costs of the additional reserve capacity be paid by the applicant.

Subsec. (a)(6). Pub. L. 97–117, § 11, struck out '', or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words 'or equal' '' after ''parts and equipment'' and inserted provision that when in the judgment of the grantee, it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description be used as a means to define performance or other salient requirements of a procurement, and in doing so the grantee need not establish the existence of any source other than the brand or source so named.

Subsec. (c). Pub. L. 97–117, § 10(b), added subsec. (c).

Subsec. (d). Pub. L. 97–117, § 12, added subsec. (d).

1980—Subsec. (b)(1). Pub. L. 96–483, § 2(a), redesignated cl. (C) as (B). Former cl. (B) relating to payment, as a condition of approval of a grant, to an applicant by industrial users of that portion of cost of construction allocable to the treatment of such industrial waste to the extent attributable to the Federal share of the cost of construction, was struck out.

Subsec. (b)(3) to (6). Pub. L. 96–483, § 2(b), redesignated pars. (4) and (5) as (3) and (4), respectively. Former par. (3) relating to a formula determining the amount the grantee shall retain of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs, and former par. (6) relating to the exemption from the requirements of par. (1)(B) of industrial users with a flow of twenty-five thousand gallons or less per day, were struck out.

1977—Subsec. (a)(3). Pub. L. 95–217, § 20, provided that any priority list developed pursuant to section

1313(e)(3)(H) of this title may be modified by such State in accordance with regulations promulgated by the Administrator to give higher priority for grants for the Federal share of the cost of preparing construction drawings and specifications for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title and for grants for the combined Federal share of the cost of preparing construction drawings and specifications and the building and erection of any treatment works meeting the requirements of the next to the last sentence of section 1283(a) of this title which utilizes processes and techniques meeting the guidelines promulgated under section 1314(d)(3) of this title.

Subsec. (a)(5). Pub. L. 95–217, §21, provided that efforts to reduce total flow of sewage and unnecessary water consumption be taken into account, in accordance with regulations promulgated by the Administrator, that the amount of reserve capacity eligible for a grant under this subchapter be determined by the Administrator taking into account the projected population and associated commercial and industrial establishments within the jurisdiction of the applicant to be served by such treatment works as identified in an approved facilities plan, an areawide plan under section 1288 of this title, or an applicable municipal master plan of development, and that, for the purpose of this paragraph, section 1288 of this title, and any such plan, projected population be determined on the basis of the latest information available from the United States Department of Commerce or from the States as the Administrator, by regulation, determines appropriate.

Subsec. (b)(1). Pub. L. 95–217, §§22(a)(1), (2), 24(c), inserted ''(except as otherwise provided in this paragraph)'' after ''proportionate share'' in cl. (A) and ''(which such portion, in the discretion of the applicant, may be recovered from industrial users of the total waste treatment system as distinguished from the treatment works for which the grant is made)'' in cl. (B) and, at end of existing provisions, inserted sentences under which a dedicated ad valorem tax system is to be deemed the user charge system meeting the requirements of cl. (A) for the residential user class and such small non-residential user classes as defined by the Administrator in cases where an applicant, as of Dec. 27, 1977, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the wastes, and other appropriate factors), and such applicant is otherwise in compliance with cl. (A) of this paragraph with respect to each industrial user.

Subsec. (b)(3). Pub. L. 95–217, §§23, 24(a), substituted ''necessary for the administrative costs associated with the requirement of paragraph (1)(B) of this subsection and future expansion'' for ''necessary for future expansion'' in cl. (B) and, at end of existing provisions, inserted sentence under which, subject to the approval of the Administrator, the following: ''Not a grantee that received a grant prior to Dec. 27, 1977, may reduce the amounts required to be paid to such grantee by any industrial user of waste treatment services under such paragraph, if such grantee requires such industrial user to adopt other means of reducing the demand for waste treatment services through reduction in the total flow of sewage or unnecessary water consumption, in proportion to such reduction as determined in accordance with regulations promulgated by the Administrator''.

Subsec. (b)(5), (6). Pub. L. 95–217, §§22(b), 24(b), added pars. (5) and (6).

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–4, title II, §205(d), Feb. 4, 1987, 101 Stat. 18, provided that: ''This section [amending this section] shall take effect on the date of the enactment of this Act [Feb. 4, 1987], except that the amendments made by subsections (a) and (b) [amending this section] shall take effect on the last day of the two-year period beginning on such date of enactment.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–483 effective Dec. 27, 1977, see section 2(g) of Pub. L. 96–483, set out as a note under section 1281 of this title.

ELIMINATION OF INAPPLICABLE CONDITIONS OR REQUIREMENTS FROM CERTAIN GRANTS

Pub. L. 96–483, §2(c), Oct. 21, 1980, 94 Stat. 2361, provided that: ''The Administrator of the Environmental Protection Agency shall take such action as may be necessary to remove from any grant made under section 201(g)(1) of the Federal Water Pollution Control Act [section 1281(g)(1) of this title] after March 1, 1973, and prior to the date of enactment of this Act [Oct. 21, 1980], any condition or requirement no longer applicable as a result of the repeals made by subsections (a) and (b) of this section [amending subsec. (b) of this section] or release any grant recipient of the obligations established by such conditions or other requirement.''

Section 2(c) of Pub. L. 96–483, set out above, effective Dec. 27, 1977, see section 2(g) of Pub. L. 96–483, set out as an Effective Date of 1980 Amendment note under section 1281 of this title.

COST RECOVERY; SUSPENSION OF GRANT REQUIREMENTS THAT INDUSTRIAL USERS MAKE PAYMENTS

Pub. L. 95–217, §75, Dec. 27, 1977, 91 Stat. 1609, as amended by Pub. L. 96–148, §1, Dec. 16, 1979, 93 Stat. 1088; Pub. L. 96–483, §2(f), Oct. 21, 1980, 94 Stat. 2361, directed Administrator of Environmental Protection Agency to study and report to Congress not later than last day of twelfth month which begins after Dec. 27, 1977, cost recovery procedures from industrial users of treatment works to the extent construction costs are attributable to the Federal share of the cost of construction.

§ 1285. Allotment of grant funds

(a) Funds for fiscal years during period June 30, 1972, and September 30, 1977; determination of amount

Sums authorized to be appropriated pursuant to section 1287 of this title for each fiscal year beginning after June 30, 1972, and before September 30, 1977, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment for fiscal year 1973 shall be made not later than 30 days after October 18, 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92–50. For the fiscal year ending June 30, 1975, such ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print. Allotments for fiscal

years which begin after the fiscal year ending June 30, 1975, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 1375(b) of this title and only after such revised cost estimate shall have been approved by law specifically enacted after October 18, 1972.

(b) Availability and use of funds allotted for fiscal years during period June 30, 1972, and September 30, 1977; reallotment

(1) Any sums allotted to a State under subsection (a) shall be available for obligation under section 1283 of this title on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallotted by the Administrator, in accordance with regulations promulgated by him, generally on the basis of the ratio used in making the last allotment of sums under this section. Such reallotted sums shall be added to the last allotments made to the States. Any sum made available to a State by reallotment under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(2) Any sums which have been obligated under section 1283 of this title and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment.

(c) Funds for fiscal years during period October 1, 1977, and September 30, 1981; funds for fiscal years 1982 to 1990; determination of amount

(1) Sums authorized to be appropriated pursuant to section 1287 of this title for the fiscal years during the period beginning October 1, 1977, and ending September 30, 1981, shall be allotted for each such year by the Administrator not later than the tenth day which begins after December 27, 1977. Notwithstanding any other provision of law, sums authorized for the fiscal years ending September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, shall be allotted in accordance with table 3 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives.

(2) Sums authorized to be appropriated pursuant to section 1287 of this title for the fiscal years 1982, 1983, 1984, and 1985 shall be allotted for each such year by the Administrator not later than the tenth day which begins after December 29, 1981. Notwithstanding any other provision of law, sums authorized for the fiscal year ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, and September 30, 1986, shall be allotted in accordance with the following table:

States:	Fiscal years 1983 through 1985[1]
Alabama	.011398
Alaska	.006101
Arizona	.006885
Arkansas	.006668
California	.072901
Colorado	.008154
Connecticut	.012487
Delaware	.004965
District of Columbia	.004965
Florida	.034407
Georgia	.017234
Hawaii	.007895
Idaho	.004965
Illinois	.046101
Indiana	.024566
Iowa	.013796
Kansas	.009201
Kentucky	.012973
Louisiana	.011205
Maine	.007788
Maryland	.024653
Massachusetts	.034608
Michigan	.043829
Minnesota	.018735
Mississippi	.009184
Missouri	.028257
Montana	.004965
Nebraska	.005214
Nevada	.004965
New Hampshire	.010186
New Jersey	.041654
New Mexico	.004965
New York	.113097
North Carolina	.018396
North Dakota	.004965
Ohio	.057383
Oklahoma	.008235
Oregon	.011515
Pennsylvania	.040377
Rhode Island	.006750
South Carolina	.010442
South Dakota	.004965
Tennessee	.014807
Texas	.038726
Utah	.005371
Vermont	.004965
Virginia	.020861
Washington	.017726
West Virginia	.015890
Wisconsin	.027557
Wyoming	.004965
Samoa	.000915
Guam	.000662
Northern Marianas	.000425
Puerto Rico	.013295
Pacific Trust Territories	.001305
Virgin Islands	.000531
United States totals	.999996

(3) FISCAL YEARS 1987–1990.—Sums authorized to be appropriated pursuant to section 1287 of this title for the fiscal years 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the 10th day which begins after February 4, 1987. Sums authorized for such fiscal years shall be allotted in accordance with the following table:

States:	
Alabama	.011309

[1] So in original. Probably should be ''1986''.

States:	
Alaska	.006053
Arizona	.006831
Arkansas	.006616
California	.072333
Colorado	.008090
Connecticut	.012390
Delaware	.004965
District of Columbia	.004965
Florida	.034139
Georgia	.017100
Hawaii	.007833
Idaho	.004965
Illinois	.045741
Indiana	.024374
Iowa	.013688
Kansas	.009129
Kentucky	.012872
Louisiana	.011118
Maine	.007829
Maryland	.024461
Massachusetts	.034338
Michigan	.043487
Minnesota	.018589
Mississippi	.009112
Missouri	.028037
Montana	.004965
Nebraska	.005173
Nevada	.004965
New Hampshire	.010107
New Jersey	.041329
New Mexico	.004965
New York	.111632
North Carolina	.018253
North Dakota	.004965
Ohio	.056936
Oklahoma	.008171
Oregon	.011425
Pennsylvania	.040062
Rhode Island	.006791
South Carolina	.010361
South Dakota	.004965
Tennessee	.014692
Texas	.046226
Utah	.005329
Vermont	.004965
Virginia	.020698
Washington	.017588
West Virginia	.015766
Wisconsin	.027342
Wyoming	.004965
American Samoa	.000908
Guam	.000657
Northern Marianas	.000422
Puerto Rico	.013191
Pacific Trust Territories	.001295
Virgin Islands	.000527

(d) Availability and use of funds; reallotment

Sums allotted to the States for a fiscal year shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twelve months. The amount of any allotment not obligated by the end of such twenty-four-month period shall be immediately reallotted by the Administrator on the basis of the same ratio as applicable to sums allotted for the then current fiscal year, except that none of the funds reallotted by the Administrator for fiscal year 1978 and for fiscal years thereafter shall be allotted to any State which failed to obligate any of the funds being reallotted. Any sum made available to a State by reallotment under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(e) Minimum allotment; additional appropriations; ratio of amount available

For the fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, 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, 1985, 1986, 1987, 1988, 1989, and 1990. 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 been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

(f) Omitted

(g) Reservation of funds; State management assistance

(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 1287 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, 1994, in which case the percentage authorized to be reserved shall not exceed 4 per centum.[2] 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.

(2) The Administrator is authorized to grant to any State from amounts reserved to such State under this subsection, the reasonable costs of administering any aspects of sections 1281, 1283, 1284, and 1292 of this title the responsibility for administration of which the Administrator has delegated to such State. The Administrator may increase such grant to take into account the reasonable costs of administer-

[2] So in original. The period probably should be a comma.

ing an approved program under section 1342 or 1344 of this title, administering a state-wide waste treatment management planning program under section 1288(b)(4) of this title, and managing waste treatment construction grants for small communities.

(h) Alternate systems for small communities

The Administrator shall set aside from funds authorized for each fiscal year beginning on or after October 1, 1978, a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent of the sums allotted to any State with a rural population of 25 per centum or more of the total population of such State, as determined by the Bureau of the Census. The Administrator may set aside no more than 7½ percent of the sums allotted to any other State for which the Governor requests such action. Such sums shall be available only for alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less, or for the highly dispersed sections of larger municipalities, as defined by the Administrator.

(i) Set-aside for innovative and alternative projects

Not less than ½ of 1 percent 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 1282(a)(2) of this title. Including the expenditures authorized by the preceding sentence, a total of 2 percent of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 percent 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 1282(a)(2) of this title. 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 percent nor more than 7½ percent 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 1282(a)(2) of this title.

(j) Water quality management plan; reservation of funds for nonpoint source management

(1) The Administrator shall reserve each fiscal year not to exceed 1 per centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or $100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning, including, but not limited to—

(A) identifying most cost effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(B) developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under subparagraph (A);

(C) determining the nature, extent, and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(D) determining those publicly owned treatment works which should be constructed with assistance under this subchapter, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 1313(e) of this title.

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection. In giving such priority, the State shall allocate at least 40 percent of the amount granted to such State for a fiscal year under paragraph (2) of this subsection to regional public comprehensive planning organizations in such State and appropriate interstate organizations for the development and implementation of the plan described in this paragraph. In any fiscal year for which the Governor, in consultation with such organizations and with the approval of the Administrator, determines that allocation of at least 40 percent of such amount to such organizations will not result in significant participation by such organizations in water quality management planning and not significantly assist in development and implementation of the plan described in this paragraph and achieving the goals of this chapter, the allocation to such organization may be less than 40 percent of such amount.

(4) All activities undertaken under this subsection shall be in coordination with other related provisions of this chapter.

(5) NONPOINT SOURCE RESERVATION.—In addition to the sums reserved under paragraph (1), the Administrator shall reserve each fiscal year for each State 1 percent 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 1329 of this title. 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 subchapter.

(k) New York City Convention Center

The Administrator shall allot to the State of New York from sums authorized to be appropriated for the fiscal year ending September 30, 1982, an amount necessary to pay the entire cost of conveying sewage from the Convention Center of the city of New York to the Newtown sewage treatment plant, Brooklyn-Queens area, New York. The amount allotted under this sub-

section shall be in addition to and not in lieu of any other amounts authorized to be allotted to such State under this chapter.

(*l*) Marine estuary reservation

(1) Reservation of funds

(A) General rule

Prior to making allotments among the States under subsection (c) of this section, the Administrator shall reserve funds from sums appropriated pursuant to section 1287 of this title for each fiscal year beginning after September 30, 1986.

(B) Fiscal years 1987 and 1988

For each of fiscal years 1987 and 1988 the reservation shall be 1 percent of the sums appropriated pursuant to section 1287 of this title for such fiscal year.

(C) Fiscal years 1989 and 1990

For each of fiscal years 1989 and 1990 the reservation shall be 1½ percent of the funds appropriated pursuant to section 1287 of this title for such fiscal year.

(2) Use of funds

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 1330 of this title, relating to the national estuary program.

(3) Period of availability

Sums reserved under this subsection shall be subject to the period of availability for obligation established by subsection (d) of this section.

(4) Treatment of certain body of water

For purposes of this section and section 1281(n) of this title, Newark Bay, New Jersey, and the portion of the Passaic River up to Little Falls, in the vicinity of Beatties Dam, shall be treated as a marine bay and estuary.

(m) Discretionary deposits into State water pollution control revolving funds

(1) From construction grant allotments

In addition to any amounts deposited in a water pollution control revolving fund established by a State under subchapter VI, upon request of the Governor of such State, the Administrator shall make available to the State for deposit, as capitalization grants, in such fund in any fiscal year beginning after September 30, 1986, such portion of the amounts allotted to such State under this section for such fiscal year as the Governor considers appropriate; except that (A) in fiscal year 1987, such deposit may not exceed 50 percent of the amounts allotted to such State under this section for such fiscal year, and (B) in fiscal year 1988, such deposit may not exceed 75 percent of the amounts allotted to such State under this section for this fiscal year.

(2) Notice requirement

The Governor of a State may make a request under paragraph (1) for a deposit into the water pollution control revolving fund of such State—

(A) in fiscal year 1987 only if no later than 90 days after February 4, 1987, and

(B) in each fiscal year thereafter only if 90 days before the first day of such fiscal year,

the State provides notice of its intent to make such deposit.

(3) Exception

Sums reserved under section 1285(j) of this title shall not be available for obligation under this subsection.

(June 30, 1948, ch. 758, title II, §205, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 837; amended Pub. L. 93–243, §1, Jan. 2, 1974, 87 Stat. 1069; Pub. L. 95–217, §§25, 26(a), 27, 28, Dec. 27, 1977, 91 Stat. 1574, 1575; Pub. L. 96–483, §11, Oct. 21, 1980, 94 Stat. 2363; Pub. L. 97–117, §§8(c), 13–16, Dec. 29, 1981, 95 Stat. 1625, 1627–1629; Pub. L. 100–4, title II, §§206(a)–(c), 207–210, 212(b), title III, §316(d), Feb. 4, 1987, 101 Stat. 19–21, 27, 60; Pub. L. 105–362, title V, §501(d)(2)(C), Nov. 10, 1998, 112 Stat. 3284; Pub. L. 107–303, title III, §302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

CODIFICATION

Subsec. (f) provided that sums made available for obligation between Jan. 1, 1975, and Mar. 1, 1975, be available for obligation until Sept. 30, 1978.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–303 repealed Pub. L. 105–362, §501(d)(2)(C). See 1998 Amendment note below.

1998—Subsec. (a). Pub. L. 105–362, §501(d)(2)(C), which directed the substitution of ''section 1375 of this title'' for ''section 1375(b) of this title'' in last sentence, was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

1987—Subsec. (c)(2). Pub. L. 100–4, §206(a)(1), substituted ''September 30, 1985, and September 30, 1986'' for ''and September 30, 1985''.

Subsec. (c)(3). Pub. L. 100–4, §206(a)(2), added par. (3).

Subsec. (e). Pub. L. 100–4, §206(b), substituted ''1985, 1986, 1987, 1988, 1989, and 1990'' for ''and 1985'' in two places.

Subsec. (g)(1). Pub. L. 100–4, §206(c), substituted ''October 1, 1994'' for ''October 1, 1985''.

Subsec. (h). Pub. L. 100–4, §207, substituted ''a total (as determined by the Governor of the State) of not less than 4 percent nor more than 7½ percent'' for ''four per centum'' and ''7½ per cent'' for ''four per centum''.

Subsec. (i). Pub. L. 100–4, §208, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''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 pursuant to section 1282(a)(2) of this title. Including the expenditures authorized by the preceding sentence, a total of two 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 from 75 per centum to 85 per centum pursuant to section 1282(a)(2) of this title. 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 7½ 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 1282(a)(2) of this title.''

Subsec. (j)(3). Pub. L. 100–4, § 209, inserted provision directing State to allocate at least 40 percent of amount granted under par. (2) to regional public comprehensive planning organizations and appropriate interstate organizations for development and implementation of plan, with exception for less than 40 percent allocation in certain circumstances.

Subsec. (j)(5). Pub. L. 100–4, § 316(d), added par. (5).

Subsec. (*l*). Pub. L. 100–4, § 210, added subsec. (*l*).

Subsec. (m). Pub. L. 100–4, § 212(b), added subsec. (m).

1981—Subsec. (c). Pub. L. 97–117, § 13(a), designated existing provision as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97–117, § 13(b), substituted ''1981, 1982, 1983, 1984, and 1985'' for ''and 1981'' in two places.

Subsec. (g)(1). Pub. L. 97–117, § 14, inserted ''except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, 1985, in which case the percentage authorized to be reserved shall not exceed 4 per centum.'' after ''October 1, 1977,'' and provision that sums authorized to be reserved be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

Subsec. (i). Pub. L. 97–117, § 8(c), substituted ''September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985'' for ''and September 30, 1981'', struck out ''from 75 per centum to 85 per centum'' after ''innovative processes and techniques'', and inserted provision that including the expenditures authorized by the first sentence of this subsection, a total, as determined by the State Governor, of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after Sept. 30, 1981, under subsec. (c) of this section be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 1282(a)(2) of this title.

Subsecs. (j), (k). Pub. L. 97–117, §§ 15, 16, added subsecs. (j) and (k).

1980—Subsec. (g)(1). Pub. L. 96–483 inserted ''of the amount authorized under section 1287 of this title for purposes'' after ''2 per centum''.

1977—Subsec. (a). Pub. L. 95–217, § 25(a), substituted ''each fiscal year beginning after June 30, 1972, and before September 30, 1977'' for ''each fiscal year beginning after June 30, 1972''.

Subsecs. (c) to (f). Pub. L. 95–217, § 25(b), added subsecs. (c) to (f).

Subsecs. (g) to (i). Pub. L. 95–217, §§ 26(a), 27, 28, added subsecs. (g) to (i).

1974—Subsec. (a). Pub. L. 93–243 inserted provisions that for the fiscal year ending June 30, 1975, the ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print and substituted ''June 30, 1975'' for ''June 30, 1974'' in sentence beginning ''Allotments for fiscal years''.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

AVAILABILITY OF ALLOTTED SUMS IN SUBSEQUENT YEARS; REALLOTMENT OF UNOBLIGATED SUMS

Pub. L. 96–483, § 7, Oct. 21, 1980, 94 Stat. 2362, provided that: ''Notwithstanding section 205(d) of the Federal Water Pollution Control Act (33 U.S.C. 1285), sums allotted to the States for the fiscal year 1979 shall remain available for obligation for the fiscal year for which authorized and for the period of the next succeeding twenty-four months. The amount of any allotment not obligated by the end of such thirty-six month period shall be immediately reallotted by the Administrator on the basis of the same ratio as applicable to sums allotted for the then current fiscal year, except that none of the funds reallotted by the Administrator for fiscal year 1979 shall be allotted to any State which failed to obligate any of the funds being reallotted. Any sum made available to a State by reallotment under this section shall be in addition to any funds otherwise allotted to such State for grants under title II of the Federal Water Pollution Control Act [this subchapter] during any fiscal year. This section shall take effect on September 30, 1980.''

§ 1286. Reimbursement and advanced construction

(a) Publicly owned treatment works construction initiated after June 30, 1966, but before July 1, 1973; reimbursement formula

Any publicly owned treatment works in a State on which construction was initiated after June 30, 1966, but before July 1, 1973, which was approved by the appropriate State water pollution control agency and which the Administrator finds meets the requirements of section 1158 of this title in effect at the time of the initiation of construction shall be reimbursed a total amount equal to the difference between the amount of Federal financial assistance, if any, received under such section 1158 of this title for such project and 50 per centum of the cost of such project, or 55 per centum of the project cost where the Administrator also determines that such treatment works was constructed in conformity with a comprehensive metropolitan treatment plan as described in section 1158(f) of this title as in effect immediately prior to October 18, 1972. Nothing in this subsection shall result in any such works receiving Federal grants from all sources in excess of 80 per centum of the cost of such project.

(b) Publicly owned treatment works construction initiated between June 30, 1956, and June 30, 1966; reimbursement formula

Any publicly owned treatment works constructed with or eligible for Federal financial assistance under this Act in a State between June 30, 1956, and June 30, 1966, which was approved by the State water pollution control agency and which the Administrator finds meets the requirements of section 1158 of this title prior to October 18, 1972 but which was constructed without assistance under such section 1158 of this title or which received such assistance in an amount less than 30 per centum of

the cost of such project shall qualify for payments and reimbursement of State or local funds used for such project from sums allocated to such State under this section in an amount which shall not exceed the difference between the amount of such assistance, if any, received for such project and 30 per centum of the cost of such project.

(c) Application for reimbursement

No publicly owned treatment works shall receive any payment or reimbursement under subsection (a) or (b) of this section unless an application for such assistance is filed with the Administrator within the one year period which begins on October 18, 1972. Any application filed within such one year period may be revised from time to time, as may be necessary.

(d) Allocation of funds

The Administrator shall allocate to each qualified project under subsection (a) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation. The Administrator shall allocate to each qualified project under subsection (b) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation.

(e) Authorization of appropriations

There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,600,000,000 and, to carry out subsection (b) of this section, not to exceed $750,000,000. The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section.

(f) Additional funds

(1) In any case where a substantial portion of the funds allotted to a State for the current fiscal year under this subchapter have been obligated under section 1281(g) of this title, or will be so obligated in a timely manner (as determined by the Administrator), and there is construction of any treatment works project without the aid of Federal funds and in accordance with all procedures and all requirements applicable to treatment works projects, except those procedures and requirements which limit construction of projects to those constructed with the aid of previously allotted Federal funds, the Administrator, upon his approval of an application made under this subsection therefor, is authorized to pay the Federal share of the cost of construction of such project when additional funds are allotted to the State under this subchapter if prior to the construction of the project the Administrator approves plans, specifications, and estimates therefor in the same manner as other treatment works projects. The Administrator may not approve an application under this subsection unless an authorization is in effect for the first fiscal year in the period for which the application requests payment and such requested payment for that fiscal year does not exceed the State's expected allotment from such authorization. The Administrator shall not be required to make such requested payment for any fiscal year—

(A) to the extent that such payment would exceed such State's allotment of the amount appropriated for such fiscal year; and

(B) unless such payment is for a project which, on the basis of an approved funding priority list of such State, is eligible to receive such payment based on the allotment and appropriation for such fiscal year.

To the extent that sufficient funds are not appropriated to pay the full Federal share with respect to a project for which obligations under the provisions of this subsection have been made, the Administrator shall reduce the Federal share to such amount less than 75 per centum as such appropriations do provide.

(2) In determining the allotment for any fiscal year under this subchapter, any treatment works project constructed in accordance with this section and without the aid of Federal funds shall not be considered completed until an application under the provisions of this subsection with respect to such project has been approved by the Administrator, or the availability of funds from which this project is eligible for reimbursement has expired, whichever first occurs.

(June 30, 1948, ch. 758, title II, §206, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 838; amended Pub. L. 93–207, §1(2), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95–217, §29(a), Dec. 27, 1977, 91 Stat. 1576; Pub. L. 96–483, §5, Oct. 21, 1980, 94 Stat. 2361.)

REFERENCES IN TEXT

Section 1158 of this title, referred to in subsecs. (a) and (b), refers to section 8 of act June 30, 1948, ch. 758, 62 Stat. 1158, prior to the supersedure and reenactment of act June 30, 1948, by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816. Provisions of section 1158 of this title are covered by this subchapter.

This Act, referred to in subsec. (b), means act June 30, 1948, ch. 758, 62 Stat. 1155, prior to the supersedure and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816, enacted this chapter.

AMENDMENTS

1980—Subsec. (f)(1). Pub. L. 96–483 substituted ''In any case where a substantial portion of the funds allotted to a State for the current fiscal year under this subchapter have been obligated under section 1281(g) of this title, or will be so obligated in a timely manner (as determined by the Administrator)'' for ''In any case where all funds allotted to a State under this subchapter have been obligated under section 1283 of this title'', substituted ''first fiscal year'' for ''future fiscal year'', inserted ''in the period'' before ''for which the application'', substituted ''and such requested payment for that fiscal year does not exceed the State's expected allotment from such authorization. The Administrator shall not be required to make such requested payment for any fiscal year—'' for ''which authorization will in-

sure such payment without exceeding the State's expected allotment from such authorization.'', and added subpars. (A), (B), and provisions following subpar. (B).

1977—Subsec. (a). Pub. L. 95–217 substituted ''July 1, 1973'' for ''July 1, 1972''.

1973—Subsec. (e). Pub. L. 93–207 substituted ''$2,600,000,000'' for ''$2,000,000,000''.

APPLICATION FOR ASSISTANCE FOR PUBLICLY OWNED TREATMENT WORKS WHERE GRANTS WERE MADE BEFORE JULY 2, 1972, AND ON WHICH CONSTRUCTION WAS INITIATED BEFORE JULY 1, 1973

Pub. L. 95–217, § 29(b), Dec. 27, 1977, 91 Stat. 1576, provided that applications for assistance for publicly owned treatment works for which a grant was made under this chapter before July 1, 1972, and on which construction was initiated before July 1, 1973, be filed not later than the ninetieth day after Dec. 27, 1977.

APPLICATION FOR ASSISTANCE

Pub. L. 93–207, § 2, Dec. 28, 1973, 87 Stat. 906, provided that notwithstanding the requirements of subsec. (c) of this section, applications for assistance under this section could have been filed with the Administrator until Jan. 31, 1974.

ALLOCATION OF CONSTRUCTION GRANTS APPROPRIATED FOR THE YEAR ENDING JUNE 30, 1973; INTERIM PAYMENTS; LIMITATIONS

Pub. L. 93–207, § 3, Dec. 28, 1973, 87 Stat. 906, provided that: ''Funds available for reimbursement under Public Law 92–399 [making appropriations for Agriculture-Environmental and Consumer Protection Programs for the fiscal year ending June 30, 1973] shall be allocated in accordance with subsection (d) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) [subsec. (d) of this section], pro rata among all projects eligible under subsection (a) of such section 206 [subsec. (a) of this section] for which applications have been submitted and approved by the Administrator pursuant to such Act [this chapter]. Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim payments to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) and (2) for the purpose of determining allocation of sums available under Public Law 92–399, the unpaid balance of reimbursement due such projects shall be computed as of January 31, 1974. Upon completion by the Administrator of his audit and approval of all projects for which an application has been filed under subsection (a) of such section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. Amounts allocated to projects which are later determined to be in excess of entitlement shall be available for reallocation, until expended, to other qualified projects under subsection (a) of such section 206. In no event, however, shall any payments exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.''

§ 1287. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter, other than sections 1286(e), 1288 and 1289 of this title, 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 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.

(June 30, 1948, ch. 758, title II, § 207, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 839; amended Pub. L. 93–207, § 1(3), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95–217, § 30, Dec. 27, 1977, 91 Stat. 1576; Pub. L. 97–35, title XVIII, § 1801(a), Aug. 13, 1981, 95 Stat. 764; Pub. L. 97–117, § 17, Dec. 29, 1981, 95 Stat. 1630; Pub. L. 100–4, title II, § 211, Feb. 4, 1987, 101 Stat. 21.)

AMENDMENTS

1987—Pub. L. 100–4 inserted ''; and 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'' before period at end.

1981—Pub. L. 97–117 substituted ''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'' for ''and for the fiscal year ending September 30, 1982, not to exceed $0, unless there is enacted legislation establishing an allotment formula for fiscal year 1982 construction grant funds and otherwise reforming the municipal sewage treatment construction grant program under this subchapter, in which case the authorization for fiscal year 1982 shall be an amount not to exceed $2,400,000,000''.

Pub. L. 97–35 substituted provisions authorizing not to exceed $2,548,837,000 for fiscal year ending Sept. 30, 1981, and not to exceed $0 for the fiscal year ending Sept. 30, 1982, unless an allotment formula is enacted, in which case the authorization is not to exceed $2,400,000,000, for provisions authorizing not to exceed $5,000,000,000 for fiscal years ending Sept. 30, 1981 and 1982.

1977—Pub. L. 95–217 inserted ''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, September 30, 1981, and September 30, 1982, not to exceed $5,000,000,000 per fiscal year''.

1973—Pub. L. 93–207 inserted reference to section 1286(e) of this title.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94–369, title III, § 301, July 22, 1976, 90 Stat. 1011, provided for authorization to carry out this subchapter, other than sections 1286, 1288, and 1289, for the fiscal year ending Sept. 30, 1977, not to exceed $700,000,000, which sum (subject to amounts provided in appropriation Acts) was to be allotted to each State listed in column 1 of table IV contained in House Public Works and Transportation Committee Print numbered 94–25 in accordance with the percentages provided for such State (if any) in column 5 of such table, and such sum to be in addition to, and not in lieu of, any funds otherwise authorized and to be available until expended.

§ 1288. Areawide waste treatment management

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

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

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

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

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

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

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

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

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

(b) Planning process

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

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

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

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

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

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

(ii) regulate the location, modification, and construction of any facilities within

such area which may result in any discharge in such area, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) In the case of a State with a program submitted and approved under this paragraph, the Administrator shall withdraw approval of such program under this subparagraph only for a sub-

stantial failure of the State to administer its program in accordance with the requirements of this paragraph.

(c) Regional operating agencies

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

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

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

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

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

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

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

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

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

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

(I) to accept for treatment industrial wastes.

(d) Conformity of works with area plan

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

(e) Permits not to conflict with approved plans

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

(f) Grants

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

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

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

(g) Technical assistance by Administrator

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

(h) Technical assistance by Secretary of the Army

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

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

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[1] So in original. Probably should be ''designated''.

(i) State best management practices program

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

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

(j) Agricultural cost sharing

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

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

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

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

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

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

(2) In return for such agreement by the landowner or operator the Secretary shall agree to provide technical assistance and share the cost of carrying out those conservation practices and measures set forth in the contract for which he determines that cost sharing is appropriate and in the public interest and which are approved for cost sharing by the agency designated to implement the plan developed under subsection (b) of this section. The portion of such cost (including labor) to be shared shall be that part which the Secretary determines is necessary and appropriate to effectuate the installation of the water quality management practices and measures under the contract, but not to exceed 50 per centum of the total cost of the measures set forth in the contract; except the Secretary may increase the matching cost share where he determines that (1) the main benefits to be derived from the measures are related to improving offsite water quality, and (2) the matching share requirement would place a burden on the landowner which would probably prevent him from participating in the program.

(3) The Secretary may terminate any contract with a landowner or operator by mutual agreement with the owner or operator if the Secretary determines that such termination would be in the public interest, and may agree to such modification of contracts previously entered into as he may determine to be desirable to carry out the purposes of the program or facilitate the practical administration thereof or to accomplish equitable treatment with respect to other conservation, land use, or water quality programs.

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

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

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

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

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

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

(June 30, 1948, ch. 758, title II, §208, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 839; amended Pub. L. 95–217, §§4(e), 31, 32, 33(a), 34, 35, Dec. 27, 1977, 91 Stat. 1566, 1576–1579; Pub. L. 96–483, §1(d), (e), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, §101(d), (e), Feb. 4, 1987, 101 Stat. 9.)

REFERENCES IN TEXT

Public Law 83–566, referred to in subsec. (j)(8), is act Aug. 4, 1954, ch. 656, 68 Stat. 666, known as the Watershed Protection and Flood Prevention Act, which is classified principally to chapter 18 (§1001 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 16 and Tables.

AMENDMENTS

1987—Subsec. (f)(3). Pub. L. 100–4, §101(d), struck out ''and'' after ''1974,'' and ''1980,'' and inserted '', and such sums as may be necessary for fiscal years 1983 through 1990'' after ''1982''.

Subsec. (j)(9). Pub. L. 100–4, §101(e), struck out ''and'' after ''1981,'' and inserted ''and such sums as may be necessary for fiscal years 1983 through 1990,'' after ''1982,''.

1980—Subsec. (f)(3). Pub. L. 96–483, §1(d), inserted authorization of not to exceed $100,000,000 per fiscal year for fiscal years ending Sept. 30, 1981 and 1982.

Subsec. (j)(9). Pub. L. 96–483, §1(e), inserted reference to authorization of $100,000,000 for each of fiscal years 1981 and 1982.

1977—Subsec. (b)(1). Pub. L. 95–217, §31(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(2)(A). Pub. L. 95–217, §32, inserted '', and an identification of open space and recreation opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation'' after ''development of such treatment works''.

Subsec. (b)(2)(F). Pub. L. 95–217, §33(a), substituted ''sources of pollution, including return flows from irrigated agriculture, and their cumulative effects,'' for ''sources of pollution, including''.

Subsec. (b)(4). Pub. L. 95–217, §34(a), designated existing provisions as subpar. (A), substituted ''to the Administrator for approval for application to a class or category of activity throughout such State'' for ''to the Administrator for application to all regions within such State'', and added subpars. (B) to (D).

Subsec. (f)(2). Pub. L. 95–217, §31(b), substituted ''For the two-year period beginning on the date the first grant is made under paragraph (1) of this subsection to an agency, if such first grant is made before October 1, 1977, the amount of each such grant to such agency shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section, and thereafter the amount granted to such agency shall not exceed 75 per centum of such costs in each succeeding one-year period'' for ''The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year'' and inserted ''In the case of any other grant made to an agency under such paragraph (1) of this subsection, the amount of such grant shall not exceed 75 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process in any year.''

Subsec. (f)(3). Pub. L. 95–217, §§4(e), 31(c), substituted ''and not to exceed $150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980'' for ''and not to exceed $150,000,000 for the fiscal year ending June 30, 1975'' and inserted ''subject to such amounts as are provided in appropriation Acts'' after ''contractual obligation of the United States for the payment of its contribution to such proposal''.

Subsec. (i). Pub. L. 95–217, §34(b), added subsec. (i).

Subsec. (j). Pub. L. 95–217, §35, added subsec. (j).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, relating to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

§ 1289. Basin planning

(a) Preparation of Level B plans

The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act [42 U.S.C. 1962 et seq.] for

all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 1288 of this title.

(b) Reporting requirements

The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

(c) Authorization of appropriations

There is authorized to be appropriated to carry out this section not to exceed $200,000,000.

(June 30, 1948, ch. 758, title II, § 209, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 843.)

REFERENCES IN TEXT

The Water Resources Planning Act, referred to in subsec. (a), is Pub. L. 89–80, July 22, 1965, 79 Stat. 244, as amended, which is classified generally to chapter 19B (§ 1962 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1962 of Title 42 and Tables.

§ 1290. Annual survey

The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this chapter, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 1375(a) of this title.

(June 30, 1948, ch. 758, title II, § 210, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 843; amended Pub. L. 105–362, title V, § 501(d)(2)(D), Nov. 10, 1998, 112 Stat. 3284; Pub. L. 107–303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

AMENDMENTS

2002—Pub. L. 107–303 repealed Pub. L. 105–362, § 501(d)(2)(D). See 1998 Amendment note below.

1998—Pub. L. 105–362, § 501(d)(2)(D), which directed the substitution of ''shall be reported to Congress not later than 90 days after the date of convening of each session of Congress'' for ''shall be included in the report required under section 1375(a) of this title'', was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

§ 1291. Sewage collection systems

(a) Existing and new systems

No grant shall be made for a sewage collection system under this subchapter unless such grant (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 1281 of this title.

(b) Use of population density as test

If the Administrator uses population density as a test for determining the eligibility of a collector sewer for assistance it shall be only for the purpose of evaluating alternatives and determining the needs for such system in relation to ground or surface water quality impact.

(c) Pollutant discharges from separate storm sewer systems

No grant shall be made under this subchapter from funds authorized for any fiscal year during the period beginning October 1, 1977, and ending September 30, 1990, for treatment works for control of pollutant discharges from separate storm sewer systems.

(June 30, 1948, ch. 758, title II, § 211, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 843; amended Pub. L. 95–217, § 36, Dec. 27, 1977, 91 Stat. 1581; Pub. L. 97–117, § 2(b), Dec. 29, 1981, 95 Stat. 1623; Pub. L. 100–4, title II, § 206(d), Feb. 4, 1987, 101 Stat. 20.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–4 substituted ''1990'' for ''1985''.

1981—Subsec. (c). Pub. L. 97–117 substituted ''September 30, 1985'' for ''September 30, 1982''.

1977—Pub. L. 95–217 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

§ 1292. Definitions

As used in this subchapter—

(1) The term ''construction'' means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 1314(d)(3) of this title, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2)(A) The term ''treatment works'' means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land applica-

tion) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, ''treatment works'' means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall, in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after October 18, 1972, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

(3) The term ''replacement'' as used in this subchapter means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

(June 30, 1948, ch. 758, title II, §212, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 844; amended Pub. L. 95–217, §37, Dec. 27, 1977, 91 Stat. 1581; Pub. L. 97–117, §8(d), Dec. 29, 1981, 95 Stat. 1626; Pub. L. 113–121, title V, §5012(a), June 10, 2014, 128 Stat. 1328.)

AMENDMENTS

2014—Par. (2)(A). Pub. L. 113–121 struck out ''any works, including site'' before ''acquisition of the land'', substituted ''will be used for ultimate'' for ''is used for ultimate'', and inserted ''and acquisition of other land, and interests in land, that are necessary for construction'' before period at end.

1981—Par. (1). Pub. L. 97–117 inserted ''field testing of innovative or alternative waste water treatment processes and techniques meeting guidelines promulgated under section 1314(d)(3) of this title,'' after ''procedures,''.

1977—Par. (2)(A). Pub. L. 95–217 inserted ''(including land used for the storage of treated wastewater in land treatment systems prior to land application)'' after ''integral part of the treatment process''.

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–121, title V, §5012(c), June 10, 2014, 128 Stat. 1328, provided that: ''The amendments made by this section [amending this section and section 1362 of this title] shall take effect on October 1, 2014.''

§ 1293. Loan guarantees

(a) State or local obligations issued exclusively to Federal Financing Bank for publicly owned treatment works; determination of eligibility of project by Administrator

Subject to the conditions of this section and to such terms and conditions as the Administrator determines to be necessary to carry out the purposes of this subchapter, the Administrator is authorized to guarantee, and to make commitments to guarantee, the principal and interest (including interest accruing between the date of default and the date of the payment in full of the guarantee) of any loan, obligation, or participation therein of any State, municipality, or intermunicipal or interstate agency issued directly and exclusively to the Federal Financing Bank to finance that part of the cost of any grant-eligible project for the construction of publicly owned treatment works not paid for with Federal financial assistance under this subchapter (other than this section), which project the Administrator has determined to be eligible for such financial assistance under this subchapter, including, but not limited to, projects eligible for reimbursement under section 1286 of this title.

(b) Conditions for issuance

No guarantee, or commitment to make a guarantee, may be made pursuant to this section—

(1) unless the Administrator certifies that the issuing body is unable to obtain on reasonable terms sufficient credit to finance its actual needs without such guarantee; and

(2) unless the Administrator determines that there is a reasonable assurance of repayment of the loan, obligation, or participation therein.

A determination of whether financing is available at reasonable rates shall be made by the Secretary of the Treasury with relationship to the current average yield on outstanding marketable obligations of municipalities of comparable maturity.

(c) Fees for application investigation and issuance of commitment guarantee

The Administrator is authorized to charge reasonable fees for the investigation of an application for a guarantee and for the issuance of a commitment to make a guarantee.

(d) Commitment for repayment

The Administrator, in determining whether there is a reasonable assurance of repayment, may require a commitment which would apply to such repayment. Such commitment may include, but not be limited to, any funds received by such grantee from the amounts appropriated under section 1286 of this title.

(June 30, 1948, ch. 758, title II, §213, as added Pub. L. 94–558, Oct. 19, 1976, 90 Stat. 2639; amended Pub. L. 96–483, §2(e), Oct. 21, 1980, 94 Stat. 2361.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–483 struck out ''(1) all or any portion of the funds retained by such grantee under section 1284(b)(3) of this title, and (2)'' after ''limited to''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–483 effective Dec. 27, 1977, see section 2(g) of Pub. L. 96–483, set out as a note under section 1281 of this title.

§ 1293a. Contained spoil disposal facilities

(a) Construction, operation, and maintenance; period; conditions; requirements

The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate, and maintain, subject to the provisions of subsection (c), contained spoil disposal facilities of sufficient capacity for a period not to exceed ten years, to meet the requirements of this section. Before establishing each such facility, the Secretary of the Army shall obtain the concurrence of appropriate local governments and shall consider the views and recommendations of the Administrator of the Environmental Protection Agency and shall comply with requirements of section 1171 of this title, and of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. Section 401 of this title shall not apply to any facility authorized by this section.

(b) Time for establishment; consideration of area needs; requirements

The Secretary of the Army, acting through the Chief of Engineers, shall establish the contained spoil disposal facilities authorized in subsection (a) at the earliest practicable date, taking into consideration the views and recommendations of the Administrator of the Environmental Protection Agency as to those areas which, in the Administrator's judgment, are most urgently in need of such facilities and pursuant to the requirements of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.].

(c) Written agreement requirement; terms of agreement

Prior to construction of any such facility, the appropriate State or States, interstate agency, municipality, or other appropriate political subdivision of the State shall agree in writing to (1) furnish all lands, easements, and rights-of-way necessary for the construction, operation, and maintenance of the facility; (2) contribute to the United States 25 per centum of the construction costs, such amount to be payable either in cash prior to construction, in installments during construction, or in installments, with interest at a rate to be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due or callable for redemption for fifteen years from date of issue; (3) hold and save the United States free from damages due to construction, operation, and maintenance of the facility; and (4) except as provided in subsection (f), maintain the facility after completion of its use for disposal purposes in a manner satisfactory to the Secretary of the Army.

(d) Waiver of construction costs contribution from non-Federal interests; findings of participation in waste treatment facilities for general geographical area and compliance with water quality standards; waiver of payments in event of written agreement before occurrence of findings

The requirement for appropriate non-Federal interest or interests to furnish an agreement to contribute 25 per centum of the construction costs as set forth in subsection (c) shall be waived by the Secretary of the Army upon a finding by the Administrator of the Environmental Protection Agency that for the area to which such construction applies, the State or States involved, interstate agency, municipality, and other appropriate political subdivision of the State and industrial concerns are participating in and in compliance with an approved plan for the general geographical area of the dredging activity for construction, modification, expansion, or rehabilitation of waste treatment facilities and the Administrator has found that applicable water quality standards are not being violated. In the event such findings occur after the appropriate non-Federal interest or interests have entered into the agreement required by subsection (c), any payments due after the date of such findings as part of the required local contribution of 25 per centum of the construction costs shall be waived by the Secretary of the Army.

(e) Federal payment of costs for disposal of dredged spoil from project

Notwithstanding any other provision of law, all costs of disposal of dredged spoil from the project for the Great Lakes connecting channels, Michigan, shall be borne by the United States.

(f) Title to lands, easements, and rights-of-way; retention by non-Federal interests; conveyance of facilities; agreement of transferee

The participating non-Federal interest or interests shall retain title to all lands, easements, and rights-of-way furnished by it pursuant to subsection (c). A spoil disposal facility owned by a non-Federal interest or interests may be conveyed to another party only after completion of the facility's use for disposal purposes and after the transferee agrees in writing to use or maintain the facility in a manner which the Secretary of the Army determines to be satisfactory.

(g) Federal licenses or permits; charges; remission of charge

Any spoil disposal facilities constructed under the provisions of this section shall be made available to Federal licensees or permittees upon payment of an appropriate charge for such use. Twenty-five per centum of such charge shall be remitted to the participating non-Federal interest or interests except for those excused from contributing to the construction costs under subsections (d) and (e).

(h) Provisions applicable to Great Lakes and their connecting channels

This section, other than subsection (i), shall be applicable only to the Great Lakes and their connecting channels.

(i) Research, study, and experimentation program relating to dredged spoil extended to navigable waters, etc.; cooperative program; scope of program; utilization of facilities and personnel of Federal agency

The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized to extend to all navigable waters, connecting channels, tributary streams, other waters of the United States and waters contiguous to the United States, a comprehensive program of research, study, and experimentation relating to dredged spoil. This program shall be carried out in cooperation with other Federal and State agencies, and shall include, but not be limited to, investigations on the characteristics of dredged spoil, and alternative methods of its disposal. To the extent that such study shall include the effects of such dredge spoil on water quality, the facilities and personnel of the Environmental Protection Agency shall be utilized.

(j) Period for depositing dredged materials

The Secretary of the Army, acting through the Chief of Engineers, is authorized to continue to deposit dredged materials into a contained spoil disposal facility constructed under this section until the Secretary determines that such facility is no longer needed for such purpose or that such facility is completely full.

(k) Study and monitoring program

(1) Study

The Secretary of the Army, acting through the Chief of Engineers, shall conduct a study of the materials disposed of in contained spoil disposal facilities constructed under this section for the purpose of determining whether or not toxic pollutants are present in such facilities and for the purpose of determining the concentration levels of each of such pollutants in such facilities.

(2) Report

Not later than 1 year after November 17, 1988, the Secretary shall transmit to Congress a report on the results of the study conducted under paragraph (1).

(3) Inspection and monitoring program

The Secretary shall conduct a program to inspect and monitor contained spoil disposal facilities constructed under this section for the purpose of determining whether or not toxic pollutants are leaking from such facilities.

(4) Toxic pollutant defined

For purposes of this subsection, the term ''toxic pollutant'' means those toxic pollutants referred to in section 1311(b)(2)(C) and 1311(b)(2)(D) of this title and such other pollutants as the Secretary, in consultation with the Administrator of the Environmental Protection Agency, determines are appropriate based on their effects on human health and the environment.

(Pub. L. 91–611, title I, §123, Dec. 31, 1970, 84 Stat. 1823; Pub. L. 93–251, title I, §23, Mar. 7, 1974, 88 Stat. 20; Pub. L. 100–676, §24, Nov. 17, 1988, 102 Stat. 4027.)

REFERENCES IN TEXT

Section 1171 of this title, referred to in subsec. (a), was omitted as superseded.

The National Environmental Policy Act of 1969, referred to in subsecs. (a) and (b), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter (§1251 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1165a of this title.

Section was not enacted as a part of the Federal Water Pollution Control Act which comprises this chapter.

AMENDMENTS

1988—Subsec. (j). Pub. L. 100–676, §24(a), added subsec. (j).

Subsec. (k). Pub. L. 100–676, §24(b), added subsec. (k).

1974—Subsec. (d). Pub. L. 93–251 inserted provision for waiver of payments in event of a written agreement before occurrence of findings.

GREAT LAKES CONFINED DISPOSAL FACILITIES

Pub. L. 104–303, title V, §513, Oct. 12, 1996, 110 Stat. 3762, provided that:

''(a) ASSESSMENT.—Pursuant to the responsibilities of the Secretary under section 123 of the River and Harbor Act of 1970 (33 U.S.C. 1293a), the Secretary shall conduct an assessment of the general conditions of confined disposal facilities in the Great Lakes.

''(b) REPORT.—Not later than 3 years after the date of the enactment of this Act [Oct. 12, 1996], the Secretary shall transmit to Congress a report on the results of the assessment conducted under subsection (a), including the following:

''(1) A description of the cumulative effects of confined disposal facilities in the Great Lakes.

''(2) Recommendations for specific remediation actions for each confined disposal facility in the Great Lakes.

''(3) An evaluation of, and recommendations for, confined disposal facility management practices and technologies to conserve capacity at such facilities and to minimize adverse environmental effects at such facilities throughout the Great Lakes system.''

§ 1294. Public information and education on recycling and reuse of wastewater, use of land treatment, and reduction of wastewater volume

The Administrator shall develop and operate within one year of December 27, 1977, a continuing program of public information and education on recycling and reuse of wastewater (including sludge), the use of land treatment, and methods for the reduction of wastewater volume.

(June 30, 1948, ch. 758, title II, §214, as added Pub. L. 95–217, §38, Dec. 27, 1977, 91 Stat. 1581.)

§ 1295. Requirements for American materials

Notwithstanding any other provision of law, no grant for which application is made after February 1, 1978, shall be made under this subchapter for any treatment works unless only

such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States will be used in such treatment works. This section shall not apply in any case where the Administrator determines, based upon those factors the Administrator deems relevant, including the available resources of the agency, it to be inconsistent with the public interest (including multilateral government procurement agreements) or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(June 30, 1948, ch. 758, title II, § 215, as added Pub. L. 95–217, § 39, Dec. 27, 1977, 91 Stat. 1581.)

§ 1296. Determination of priority of projects

Notwithstanding any other provision of this chapter, the determination of the priority to be given each category of projects for construction of publicly owned treatment works within each State shall be made solely by that State, except that if the Administrator, after a public hearing, determines that a specific project will not result in compliance with the enforceable requirements of this chapter, such project shall be removed from the State's priority list and such State shall submit a revised priority list. These categories shall include, but not be limited to (A) secondary treatment, (B) more stringent treatment, (C) infiltration-in-flow correction, (D) major sewer system rehabilitation, (E) new collector sewers and appurtenances, (F) new interceptors and appurtenances, and (G) correction of combined sewer overflows. Not less than 25 per centum of funds allocated to a State in any fiscal year under this subchapter for construction of publicly owned treatment works in such State shall be obligated for those types of projects referred to in clauses (D), (E), (F), and (G) of this section, if such projects are on such State's priority list for that year and are otherwise eligible for funding in that fiscal year. It is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency shall be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

(June 30, 1948, ch. 758, title II, § 216, as added Pub. L. 95–217, § 40, Dec. 27, 1977, 91 Stat. 1582; amended Pub. L. 97–117, § 18, Dec. 29, 1981, 95 Stat. 1630.)

AMENDMENTS

1981—Pub. L. 97–117 inserted provision that it is the policy of Congress that projects for wastewater treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency be projects which, in the estimation of the State, are designed to achieve optimum water quality management, consistent with the public health and water quality goals and requirements of this chapter.

§ 1297. Guidelines for cost-effectiveness analysis

Any guidelines for cost-effectiveness analysis published by the Administrator under this subchapter shall provide for the identification and selection of cost effective alternatives to comply with the objectives and goals of this chapter and sections 1281(b), 1281(d), 1281(g)(2)(A), and 1311(b)(2)(B) of this title.

(June 30, 1948, ch. 758, title II, § 217, as added Pub. L. 95–217, § 41, Dec. 27, 1977, 91 Stat. 1582.)

§ 1298. Cost effectiveness

(a) Congressional statement of policy

It is the policy of Congress that a project for waste treatment and management undertaken with Federal financial assistance under this chapter by any State, municipality, or intermunicipal or interstate agency shall be considered as an overall waste treatment system for waste treatment and management, and shall be that system which constitutes the most economical and cost-effective combination of devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping power, and other equipment, and their appurtenances; extension, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land use for the storage of treated wastewater in land treatment systems prior to land application) or which is used for ultimate disposal of residues resulting from such treatment; water efficiency measures and devices; and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems; to meet the requirements of this chapter.

(b) Determination by Administrator as prerequisite to approval of grant

In accordance with the policy set forth in subsection (a) of this section, before the Administrator approves any grant to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of any treatment works the Administrator shall determine that the facilities plan of which such treatment works are a part constitutes the most economical and cost-effective combination of treatment works over the life of the project to

meet the requirements of this chapter, including, but not limited to, consideration of construction costs, operation, maintenance, and replacement costs.

(c) Value engineering review

In furtherance of the policy set forth in subsection (a) of this section, the Administrator shall require value engineering review in connection with any treatment works, prior to approval of any grant for the erection, building, acquisition, alteration, remodeling, improvement, or extension of such treatment works, in any case in which the cost of such erection, building, acquisition, alteration, remodeling, improvement, or extension is projected to be in excess of $10,000,000. For purposes of this subsection, the term ''value engineering review'' means a specialized cost control technique which uses a systematic and creative approach to identify and to focus on unnecessarily high cost in a project in order to arrive at a cost saving without sacrificing the reliability or efficiency of the project.

(d) Projects affected

This section applies to projects for waste treatment and management for which no treatment works including a facilities plan for such project have received Federal financial assistance for the preparation of construction plans and specifications under this chapter before December 29, 1981.

(June 30, 1948, ch. 758, title II, §218, as added Pub. L. 97–117, §19, Dec. 29, 1981, 95 Stat. 1630.)

§1299. State certification of projects

Whenever the Governor of a State which has been delegated sufficient authority to administer the construction grant program under this subchapter in that State certifies to the Administrator that a grant application meets applicable requirements of Federal and State law for assistance under this subchapter, the Administrator shall approve or disapprove such application within 45 days of the date of receipt of such application. If the Administrator does not approve or disapprove such application within 45 days of receipt, the application shall be deemed approved. If the Administrator disapproves such application the Administrator shall state in writing the reasons for such disapproval. Any grant approved or deemed approved under this section shall be subject to amounts provided in appropriation Acts.

(June 30, 1948, ch. 758, title II, §219, as added Pub. L. 97–117, §20, Dec. 29, 1981, 95 Stat. 1631.)

§1300. Pilot program for alternative water source projects

(a) Policy

Nothing in this section shall be construed to affect the application of section 1251(g) of this title and all of the provisions of this section shall be carried out in accordance with the provisions of section 1251(g) of this title.

(b) In general

The Administrator may establish a pilot program to make grants to State, interstate, and intrastate water resource development agencies (including water management districts and water supply authorities), local government agencies, private utilities, and nonprofit entities for alternative water source projects to meet critical water supply needs.

(c) Eligible entity

The Administrator may make grants under this section to an entity only if the entity has authority under State law to develop or provide water for municipal, industrial, and agricultural uses in an area of the State that is experiencing critical water supply needs.

(d) Selection of projects

(1) Limitation

A project that has received funds under the reclamation and reuse program conducted under the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. 390h et seq.) shall not be eligible for grant assistance under this section.

(2) Additional consideration

In making grants under this section, the Administrator shall consider whether the project is located within the boundaries of a State or area referred to in section 391 of title 43, and within the geographic scope of the reclamation and reuse program conducted under the Reclamation Projects Authorization and Adjustment Act of 1992 (43 U.S.C. 390h et seq.).

(3) Geographical distribution

Alternative water source projects selected by the Administrator under this section shall reflect a variety of geographical and environmental conditions.

(e) Committee resolution procedure

(1) In general

No appropriation shall be made for any alternative water source project under this section, the total Federal cost of which exceeds $3,000,000, if such project has not been approved by a resolution adopted by the Committee on Transportation and Infrastructure of the House of Representatives or the Committee on Environment and Public Works of the Senate.

(2) Requirements for securing consideration

For purposes of securing consideration of approval under paragraph (1), the Administrator shall provide to a committee referred to in paragraph (1) such information as the committee requests and the non-Federal sponsor shall provide to the committee information on the costs and relative needs for the alternative water source project.

(f) Uses of grants

Amounts from grants received under this section may be used for engineering, design, construction, and final testing of alternative water source projects designed to meet critical water supply needs. Such amounts may not be used for planning, feasibility studies or for operation, maintenance, replacement, repair, or rehabilitation.

(g) Cost sharing

The Federal share of the eligible costs of an alternative water source project carried out

using assistance made available under this section shall not exceed 50 percent.

(h) Reports

On or before September 30, 2004, the Administrator shall transmit to Congress a report on the results of the pilot program established under this section, including progress made toward meeting the critical water supply needs of the participants in the pilot program.

(i) Definitions

In this section, the following definitions apply:

(1) Alternative water source project

The term ''alternative water source project'' means a project designed to provide municipal, industrial, and agricultural water supplies in an environmentally sustainable manner by conserving, managing, reclaiming, or reusing water or wastewater or by treating wastewater. Such term does not include water treatment or distribution facilities.

(2) Critical water supply needs

The term ''critical water supply needs'' means existing or reasonably anticipated future water supply needs that cannot be met by existing water supplies, as identified in a comprehensive statewide or regional water supply plan or assessment projected over a planning period of at least 20 years.

(j) Authorization of appropriations

There is authorized to be appropriated to carry out this section a total of $75,000,000 for fiscal years 2002 through 2004. Such sums shall remain available until expended.

(June 30, 1948, ch. 758, title II, § 220, as added Pub. L. 106–457, title VI, § 602, Nov. 7, 2000, 114 Stat. 1975.)

REFERENCES IN TEXT

The Reclamation Projects Authorization and Adjustment Act of 1992, referred to in subsec. (d)(1), (2), is Pub. L. 102–575, Oct. 30, 1992, 106 Stat. 4600, as amended. Provisions relating to the reclamation and reuse program are classified generally to section 390h et seq. of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 371 of Title 43 and Tables.

§ 1301. Sewer overflow and stormwater reuse municipal grants

(a) In general

(1) Grants to States

The Administrator may make grants to States for the purpose of providing grants to a municipality or municipal entity for planning, design, and construction of—

(A) treatment works to intercept, transport, control, treat, or reuse municipal combined sewer overflows, sanitary sewer overflows, or stormwater; and

(B) any other measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water eligible for assistance under section 1383(c) of this title.

(2) Direct municipal grants

Subject to subsection (g), the Administrator may make a direct grant to a municipality or municipal entity for the purposes described in paragraph (1).

(b) Prioritization

In selecting from among municipalities applying for grants under subsection (a), a State or the Administrator shall give priority to an applicant that—

(1) is a municipality that is a financially distressed community under subsection (c);

(2) has implemented or is complying with an implementation schedule for the nine minimum controls specified in the CSO control policy referred to in section 1342(q)(1) of this title and has begun implementing a long-term municipal combined sewer overflow control plan or a separate sanitary sewer overflow control plan;

(3) is requesting a grant for a project that is on a State's intended use plan pursuant to section 1386(c) of this title; or

(4) is an Alaska Native Village.

(c) Financially distressed community

(1) Definition

In subsection (b), the term ''financially distressed community'' means a community that meets affordability criteria established by the State in which the community is located, if such criteria are developed after public review and comment.

(2) Consideration of impact on water and sewer rates

In determining if a community is a distressed community for the purposes of subsection (b), the State shall consider, among other factors, the extent to which the rate of growth of a community's tax base has been historically slow such that implementing a plan described in subsection (b)(2) would result in a significant increase in any water or sewer rate charged by the community's publicly owned wastewater treatment facility.

(3) Information to assist States

The Administrator may publish information to assist States in establishing affordability criteria under paragraph (1).

(d) Cost-sharing

The Federal share of the cost of activities carried out using amounts from a grant made under subsection (a) shall be not less than 55 percent of the cost. The non-Federal share of the cost may include, in any amount, public and private funds and in-kind services, and may include, notwithstanding section 1383(h) of this title, financial assistance, including loans, from a State water pollution control revolving fund.

(e) Administrative requirements

A project that receives assistance under this section shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund under subchapter VI of this chapter, except to the extent that the Governor of the State in which the project is located determines that a requirement of subchapter VI of this chapter is inconsistent with the purposes of this section. For the purposes of this subsection, a Governor may not determine that the require-

ments of subchapter VI of this chapter relating to the application of section 1372 of this title are inconsistent with the purposes of this section.

(f) Authorization of appropriations

(1) In general

There is authorized to be appropriated to carry out this section $225,000,000 for each of fiscal years 2019 through 2020.

(2) Minimum allocations

To the extent there are sufficient eligible project applications, the Administrator shall ensure that a State uses not less than 20 percent of the amount of the grants made to the State under subsection (a) in a fiscal year to carry out projects to intercept, transport, control, treat, or reuse municipal combined sewer overflows, sanitary sewer overflows, or stormwater through the use of green infrastructure, water and energy efficiency improvements, and other environmentally innovative activities.

(g) Allocation of funds

(1) Fiscal year 2019

Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2019 for making grants to municipalities and municipal entities under subsection (a)(2) in accordance with the criteria set forth in subsection (b).

(2) Fiscal year 2020 and thereafter

Subject to subsection (h), the Administrator shall use the amounts appropriated to carry out this section for fiscal year 2020 and each fiscal year thereafter for making grants to States under subsection (a)(1) in accordance with a formula to be established by the Administrator, after providing notice and an opportunity for public comment, that allocates to each State a proportional share of such amounts based on the total needs of the State for municipal combined sewer overflow controls, sanitary sewer overflow controls, and stormwater identified in the most recent detailed estimate and comprehensive study submitted pursuant to section 1375 of this title and any other information the Administrator considers appropriate.

(h) Administrative expenses

Of the amounts appropriated to carry out this section for each fiscal year—

(1) the Administrator may retain an amount not to exceed 1 percent for the reasonable and necessary costs of administering this section; and

(2) the Administrator, or a State, may retain an amount not to exceed 4 percent of any grant made to a municipality or municipal entity under subsection (a), for the reasonable and necessary costs of administering the grant.

(i) Reports

Not later than December 31, 2003, and periodically thereafter, the Administrator shall transmit to Congress a report containing recommended funding levels for grants under this section. The recommended funding levels shall be sufficient to ensure the continued expeditious implementation of municipal combined sewer overflow and sanitary sewer overflow controls nationwide.

(June 30, 1948, ch. 758, title II, §221, as added Pub. L. 106–554, §1(a)(4) [div. B, title I, §112(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–225; amended Pub. L. 115–270, title IV, §4106, Oct. 23, 2018, 132 Stat. 3875.)

AMENDMENTS

2018—Pub. L. 115–270, §4106(1), substituted ''Sewer overflow and stormwater reuse municipal grants'' for ''Sewer overflow control grants'' in section catchline.

Subsec. (a). Pub. L. 115–270, §4106(2), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to purposes for making sewer overflow control grants to States, municipalities, and municipal entities.

Subsec. (e). Pub. L. 115–270, §4106(3), amended subsec. (e) generally. Prior to amendment, text read as follows: ''If a project receives grant assistance under subsection (a) and loan assistance from a State water pollution control revolving fund and the loan assistance is for 15 percent or more of the cost of the project, the project may be administered in accordance with State water pollution control revolving fund administrative reporting requirements for the purposes of streamlining such requirements.''

Subsec. (f). Pub. L. 115–270, §4106(4), amended subsec. (f) generally. Prior to amendment, text read as follows: ''There is authorized to be appropriated to carry out this section $750,000,000 for each of fiscal years 2002 and 2003. Such sums shall remain available until expended.''

Subsec. (g). Pub. L. 115–270, §4106(5), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to allocation of funds.

INFORMATION ON CSOS AND SSOS

Pub. L. 106–554, §1(a)(4) [div. B, title I, §112(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–227, provided that:

''(1) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this Act [Dec. 21, 2000], the Administrator of the Environmental Protection Agency shall transmit to Congress a report summarizing—

''(A) the extent of the human health and environmental impacts caused by municipal combined sewer overflows and sanitary sewer overflows, including the location of discharges causing such impacts, the volume of pollutants discharged, and the constituents discharged;

''(B) the resources spent by municipalities to address these impacts; and

''(C) an evaluation of the technologies used by municipalities to address these impacts.

''(2) TECHNOLOGY CLEARINGHOUSE.—After transmitting a report under paragraph (1), the Administrator shall maintain a clearinghouse of cost-effective and efficient technologies for addressing human health and environmental impacts due to municipal combined sewer overflows and sanitary sewer overflows.''

SUBCHAPTER III—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations

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

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives

In order to carry out the objective of this chapter there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title;

(B) Repealed. Pub. L. 97–117, § 21(b), Dec. 29, 1981, 95 Stat. 1632.

(C) with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 1317 of this title which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989;

(E) as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 1314(a)(4) of this title shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(4) of this title; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as practicable but in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989.

(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for an industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989; and

(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 1342(a)(1) of this title in a permit issued after February 4, 1987, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than March 31, 1989.

(c) Modification of timetable

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents, high-level radioactive waste, or medical waste

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste, into the navigable waters.

(g) Modifications for certain nonconventional pollutants

(1) General authority

The Administrator, with the concurrence of the State, may modify the requirements of subsection (b)(2)(A) of this section with respect to the discharge from any point source of ammonia, chlorine, color, iron, and total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection.

(2) Requirements for granting modifications

A modification under this subsection shall be granted only upon a showing by the owner or operator of a point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b)(1)(A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(3) Limitation on authority to apply for subsection (c) modification

If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time period as he is eligible to apply for a modification under this subsection.

(4) Procedures for listing additional pollutants

(A) General authority

Upon petition of any person, the Administrator may add any pollutant to the list of pollutants for which modification under this section is authorized (except for pollutants identified pursuant to section 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) in accordance with the provisions of this paragraph.

(B) Requirements for listing

(i) Sufficient information

The person petitioning for listing of an additional pollutant under this subsection shall submit to the Administrator sufficient information to make the determinations required by this subparagraph.

(ii) Toxic criteria determination

The Administrator shall determine whether or not the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title.

(iii) Listing as toxic pollutant

If the Administrator determines that the pollutant meets the criteria for listing as a toxic pollutant under section 1317(a) of this title, the Administrator shall list the pollutant as a toxic pollutant under section 1317(a) of this title.

(iv) Nonconventional criteria determination

If the Administrator determines that the pollutant does not meet the criteria for listing as a toxic pollutant under such section and determines that adequate test methods and sufficient data are available to make the determinations required by paragraph (2) of this subsection with respect to the pollutant, the Administrator shall add the pollutant to the list of pollutants specified in paragraph (1) of this subsection for which modifications are authorized under this subsection.

(C) Requirements for filing of petitions

A petition for listing of a pollutant under this paragraph—

(i) must be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title;

(ii) may be filed before promulgation of such guideline; and

(iii) may be filed with an application for a modification under paragraph (1) with respect to the discharge of such pollutant.

(D) Deadline for approval of petition

A decision to add a pollutant to the list of pollutants for which modifications under this subsection are authorized must be made

within 270 days after the date of promulgation of an applicable effluent guideline under section 1314 of this title.

(E) Burden of proof

The burden of proof for making the determinations under subparagraph (B) shall be on the petitioner.

(5) Removal of pollutants

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

(h) Modification of secondary treatment requirements

The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 1314(a)(6) of this title;

(2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 1314(a)(1) of this title after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this subsection the phrase ''the discharge of any pollutant into marine waters'' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 1251(a)(2) of this title. For the purposes of paragraph (9), ''primary or equivalent treatment'' means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New

York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(i) Municipal time extensions

(1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b)(1)(B) or (b)(1)(C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this chapter available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 1342 of this title or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after February 4, 1987. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1988, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 1281 of this title, section 1317 of this title, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this chapter.

(2)(A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b)(1)(A) and (b)(1)(C) of this section and—

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this chapter for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works,

and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 1342 of this title to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after December 27, 1977, or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the requirements of subsections (b)(1)(A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this chapter.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2)(A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1988; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1988, and will meet the requirements of subsections (b)(1)(B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 1284 of this title, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires that point source to meet all requirements under section 1317(a) and (b) of this title during the period of such time modification.

(j) Modification procedures

(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later that[1] the 365th day which begins after December 29, 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after February 4, 1987, and except as provided in paragraph (5);

(B) subsection (b)(2)(A) 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 1314 of this title or not later than 270 days after December 27, 1977, whichever is later.

(2) Subject to paragraph (3) of this section, any application for a modification filed under

[1] So in original. Probably should be ''than''.

subsection (g) of this section shall not operate to stay any requirement under this chapter, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(3) COMPLIANCE REQUIREMENTS UNDER SUBSECTION (g).—

(A) EFFECT OF FILING.—An application for a modification under subsection (g) and a petition for listing of a pollutant as a pollutant for which modifications are authorized under such subsection shall not stay the requirement that the person seeking such modification or listing comply with effluent limitations under this chapter for all pollutants not the subject of such application or petition.

(B) EFFECT OF DISAPPROVAL.—Disapproval of an application for a modification under subsection (g) shall not stay the requirement that the person seeking such modification comply with all applicable effluent limitations under this chapter.

(4) DEADLINE FOR SUBSECTION (g) DECISION.—An application for a modification with respect to a pollutant filed under subsection (g) must be approved or disapproved not later than 365 days after the date of such filing; except that in any case in which a petition for listing such pollutant as a pollutant for which modifications are authorized under such subsection is approved, such application must be approved or disapproved not later than 365 days after the date of approval of such petition.

(5) EXTENSION OF APPLICATION DEADLINE.—

(A) IN GENERAL.—In the 180-day period beginning on October 31, 1994, the city of San Diego, California, may apply for a modification pursuant to subsection (h) of the requirements of subsection (b)(1)(B) with respect to biological oxygen demand and total suspended solids in the effluent discharged into marine waters.

(B) APPLICATION.—An application under this paragraph shall include a commitment by the applicant to implement a waste water reclamation program that, at a minimum, will—

(i) achieve a system capacity of 45,000,000 gallons of reclaimed waste water per day by January 1, 2010; and

(ii) result in a reduction in the quantity of suspended solids discharged by the applicant into the marine environment during the period of the modification.

(C) ADDITIONAL CONDITIONS.—The Administrator may not grant a modification pursuant to an application submitted under this paragraph unless the Administrator determines that such modification will result in removal of not less than 58 percent of the biological oxygen demand (on an annual average) and not less than 80 percent of total suspended solids (on a monthly average) in the discharge to which the application applies.

(D) PRELIMINARY DECISION DEADLINE.—The Administrator shall announce a preliminary decision on an application submitted under this paragraph not later than 1 year after the date the application is submitted.

(k) Innovative technology

In the case of any facility subject to a permit under section 1342 of this title which proposes to comply with the requirements of subsection (b)(2)(A) or (b)(2)(E) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 1342 of this title, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) or (b)(2)(E) of this section no later than two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection, if it is also determined that such innovative system has the potential for industrywide application.

***(l)* Toxic pollutants**

Other than as provided in subsection (n) of this section, the Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 1317(a)(1) of this title.

(m) Modification of effluent limitation requirements for point sources

(1) The Administrator, with the concurrence of the State, may issue a permit under section 1342 of this title which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 1343 of this title, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) and section 1343 of this title exceed by an unreasonable amount the benefits to be obtained, including the objectives of this chapter;

(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 1251(a)(2) of this title;

(G) the applicant accepts as a condition to the permit a contractural[2] obligation to use funds in the amount required (but not less than $250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this chapter applicable to similarly situated discharges; and

(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit.

(n) Fundamentally different factors

(1) General rule

The Administrator, with the concurrence of the State, may establish an alternative requirement under subsection (b)(2) or section 1317(b) of this title for a facility that modifies the requirements of national effluent limitation guidelines or categorical pretreatment standards that would otherwise be applicable to such facility, if the owner or operator of such facility demonstrates to the satisfaction of the Administrator that—

(A) the facility is fundamentally different with respect to the factors (other than cost) specified in section 1314(b) or 1314(g) of this title and considered by the Administrator in establishing such national effluent limitation guidelines or categorical pretreatment standards;

(B) the application—

(i) is based solely on information and supporting data submitted to the Administrator during the rulemaking for establishment of the applicable national effluent limitation guidelines or categorical pretreatment standard specifically raising the factors that are fundamentally different for such facility; or

(ii) is based on information and supporting data referred to in clause (i) and information and supporting data the applicant did not have a reasonable opportunity to submit during such rulemaking;

(C) the alternative requirement is no less stringent than justified by the fundamental difference; and

(D) the alternative requirement will not result in a non-water quality environmental impact which is markedly more adverse than the impact considered by the Administrator in establishing such national effluent limitation guideline or categorical pretreatment standard.

(2) Time limit for applications

An application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection must be submitted to the Administrator within 180 days after the date on which such limitation or standard is established or revised, as the case may be.

(3) Time limit for decision

The Administrator shall approve or deny by final agency action an application submitted under this subsection within 180 days after the date such application is filed with the Administrator.

(4) Submission of information

The Administrator may allow an applicant under this subsection to submit information

[2] So in original. Probably should be ''contractual''.

and supporting data until the earlier of the date the application is approved or denied or the last day that the Administrator has to approve or deny such application.

(5) Treatment of pending applications

For the purposes of this subsection, an application for an alternative requirement based on fundamentally different factors which is pending on February 4, 1987, shall be treated as having been submitted to the Administrator on the 180th day following February 4, 1987. The applicant may amend the application to take into account the provisions of this subsection.

(6) Effect of submission of application

An application for an alternative requirement under this subsection shall not stay the applicant's obligation to comply with the effluent limitation guideline or categorical pretreatment standard which is the subject of the application.

(7) Effect of denial

If an application for an alternative requirement which modifies the requirements of an effluent limitation or pretreatment standard under this subsection is denied by the Administrator, the applicant must comply with such limitation or standard as established or revised, as the case may be.

(8) Reports

By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of applications for alternative requirements which modify the requirements of effluent limitations under section 1311 or 1314 of this title or any national categorical pretreatment standard under section 1317(b) of this title filed before, on, or after February 4, 1987.

(*o*) Application fees

The Administrator shall prescribe and collect from each applicant fees reflecting the reasonable administrative costs incurred in reviewing and processing applications for modifications submitted to the Administrator pursuant to subsections (c), (g), (i), (k), (m), and (n) of this section, section 1314(d)(4) of this title, and section 1326(a) of this title. All amounts collected by the Administrator under this subsection shall be deposited into a special fund of the Treasury entitled ''Water Permits and Related Services'' which shall thereafter be available for appropriation to carry out activities of the Environmental Protection Agency for which such fees were collected.

(p) Modified permit for coal remining operations

(1) In general

Subject to paragraphs (2) through (4) of this subsection, the Administrator, or the State in any case which the State has an approved permit program under section 1342(b) of this title, may issue a permit under section 1342 of this title which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any pre-existing discharge, and with respect to pre-existing discharges of iron and manganese from the remined area of any coal remining operation or with respect to the pH level or level of iron or manganese in any pre-existing discharge affected by the remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment, to set specific numerical effluent limitations in each permit.

(2) Limitations

The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation will result in the potential for improved water quality from the remining operation but in no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins. No discharge from, or affected by, the remining operation shall exceed State water quality standards established under section 1313 of this title.

(3) Definitions

For purposes of this subsection—

(A) Coal remining operation

The term ''coal remining operation'' means a coal mining operation which begins after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.

(B) Remined area

The term ''remined area'' means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(C) Pre-existing discharge

The term ''pre-existing discharge'' means any discharge at the time of permit application under this subsection.

(4) Applicability of strip mining laws

Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] to any coal remining operation, including the application of such Act to suspended solids.

(June 30, 1948, ch. 758, title III, § 301, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 844; amended Pub. L. 95–217, §§ 42–47, 53(c), Dec. 27, 1977, 91 Stat. 1582–1586, 1590; Pub. L. 97–117, §§ 21, 22(a)–(d), Dec. 29, 1981, 95 Stat. 1631, 1632; Pub. L. 97–440, Jan. 8, 1983, 96 Stat. 2289; Pub. L. 100–4, title III, §§ 301(a)–(e), 302(a)–(d), 303(a), (b)(1), (c)–(f), 304(a), 305, 306(a), (b), 307, Feb. 4, 1987, 101 Stat. 29–37; Pub. L. 100–688, title III, § 3202(b), Nov. 18, 1988, 102 Stat. 4154; Pub. L. 103–431, § 2, Oct. 31, 1994, 108 Stat. 4396; Pub. L. 104–66, title II, § 2021(b), Dec. 21, 1995, 109 Stat. 727.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (p)(4), is Pub. L. 95–87, Aug.

3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§ 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

AMENDMENTS

1995—Subsec. (n)(8). Pub. L. 104–66 substituted ''By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure'' for ''Every 6 months after February 4, 1987, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation''.

1994—Subsec. (j)(1)(A). Pub. L. 103–431, § 2(1), inserted before semicolon at end '', and except as provided in paragraph (5)''.

Subsec. (j)(5). Pub. L. 103–431, § 2(2), added par. (5).

1988—Subsec. (f). Pub. L. 100–688 substituted '', any high-level radioactive waste, or any medical waste,'' for ''or high-level radioactive waste''.

1987—Subsec. (b)(2)(C). Pub. L. 100–4, § 301(a), struck out ''not later than July 1, 1984,'' before ''with respect'' and inserted ''as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989'' after ''of this paragraph''.

Subsec. (b)(2)(D). Pub. L. 100–4, § 301(b), substituted ''as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989'' for ''not later than three years after the date such limitations are established''.

Subsec. (b)(2)(E). Pub. L. 100–4, § 301(c), substituted ''as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 1314(b) of this title, and in no case later than March 31, 1989, compliance with'' for ''not later than July 1, 1984,''.

Subsec. (b)(2)(F). Pub. L. 100–4, § 301(d), substituted ''as expeditiously as practicable but in no case'' for ''not'' and ''and in no case later than March 31, 1989'' for ''or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987''.

Subsec. (b)(3). Pub. L. 100–4, § 301(e), added par. (3).

Subsec. (g)(1). Pub. L. 100–4, § 302(a), substituted par. (1) for introductory provisions of former par. (1) which read as follows: ''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 1314(a)(4) of this title, toxic pollutants subject to section 1317(a) of this title, and the thermal component of discharges) from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—''. Subpars (A) to (C) of former par. (1) were redesignated as subpars. (A) to (C) of par. (2).

Subsec. (g)(2). Pub. L. 100–4, § 302(a), (d)(2), inserted introductory provisions of par. (2), and by so doing, redesignated subpars. (A) to (C) of former par. (1) as subpars. (A) to (C) of par. (2), realigned such subpars. with subpar. (A) of par. (4), and redesignated former par. (2) as (3).

Subsec. (g)(3). Pub. L. 100–4, § 302(a), (d)(1), redesignated former par. (2) as (3), inserted heading, and aligned par. (3) with par. (4).

Subsec. (g)(4), (5). Pub. L. 100–4, § 302(b), added pars. (4) and (5).

Subsec. (h). Pub. L. 100–4, § 303(d)(2), (e), in closing provisions, inserted provision defining ''primary or equivalent treatment'' for purposes of par. (9) and provisions placing limitations on issuance of permits for discharge of pollutant into marine waters and saline estuarine waters and prohibiting issuance of permit for discharge of pollutant into New York Bight Apex.

Subsec. (h)(2). Pub. L. 100–4, § 303(a), substituted ''the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,'' for ''such modified requirements will not interfere''.

Subsec. (h)(3). Pub. L. 100–4, § 303(b)(1), inserted '', and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge'' before semicolon at end.

Subsec. (h)(6) to (9). Pub. L. 100–4, § 303(c), (d)(1), added par. (6), redesignated former pars. (6) and (7) as (7) and (8), respectively, substituted semicolon for period at end of par. (8), and added par. (9).

Subsec. (i)(1). Pub. L. 100–4, § 304(a), substituted ''February 4, 1987'' for ''December 27, 1977''.

Subsec. (j)(1)(A). Pub. L. 100–4, § 303(f), inserted before semicolon at end '', except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h), may apply for a modification of subsection (h) in its own right not later than 30 days after February 4, 1987''.

Subsec. (j)(2). Pub. L. 100–4, § 302(c)(1), substituted ''Subject to paragraph (3) of this section, any'' for ''Any''.

Subsec. (j)(3), (4). Pub. L. 100–4, § 302(c)(2), added pars. (3) and (4).

Subsec. (k). Pub. L. 100–4, § 305, substituted ''two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection'' for ''July 1, 1987'' and inserted ''or (b)(2)(E)'' after ''(b)(2)(A)'' in two places.

Subsec. (*l*). Pub. L. 100–4, § 306(b), substituted ''Other than as provided in subsection (n) of this section, the'' for ''The''.

Subsecs. (n), (*o*). Pub. L. 100–4, § 306(a), added subsecs. (n) and (*o*).

Subsec. (p). Pub. L. 100–4, § 307, added subsec. (p).

1983—Subsec. (m). Pub. L. 97–440 added subsec. (m).

1981—Subsec. (b)(2)(B). Pub. L. 97–117, § 21(b), struck out subpar. (B) which required that, not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements in section 1281(g)(2)(A) of this title be achieved.

Subsec. (h). Pub. L. 97–117, § 22(a) to (c), struck out in provision preceding par. (1) ''in an existing discharge'' after ''discharge of any pollutant'', struck out par. (8), which required the applicant to demonstrate to the satisfaction of the Administrator that any funds available to the owner of such treatment works under subchapter II of this chapter be used to achieve the degree of effluent reduction required by section 1281(b) and (g)(2)(A) of this title or to carry out the requirements of this subsection, and inserted in provision following par. (7) a further provision that a municipality which applies secondary treatment be eligible to receive a permit which modifies the requirements of subsec. (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 and that no permit issued under this subsection authorize the discharge of sewage sludge into marine waters.

Subsec. (i)(1), (2)(B). Pub. L. 97–117, § 21(a), substituted ''July 1, 1988,'' for ''July 1, 1983,'' wherever appearing. Par. (2)(B) contained a reference to ''July 1, 1983;'' which was changed to ''July 1, 1988;'' as the probable intent of Congress in that reference to July 1, 1983, was to the outside date for compliance for a point source other than a publicly owned treatment works and subpar. (B) allows a time extension for such a point source up to the date granted in an extension for a publicly owned treatment works, which date was extended to July 1, 1988, by Pub. L. 97–117.

Subsec. (j)(1)(A). Pub. L. 97–117, § 22(d), substituted ''that the 365th day which begins after December 29, 1981'' for ''than 270 days after December 27, 1977''.

1977—Subsec. (b)(2)(A). Pub. L. 95–217, § 42(b), substituted ''for pollutants identified in subparagraphs (C),

(D), and (F) of this paragraph'' for ''not later than July 1, 1983''.

Subsec. (b)(2)(C) to (F). Pub. L. 95–217, § 42(a), added subpars. (C) to (F).

Subsec. (g). Pub. L. 95–217, § 43, added subsec. (g).

Subsec. (h). Pub. L. 95–217, § 44, added subsec. (h).

Subsec. (i). Pub. L. 95–217, § 45, added subsec. (i).

Subsec. (j). Pub. L. 95–217, § 46, added subsec. (j).

Subsec. (k). Pub. L. 95–217, § 47, added subsec. (k).

Subsec. (*l*). Pub. L. 95–217, § 53(c), added subsec. (*l*).

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–4, title III, § 302(e), Feb. 4, 1987, 101 Stat. 32, provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to all requests for modifications under section 301(g) of the Federal Water Pollution Control Act [33 U.S.C. 1311(g)] pending on the date of the enactment of this Act [Feb. 4, 1987] and shall not have the effect of extending the deadline established in section 301(j)(1)(B) of such Act.

''(2) EXCEPTION.—The amendments made by this section shall not affect any application for a modification with respect to the discharge of ammonia, chlorine, color, iron, or total phenols (4AAP) under section 301(g) of the Federal Water Pollution Control Act pending on the date of the enactment of this Act; except that the Administrator must approve or disapprove such application not later than 365 days after the date of such enactment.''

Pub. L. 100–4, title III, § 303(b)(2), Feb. 4, 1987, 101 Stat. 33, provided that: ''The amendment made by subsection (b) [amending this section] shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act [Feb. 4, 1987].''

Pub. L. 100–4, title III, § 303(g), Feb. 4, 1987, 101 Stat. 34, provided that: ''The amendments made by subsections (a), (c), (d), and (e) of this section [amending this section] shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act [33 U.S.C. 1311(h)] which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act [Feb. 4, 1987]; except that such amendments shall apply to all renewals of such permits after such date of enactment.''

Pub. L. 100–4, title III, § 304(b), Feb. 4, 1987, 101 Stat. 34, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply to those treatment works which are subject to a compliance schedule established before the date of the enactment of this Act [Feb. 4, 1987] by a court order or a final administrative order.''

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–117, § 22(e), Dec. 29, 1981, 95 Stat. 1632, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 29, 1981], except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act [33 U.S.C. 1311(h)] which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act [33 U.S.C. 1311(b)(1)(B)] shall receive such permit during the one-year period which begins on the date of enactment of this Act.''

REGULATIONS

Pub. L. 100–4, title III, § 301(f), Feb. 4, 1987, 101 Stat. 30, provided that: ''The Administrator 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 [33 U.S.C. 1311(b)(2)(A), 1317(b)(1)] 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
Organic chemicals and plastics and synthetic fibers	December 31, 1986.
Pesticides	December 31, 1986.''

PHOSPHATE FERTILIZER EFFLUENT LIMITATION

Amendment by section 306(a), (b) of Pub. L. 100–4 not to be construed (A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters, (B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 1342(a)(1)(B) of this title, and (C) to affect the authority of any State to deny or condition certification under section 1314 of this title with respect to the issuance of permits under section 1342(a)(1)(B) of this title, see section 306(c) of Pub. L. 100–4, set out as a note under section 1342 of this title.

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION FROM FEDERAL WATER POLLUTION CONTROL REQUIREMENTS; CONDITIONS

Pub. L. 98–67, title II, § 214(g), Aug. 5, 1983, 97 Stat. 393, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Any discharge from a point source in the United States Virgin Islands in existence on the date of the enactment of this subsection [Aug. 5, 1983] which discharge is attributable to the manufacture of rum (as defined in paragraphs (3) of section 7652(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) [26 U.S.C. 7652(c)(3)] shall not be subject to the requirements of section 301 (other than toxic pollutant discharges), section 306 or section 403 of the Federal Water Pollution Control Act [33 U.S.C. 1311, 1316, 1343] if—

''(1) such discharge occurs at least one thousand five hundred feet into the territorial sea from the line of ordinary low water from that portion of the coast which is in direct contact with the sea, and

''(2) the Governor of the United States Virgin Islands determines that such discharge 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 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.''

CERTAIN MUNICIPAL COMPLIANCE DEADLINES UNAFFECTED; EXCEPTION

Pub. L. 97–117, § 21(a), Dec. 29, 1981, 95 Stat. 1631, provided in part that: ''The amendment made by this subsection [amending this section] shall not be interpreted or applied to extend the date for compliance with section 301(b)(1)(B) or (C) of the Federal Water Pollution Control Act [33 U.S.C. 1311(b)(1)(B), (C)] beyond schedules for compliance in effect as of the date of enactment of this Act [Dec. 29, 1981], except in cases where reductions in the amount of financial assistance under this Act [Pub. L. 97–117, see Short Title of 1981 Amendment note set out under section 1251 of this title] or changed conditions affecting the rate of construction

beyond the control of the owner or operator will make it impossible to complete construction by July 1, 1983.''

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1312. Water quality related effluent limitations

(a) Establishment

Whenever, in the judgment of the Administrator or as identified under section 1314(*l*) of this title, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) Modifications of effluent limitations

(1) Notice and hearing

Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within 90 days of such publication hold a public hearing.

(2) Permits

(A) No reasonable relationship

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter) from achieving such limitation.

(B) Reasonable progress

The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed 5 years if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (i) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (ii) will result in reasonable further progress beyond the requirements of section 1311(b)(2) of this title toward the requirements of subsection (a) of this section.

(c) Delay in application of other limitations

The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title.

(June 30, 1948, ch. 758, title III, § 302, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 846; amended Pub. L. 100–4, title III, § 308(e), Feb. 4, 1987, 101 Stat. 39.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–4, § 308(e)(2), inserted ''or as identified under section 1314(*l*) of this title'' after ''Administrator'' and ''public health,'' after ''protection of''.

Subsec. (b). Pub. L. 100–4, § 308(e)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(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 chapter) 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 between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.''

§ 1313. Water quality standards and implementation plans

(a) Existing water quality standards

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

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with

the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

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

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

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

(b) Proposed regulations

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

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

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

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

(c) Review; revised standards; publication

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) LIMITATIONS ON REVISION OF CERTAIN EFFLUENT LIMITATIONS.—

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

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

(e) Continuing planning process

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

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning proc-

ess is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

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

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

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

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

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

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

(f) Earlier compliance

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

(g) Heat standards

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

(h) Thermal water quality standards

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

(i) Coastal recreation water quality criteria

(1) Adoption by States

(A) Initial criteria and standards

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

(B) New or revised criteria and standards

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

(2) Failure of States to adopt

(A) In general

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

(B) Exception

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

(3) Applicability

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

(June 30, 1948, ch. 758, title III, § 303, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 846; amended Pub. L. 100–4, title III, § 308(d), title IV, § 404(b), Feb. 4, 1987, 101 Stat. 39, 68; Pub. L. 106–284, § 2, Oct. 10, 2000, 114 Stat. 870.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (2), (3)(B), (C) and (b)(1), means act June 30, 1948, ch. 758, 62 Stat. 1155, prior to the supersedure and reenactment of act June 30, 1948 by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816. Act June 30, 1948, ch. 758, as added by act Oct. 18, 1972, Pub. L. 92–500, 86 Stat. 816, enacted this chapter.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106–284 added subsec. (i).

1987—Subsec. (c)(2). Pub. L. 100–4, § 308(d), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (d)(4). Pub. L. 100–4, § 404(b), added par. (4).

§ 1313a. Revised water quality standards

The review, revision, and adoption or promulgation of revised or new water quality standards pursuant to section 303(c) of the Federal Water Pollution Control Act [33 U.S.C. 1313(c)] shall be completed by the date three years after December 29, 1981. No grant shall be made under title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.] after such date until water

quality standards are reviewed and revised pursuant to section 303(c), except where the State has in good faith submitted such revised water quality standards and the Administrator has not acted to approve or disapprove such submission within one hundred and twenty days of receipt.

(Pub. L. 97–117, § 24, Dec. 29, 1981, 95 Stat. 1632.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in text, is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816. Title II of the Act is classified generally to subchapter II (§ 1281 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1314. Information and guidelines

(a) Criteria development and publication

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

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

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

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

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

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

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

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

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

(9) REVISED CRITERIA FOR COASTAL RECREATION WATERS.—

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

(B) REVIEWS.—Not later than the date that is 5 years after the date of publication of water quality criteria under this paragraph,

and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria.

(b) Effluent limitation guidelines

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

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

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

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

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

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

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

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

(c) Pollution discharge elimination procedures

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

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

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

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

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

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

(e) Best management practices for industry

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

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

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

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

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

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

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

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

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

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

(g) Guidelines for pretreatment of pollutants

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

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

(h) Test procedures guidelines

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

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

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

(A) monitoring requirements;

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

(C) enforcement provisions; and

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

(j) Lake restoration guidance manual

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

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

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

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

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

***(l)* Individual control strategies for toxic pollutants**

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

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

(A) a list of those waters within the State which after the application of effluent limitations required under section 1311(b)(2) of this title cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 1313(c)(2)(B) of this title, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

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

(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 1342 of this title and water quality standards under section 1313(c)(2)(B) of this title, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

(2) Approval or disapproval

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

(3) Administrator's action

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

(m) Schedule for review of guidelines

(1) Publication

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

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

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

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

(2) Public review

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

(June 30, 1948, ch. 758, title III, § 304, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 850; amended Pub. L. 95–217, §§ 48–51, 62(b), Dec. 27, 1977, 91 Stat. 1587, 1588, 1598; Pub. L. 97–117, § 23, Dec. 29, 1981, 95 Stat. 1632; Pub. L. 100–4, title I, § 101(f), title III, §§ 308(a), (c), (f), 315(c), 316(e), Feb. 4, 1987, 101 Stat. 9, 38–40, 52, 61; Pub. L. 106–284, § 3(b), Oct. 10, 2000, 114 Stat. 871.)

CODIFICATION

Pub. L. 95–217, § 50, Dec. 27, 1977, 91 Stat. 1588, provided in part that, upon the enactment of subsec. (e) of this section by Pub. L. 95–217 and the concurrent redesignation of former subsecs. (e) to (j) of this section as (f) to (k), respectively, all references to former subsecs. (e) to (j) be changed to (f) to (k), respectively.

AMENDMENTS

2000—Subsec. (a)(9). Pub. L. 106–284 added par. (9).

1987—Subsec. (a)(7), (8). Pub. L. 100–4, § 308(c), added pars. (7) and (8).

Subsec. (j). Pub. L. 100–4, § 315(c), amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''The Administrator shall issue information biennially on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes.''

Subsec. (k)(1). Pub. L. 100–4, § 316(e), inserted ''and nonpoint source pollution management programs approved under section 1329 of this title'' before period at end.

Subsec. (k)(3). Pub. L. 100–4, § 101(f), inserted ''and such sums as may be necessary for fiscal years 1984 through 1990'' after ''1983''.

Subsec. (*l*). Pub. L. 100–4, § 308(a), added subsec. (*l*).

Subsec. (m). Pub. L. 100–4, § 308(f), added subsec. (m).

1981—Subsec. (d)(4). Pub. L. 97–117 added par. (4).

1977—Subsec. (a)(4) to (6). Pub. L. 95–217, § 48(a), added pars. (4) to (6).

Subsec. (b)(4). Pub. L. 95–217, § 48(b), added par. (4).

Subsec. (d)(3). Pub. L. 95–217, § 49, added par. (3).

Subsecs. (e) to (i). Pub. L. 95–217, § 50, added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95–217, §§ 50, 62(b), redesignated former subsec. (i) as (j) and substituted ''shall issue information biennially on methods'' for ''shall, within 270 days after October 18, 1972 (and from time to time thereafter), issue such information on methods''. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 95–217, §§ 50, 51, redesignated former subsec. (j) as (k), substituted ''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 the maximum utilization of other Federal laws and programs'' for ''The Administrator shall, within six months from October 18, 1972, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries'' in par. (1), made conforming amendments in par. (2), and in par. (3) authorized appropriations for fiscal years 1979 through 1983.

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, relating to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

REVIEW OF EFFLUENT GUIDELINES PROMULGATED PRIOR TO DECEMBER 27, 1977

Pub. L. 95–217, § 73, Dec. 27, 1977, 91 Stat. 1609, directed Administrator, within 90 days after Dec. 27, 1977, to review every effluent guideline promulgated prior to that date which was final or interim final (other than those applicable to industrial categories listed in table 2 of Committee Print Numbered 95–30 of Committee on Public Works and Transportation of House of Representatives) and which applied to those pollutants identified pursuant to 33 U.S.C. 1314(a)(4) and, on or before July 1, 1980, to review every guideline applicable to industrial categories listed in such table 2, authorized Administrator, upon completion of each such review to make such adjustments in any such guidelines as may be necessary to carry out 33 U.S.C. 1314(b)(4), directed Administrator to publish the results of each such review, and provided for judicial review of Administrator's actions.

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1314a. Wastewater technology clearinghouse

(a) In general

(1) In general

The Administrator of the Environmental Protection Agency shall—

(A) for each of the programs described in paragraph (2), update the information for those programs to include information on cost-effective and alternative wastewater recycling and treatment technologies, including onsite and decentralized systems; and

(B) disseminate to units of local government and nonprofit organizations seeking Federal funds for wastewater technology information on the cost effectiveness of alter-

native wastewater treatment and recycling technologies, including onsite and decentralized systems.

(2) Programs described

The programs referred to in paragraph (1)(A) are programs that provide technical assistance for wastewater management, including—

(A) programs for nonpoint source management under section 1329 of this title; and

(B) the permit program for the disposal of sewer sludge under section 1345 of this title.

(b) Report to Congress

Not later than 1 year after October 23, 2018, and not less frequently than every 3 years thereafter, the Administrator of the Environmental Protection Agency shall submit to Congress a report that describes—

(1) the type and amount of information provided under subsection (a) to units of local government and nonprofit organizations regarding alternative wastewater treatment and recycling technologies;

(2) the States and regions that have made greatest use of alternative wastewater treatment and recycling technologies; and

(3) the actions taken by the Administrator to assist States in the deployment of alternative wastewater treatment and recycling technologies, including onsite and decentralized systems.

(Pub. L. 115–270, title IV, § 4102, Oct. 23, 2018, 132 Stat. 3871.)

CODIFICATION

Section was enacted as part of the America's Water Infrastructure Act of 2018, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1315. State reports on water quality

(a) Omitted

(b)(1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter.

(June 30, 1948, ch. 758, title III, § 305, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 853; amended Pub. L. 95–217, § 52, Dec. 27, 1977, 91 Stat. 1589.)

CODIFICATION

Subsec. (a) authorized the Administrator, in cooperation with the States and Federal agencies, to prepare a report describing the specific quality, during 1973, of all navigable waters and waters of the contiguous zone, including an inventory of all point sources of discharge of pollutants into these waters, and identifying those navigable waters capable of supporting fish and wildlife populations and allowing recreational activities, those which could reasonably be expected to attain this level by 1977 or 1983, and those which could attain this level sooner, and submit this report to Congress on or before Jan. 1, 1974.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95–217, § 52(1), substituted ''April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter'' for ''January 1, 1975, and shall bring up to date each year thereafter'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 95–217, § 52(2), substituted ''on or before October 1, 1975, and October 1, 1976, and biennially thereafter'' for ''on or before October 1, 1975, and annually thereafter''.

§ 1316. National standards of performance

(a) Definitions

For purposes of this section:

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

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

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

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

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

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

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

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

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

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

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

(c) State enforcement of standards of performance

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

(d) Protection from more stringent standards

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

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

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(June 30, 1948, ch. 758, title III, § 306, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 854.)

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION; CONDITIONS

Discharges from point sources in the United States Virgin Islands in existence on Aug. 5, 1983, attributable to the manufacture of rum not to be subject to the requirements of this section under certain conditions, see section 214(g) of Pub. L. 98–67, set out as a note under section 1311 of this title.

§ 1317. Toxic and pretreatment effluent standards

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

(1) On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after

December 27, 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

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

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

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

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

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

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

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

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollut-

ant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works.

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

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

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

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

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

(d) Operation in violation of standards unlawful

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

(e) Compliance date extension for innovative pretreatment systems

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

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

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

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

(B) concurs with the proposed extension.

(June 30, 1948, ch. 758, title III, § 307, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 856; amended Pub. L. 95–217, §§ 53(a), (b), 54(a), Dec. 27, 1977, 91 Stat. 1589–1591; Pub. L. 100–4, title III, § 309(a), Feb. 4, 1987, 101 Stat. 41.)

AMENDMENTS

1987—Subsec. (e). Pub. L. 100–4 added subsec. (e).

1977—Subsec. (a)(1). Pub. L. 95–217, § 53(a), substituted ''On and after December 27, 1977, the list of toxic pollutants or combination of pollutants subject to this chapter shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after December 27, 1977, that list'' for ''The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section'' and inserted provision for the revision of the list and for the finality of the Administrator's determination except when that determination is arbitrary and capricious.

Subsec. (a)(2). Pub. L. 95–217, § 53(a), expanded provisions covering effluent limitations and the establishment of effluent standards (or prohibitions), introduced provisions relating to the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with sections 1311(b)(2)(A) and 1314(b)(2) of this title, inserted provision that published effluent standards take into account the extent to which effective control is being or may be achieved under other regulatory authority, inserted provision for a sixty day minimum period following publication of proposed effluent standards for written comment, substituted two hundred and seventy days for six months as the period following publication of proposed standards during which period standards (or prohibitions) must be promulgated, and inserted provision for the finality of effluent limitations (or prohibitions) except if, on judicial review, the standard was not based on substantial evidence.

Subsec. (a)(3). Pub. L. 95–217, § 53(a), struck out provision for the immediate promulgation of revised effluent standards (or prohibitions) for pollutants or combinations of pollutants if, after public hearings, the Administrator found that a modification of such proposed standards (or prohibitions) was justified. See subsec. (a)(2) of this section.

Subsec. (a)(6). Pub. L. 95–217, § 53(b), inserted provision that if the Administrator determines that compliance with effluent standards (or prohibitions) within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for that category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

Subsec. (b)(1). Pub. L. 95–217, § 54(a), inserted provision that if, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by the works removes all or any part of the toxic pollutant and the discharge from the works does not violate that effluent limitation or standard which would be applicable to the toxic pollutant if it were discharged by the source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by the works in accordance with section 1345 of this title, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of the toxic pollutant by the works.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

INCREASE IN EPA EMPLOYEES

Pub. L. 100–4, title III, § 309(b), Feb. 4, 1987, 101 Stat. 41, provided that: ''The Administrator shall take such actions as may be necessary to increase the number of employees of the Environmental Protection Agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act [33 U.S.C. 1317].''

§ 1318. Records and reports; inspections

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

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

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

(B) the Administrator or his authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

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

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

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

(c) Application of State law

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

(d) Access by Congress

Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by

the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of Congress, to such committee.

(June 30, 1948, ch. 758, title III, § 308, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 858; amended Pub. L. 95–217, § 67(c)(1), Dec. 27, 1977, 91 Stat. 1606; Pub. L. 100–4, title III, § 310, title IV, § 406(d)(1), Feb. 4, 1987, 101 Stat. 41, 73.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–4, § 406(d)(1), substituted ''1345, and 1364'' for ''and 1364'' in cl. (4).

Subsec. (a)(B). Pub. L. 100–4, § 310(a)(2), inserted ''(including an authorized contractor acting as a representative of the Administrator)'' after ''representative''.

Subsec. (b). Pub. L. 100–4, § 310(a)(1), substituted a period and ''Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection shall be fined not more than $1,000 or imprisoned not more than 1 year, or both. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.'' for '', except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.''

Subsec. (d). Pub. L. 100–4, § 310(b), added subsec. (d).

1977—Subsec. (a)(4). Pub. L. 95–217 inserted ''1344 (relating to State permit programs),'' after ''sections 1315, 1321, 1342,'' in provisions preceding subpar. (A).

§ 1319. Enforcement

(a) State enforcement; compliance orders

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

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

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

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

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, 1318, 1322(p), 1328, or 1345 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State or in a permit issued under section 1344 of this title by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

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

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

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

ferred to in section 1311(b)(1)(A) of this title to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

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

(b) Civil actions

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

(c) Criminal penalties

(1) Negligent violations

Any person who—

(A) negligently violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1322(p), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

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

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

(2) Knowing violations

Any person who—

(A) knowingly violates section 1311, 1312, 1316, 1317, 1318, 1321(b)(3), 1322(p), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State; or

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

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

(3) Knowing endangerment

(A) General rule

Any person who knowingly violates section 1311, 1312, 1313, 1316, 1317, 1318, 1321(b)(3), 1322(p), 1328, or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by the Secretary of the Army or by a State, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(B) Additional provisions

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

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

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

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

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

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

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

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

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

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

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

(4) False statements

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

(5) Treatment of single operational upset

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

(6) Responsible corporate officer as "person"

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

(7) Hazardous substance defined

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

(d) Civil penalties; factors considered in determining amount

Any person who violates section 1311, 1312, 1316, 1317, 1318, 1322(p), 1328,,[1] or 1345 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, or in a permit issued under section 1344 of this title by a State, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $25,000 per day for each violation. In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(e) State liability for judgments and expenses

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

(f) Wrongful introduction of pollutant into treatment works

Whenever, on the basis of any information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in viola-

[1] So in original.

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

(g) Administrative penalties

(1) Violations

Whenever on the basis of any information available—

(A) the Administrator finds that any person has violated section 1311, 1312, 1316, 1317, 1318, 1322(p), 1328, or 1345 of this title, or has violated any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, or in a permit issued under section 1344 of this title by a State, or

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

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

(2) Classes of penalties

(A) Class I

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

(B) Class II

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

(3) Determining amount

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

(4) Rights of interested persons

(A) Public notice

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

(B) Presentation of evidence

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

(C) Rights of interested persons to a hearing

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

denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(5) Finality of order

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

(6) Effect of order

(A) Limitation on actions under other sections

Action taken by the Administrator or the Secretary, as the case may be, under this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation—

(i) with respect to which the Administrator or the Secretary has commenced and is diligently prosecuting an action under this subsection,

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

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

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

(B) Applicability of limitation with respect to citizen suits

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

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

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

(7) Effect of action on compliance

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

(8) Judicial review

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

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

(B) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or the Secretary, as the case may be, and the Attorney General. The Administrator or the Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(9) Collection

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

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

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

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

(10) Subpoenas

The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this

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

(11) Protection of existing procedures

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

(h) Implementation of integrated plans

(1) In general

In conjunction with an enforcement action under subsection (a) or (b) relating to municipal discharges, the Administrator shall inform a municipality of the opportunity to develop an integrated plan, as defined in section 1342(s) of this title.

(2) Modification

Any municipality under an administrative order under subsection (a) or settlement agreement (including a judicial consent decree) under subsection (b) that has developed an integrated plan consistent with section 1342(s) of this title may request a modification of the administrative order or settlement agreement based on that integrated plan.

(June 30, 1948, ch. 758, title III, § 309, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 859; amended Pub. L. 95–217, §§ 54(b), 55, 56, 67(c)(2), Dec. 27, 1977, 91 Stat. 1591, 1592, 1606; Pub. L. 100–4, title III, §§ 312, 313(a)(1), (b)(1), (c), 314(a), Feb. 4, 1987, 101 Stat. 42, 45, 46; Pub. L. 101–380, title IV, § 4301(c), Aug. 18, 1990, 104 Stat. 537; Pub. L. 115–282, title IX, § 903(c)(2), Dec. 4, 2018, 132 Stat. 4356; Pub. L. 115–436, § 3(b), Jan. 14, 2019, 132 Stat. 5560.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(7), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

2019—Subsec. (h). Pub. L. 115–436 added subsec. (h).

2018—Subsec. (a)(3). Pub. L. 115–282, § 903(c)(2)(A), substituted ''1322(p), 1328'' for ''1328''.

Subsec. (c)(1)(A), (2)(A), (3)(A). Pub. L. 115–282, § 903(c)(2)(B), substituted ''1322(p), 1328'' for ''1328''.

Subsec. (d). Pub. L. 115–282, § 903(c)(2)(C), substituted ''1322(p), 1328,'' for ''1328'' and ''State,'' for ''State,,''.

Subsec. (g)(1)(A). Pub. L. 115–282, § 903(c)(2)(D), substituted ''1322(p), 1328'' for ''1328''.

1990—Subsec. (c)(1)(A), (2)(A), (3)(A). Pub. L. 101–380 inserted ''1321(b)(3),'' after ''1318,''.

1987—Subsec. (c). Pub. L. 100–4, § 312, amended subsec. (c) generally, revising provisions of par. (1), adding pars. (2), (3), (5), and (7), redesignating former pars. (2) and (4) as (3) and (6), respectively, and revising provisions of redesignated par. (4).

Subsec. (d). Pub. L. 100–4, § 313(a)(1), inserted '', or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title,'' after second reference to ''State,''.

Pub. L. 100–4, § 313(b)(1), substituted ''$25,000 per day for each violation'' for ''$10,000 per day of such violation''.

Pub. L. 100–4, § 313(c), inserted at end ''In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.''

Subsec. (g). Pub. L. 100–4, § 314(a), added subsec. (g).

1977—Subsec. (a)(1). Pub. L. 95–217, §§ 55(a), 67(c)(2)(A), substituted ''1318, 1328, or 1345 of this title'' for ''or 1318 of this title'' and ''1342 or 1344 of this title'' for ''1342 of this title''.

Subsec. (a)(2). Pub. L. 95–217, § 56(a), substituted ''except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation'' for ''the Administrator shall enforce any permit condition or limitation''.

Subsec. (a)(3). Pub. L. 95–217, §§ 55(b), 67(c)(2)(B), substituted ''1318, 1328, or 1345 of this title'' for ''or 1318 of this title'' and inserted ''or in a permit issued under section 1344 of this title by a State'' after ''in a permit issued under section 1342 of this title by him or by a State''.

Subsec. (a)(4). Pub. L. 95–217, § 56(b), struck out provision that any order issued under this subsection had to be by personal service and had to state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. See section subsec. (a)(5) of this section.

Subsec. (a)(5), (6). Pub. L. 95–217, § 56(c), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95–217, § 67(c)(2)(C), substituted ''by a State or in a permit issued under section 1344 of this title by a State, shall be punished'' for ''by a State, shall be punished''.

Subsec. (d). Pub. L. 95–217, §§ 55(c), 67(c)(2)(D), substituted ''1318, 1328, or 1345 of this title'' for ''or 1318 of this title'' and inserted ''or in a permit issued under section 1344 of this title by a State,'' after ''permit issued under section 1342 of this title by the Administrator, or by a State,''.

Subsec. (f). Pub. L. 95–217, § 54(b), added subsec. (f).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of this title.

SAVINGS PROVISION

Pub. L. 100–4, title III, § 313(a)(2), Feb. 4, 1987, 101 Stat. 45, provided that: ''No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342] as a result of the amendment made by paragraph (1) [amending this section].''

DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to subsection (c) of this section and sections 1321 and 1501 et seq. of this title to be

deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101–380, set out as a note under section 9509 of Title 26.

INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS

Pub. L. 100–4, title III, § 313(b)(2), Feb. 4, 1987, 101 Stat. 45, provided that: ''The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) of such Act [33 U.S.C. 1319(d)] which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1) [amending this section]. Nothing in this paragraph shall affect the Administrator's authority to establish or adjust by regulation a minimum acceptable State civil penalty.''

ACTIONS BY SURGEON GENERAL RELATING TO INTERSTATE POLLUTION

Act July 9, 1956, ch. 518, § 5, 70 Stat. 507, provided that actions by the Surgeon General with respect to water pollutants under section 2(d) of act June 30, 1948, ch. 758, 62 Stat. 1155, as in effect prior to July 9, 1956, which had been completed prior to such date, would still be subject to the terms of section 2(d) of act June 30, 1948, in effect prior to the July 9, 1956 amendment, but that actions with respect to such pollutants would nevertheless subsequently be possible in accordance with the terms of act June 30, 1948, as amended by act July 9, 1956.

§ 1320. International pollution abatement

(a) Hearing; participation by foreign nations

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

(b) Functions and responsibilities of Administrator not affected

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

(c) Hearing board; composition; findings of fact; recommendations; implementation of board's decision

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this chapter.

(d) Report by alleged polluter

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Compensation of board members

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence and related expenses.

(f) Enforcement proceedings

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch. 758, title III, § 310, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 860.)

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1321. Oil and hazardous substance liability

(a) Definitions

For the purpose of this section, the term—

(1) ''oil'' means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) ''discharge'' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit,,[1] (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;

(3) ''vessel'' means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) ''public vessel'' means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) ''United States'' means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) ''owner or operator'' means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) ''person'' includes an individual, firm, corporation, association, and a partnership;

(8) ''remove'' or ''removal'' refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) ''contiguous zone'' means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) ''onshore facility'' means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) ''offshore facility'' means any facility of any kind located in, on, or under, any of the navigable waters of the United States, any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel, and, for the purposes of applying subsections (b), (c), (e), and (*o*), any foreign offshore unit (as defined in section 1001 of the Oil Pollution Act[2]) or any other facility located seaward of the exclusive economic zone;

(12) ''act of God'' means an act occasioned by an unanticipated grave natural disaster;

(13) ''barrel'' means 42 United States gallons at 60 degrees Fahrenheit;

(14) ''hazardous substance'' means any substance designated pursuant to subsection (b)(2) of this section;

(15) ''inland oil barge'' means a non-self-propelled vessel carrying oil in bulk as cargo and

[1] So in original.

[2] See References in Text note below.

certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) ''inland waters of the United States'' means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway;

(17) ''otherwise subject to the jurisdiction of the United States'' means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

(18) ''Area Committee'' means an Area Committee established under subsection (j);

(19) ''Area Contingency Plan'' means an Area Contingency Plan prepared under subsection (j);

(20) ''Coast Guard District Response Group'' means a Coast Guard District Response Group established under subsection (j);

(21) ''Federal On-Scene Coordinator'' means a Federal On-Scene Coordinator designated in the National Contingency Plan;

(22) ''National Contingency Plan'' means the National Contingency Plan prepared and published under subsection (d);

(23) ''National Response Unit'' means the National Response Unit established under subsection (j);

(24) ''worst case discharge'' means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions;

(25) ''removal costs'' means—

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that threat;

(26) ''nontank vessel'' means a self-propelled vessel that—

(A) is at least 400 gross tons as measured under section 14302 of title 46 or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(23) of that title;

(27) the term ''best available science'' means science that—

(A) maximizes the quality, objectivity, and integrity of information, including statistical information;

(B) uses peer-reviewed and publicly available data; and

(C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;

(28) the term ''Chairperson'' means the Chairperson of the Council;

(29) the term ''coastal political subdivision'' means any local political jurisdiction that is immediately below the State level of government, including a county, parish, or borough, with a coastline that is contiguous with any portion of the United States Gulf of Mexico;

(30) the term ''Comprehensive Plan'' means the comprehensive plan developed by the Council pursuant to subsection (t);

(31) the term ''Council'' means the Gulf Coast Ecosystem Restoration Council established pursuant to subsection (t);

(32) the term ''Deepwater Horizon oil spill'' means the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulting hydrocarbon releases into the environment;

(33) the term ''Gulf Coast region'' means—

(A) in the Gulf Coast States, the coastal zones (as that term is defined in section 1453 of title 16),[1] except that, in this section, the term ''coastal zones'' includes land within the coastal zones that is held in trust by, or the use of which is by law subject solely to the discretion of, the Federal Government or officers or agents of the Federal Government))[1] that border the Gulf of Mexico;

(B) any adjacent land, water, and watersheds, that are within 25 miles of the coastal zones described in subparagraph (A) of the Gulf Coast States; and

(C) all Federal waters in the Gulf of Mexico;

(34) the term ''Gulf Coast State'' means any of the States of Alabama, Florida, Louisiana, Mississippi, and Texas; and

(35) the term ''Trust Fund'' means the Gulf Coast Restoration Trust Fund established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions: penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs, alternative remedies, and withholding clearance of vessels

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regu-

lations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92–500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with title 18, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) ADMINISTRATIVE PENALTIES.—

(A) VIOLATIONS.—Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility—

(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

(ii) who fails or refuses to comply with any regulation issued under subsection (j) to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, or the Administrator.

(B) CLASSES OF PENALTIES.—

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

(ii) CLASS II.—The amount of a class II civil penalty under subparagraph (A) may not exceed $10,000 per day for each day dur-

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

(C) RIGHTS OF INTERESTED PERSONS.—

(i) PUBLIC NOTICE.—Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) PRESENTATION OF EVIDENCE.—Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

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

(D) FINALITY OF ORDER.—An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) EFFECT OF ORDER.—Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation—

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph,

shall not be the subject of a civil penalty action under section 1319(d), 1319(g), or 1365 of this title or under paragraph (7).

(F) EFFECT OF ACTION ON COMPLIANCE.—No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this chapter.

(G) JUDICIAL REVIEW.—Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment—

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

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) COLLECTION.—If any person fails to pay an assessment of a civil penalty—

(i) after the assessment has become final, or

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

the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for col-

lection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

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

(7) CIVIL PENALTY ACTION.—

(A) DISCHARGE, GENERALLY.—Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to $1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) FAILURE TO REMOVE OR COMPLY.—Any person described in subparagraph (A) who, without sufficient cause—

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c); or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B);

shall be subject to a civil penalty in an amount up to $25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) FAILURE TO COMPLY WITH REGULATION.—Any person who fails or refuses to comply with any regulation issued under subsection (j) shall be subject to a civil penalty in an amount up to $25,000 per day of violation.

(D) GROSS NEGLIGENCE.—In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than $100,000, and not more than $3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

(E) JURISDICTION.—An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) LIMITATION.—A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) MITIGATION OF DAMAGE.—In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) RECOVERY OF REMOVAL COSTS.—Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 1319(b) of this title.

(11) LIMITATION.—Civil penalties shall not be assessed under both this section and section 1319 of this title for the same discharge.

(12) WITHHOLDING CLEARANCE.—If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke—

(A) the clearance required by section 60105 of title 46;

(B) a permit to proceed under section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313);[2] and

(C) a permit to depart required under section 1443[2] of title 19;

as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

(c) Federal removal authority

(1) General removal requirement

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance—

(i) into or on the navigable waters;

(ii) on the adjoining shorelines to the navigable waters;

(iii) into or on the waters of the exclusive economic zone; or

(iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may—

(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) Discharge posing substantial threat to public health or welfare

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government—

(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(3) Actions in accordance with National Contingency Plan

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j), or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

(4) Exemption from liability

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply—

(i) to a responsible party;

(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(iii) with respect to personal injury or wrongful death; or

(iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

(5) Obligation and liability of owner or operator not affected

Nothing in this subsection affects—

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.].

(6) "Responsible party" defined

For purposes of this subsection, the term ''responsible party'' has the meaning given that term under section 1001 of the Oil Pollution Act of 1990 [33 U.S.C. 2701].

(d) National Contingency Plan

(1) Preparation by President

The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

(2) Contents

The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

(B) Identification, procurement, maintenance, and storage of equipment and supplies.

(C) Establishment or designation of Coast Guard strike teams, consisting of—

(i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;

(ii) adequate oil and hazardous substance pollution control equipment and material; and

(iii) a detailed oil and hazardous substance pollution and prevention plan, in-

cluding measures to protect fisheries and wildlife.

(D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.

(E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.

(F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.

(G) A schedule, prepared in cooperation with the States, identifying—

(i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,

(ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and

(iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,

which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.

(H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.

(I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2).

(J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j).

(L) Establishment of procedures for the coordination of activities of—

(i) Coast Guard strike teams established under subparagraph (C);

(ii) Federal On-Scene Coordinators designated under subparagraph (K);

(iii) District Response Groups established under subsection (j); and

(iv) Area Committees established under subsection (j).

(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

(3) Revisions and amendments

The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

(4) Actions in accordance with National Contingency Plan

After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(e) Civil enforcement

(1) Orders protecting public health

In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b), the President may—

(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

(2) Jurisdiction of district courts

The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.

(f) Liability for actual costs of removal

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any

vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Third party liability

Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except

where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) Rights against third parties who caused or contributed to discharge

The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The[3] United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs

In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Federal Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

[3] So in original. Probably should not be capitalized.

(j) National Response System

(1) In general

Consistent with the National Contingency Plan required by subsection (c)(2)[2] of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) National Response Unit

The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit—

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(G) shall review each of those plans that affects its responsibilities under this subsection.

(3) Coast Guard District Response Groups

(A) The Secretary of the department in which the Coast Guard is operating shall es-

tablish in each Coast Guard district a Coast Guard District Response Group.

(B) Each Coast Guard District Response Group shall consist of—

(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

(ii) additional prepositioned equipment; and

(iii) a district response advisory staff.

(C) Coast Guard district response groups—

(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

(ii) shall maintain all Coast Guard response equipment within its district;

(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

(iv) shall review each of those plans that affect its area of geographic responsibility.

(4) Area Committees and Area Contingency Plans

(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified—

(i) personnel of Federal, State, and local agencies; and

(ii) members of federally recognized Indian tribes, where applicable.

(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall—

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State, local, and tribal officials to enhance the contingency planning of those officials and to assure preplanning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge; and

(iii) work with State, local, and tribal officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall—

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator, Federal, State, and local agencies, and tribal governments, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) include a framework for advance planning and decisionmaking with respect to the closing and reopening of fishing areas following a discharge, including protocols and standards for the closing and reopening of fishing areas;

(viii) include any other information the President requires; and

(ix) be updated periodically by the Area Committee.

(D) The President shall—

(i) review and approve Area Contingency Plans under this paragraph; and

(ii) periodically review Area Contingency Plans so approved.

(5) Tank vessel, nontank vessel, and facility response plans

(A)(i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a

discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term ''noxious liquid substance'' has the same meaning when that term is used in the MARPOL Protocol described in section 1901(a)(3)[2] of this title.

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

(i) A tank vessel, as defined under section 2101 of title 46.

(ii) A nontank vessel.

(iii) An offshore facility.

(iv) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

(D) A response plan required under this paragraph shall—

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) be updated periodically; and

(vi) be resubmitted for approval of each significant change.

(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall—

(i) promptly review such response plan;

(ii) require amendments to any plan that does not meet the requirements of this paragraph;

(iii) approve any plan that meets the requirements of this paragraph;

(iv) review each plan periodically thereafter; and

(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004, and ensure consistency to the extent practicable.

(F) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless—

(i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and

(ii) the vessel or facility is operating in compliance with the plan.

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

(H) The owner or operator of a tank vessel, nontank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.] that the owner or operator was acting in accordance with an approved response plan.

(I) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of title 46, the dates of approval and review of a response plan under this paragraph for each tank vessel and nontank vessel that is a vessel of the United States.

(6) Equipment requirements and inspection

The President may require—

(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges; and

(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo, and nontank vessels carrying oil of any kind as fuel for main propulsion, to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

(7) Area drills

The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel, nontank vessel, and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

(8) United States Government not liable

The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.

(k) Repealed. Pub. L. 101–380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507

(*l*) Administration

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Administrative provisions

(1) For vessels

Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels—

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(2) For facilities

(A) Recordkeeping

Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

(B) Entry and inspection

Whenever required to carry out the purposes of this section, the Administrator, the Secretary of Transportation, or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may—

(i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and

(ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

(C) Arrests and execution of warrants

Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may—

(i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and

(ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

(D) Public access

Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to section 1318 of this title.

(n) Jurisdiction

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(*l*),[2] arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(*o*) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) Repealed. Pub. L. 101–380, title II, § 2002(b)(4), Aug. 18, 1990, 104 Stat. 507

(q) Establishment of maximum limit of liability with respect to onshore or offshore facilities

The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

(r) Liability limitations not to limit liability under other legislation

Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C. 1501 et seq.].

(s) Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund established under section 9509 of title 26 shall be available to carry out subsections (b), (c), (d), (j), and (*l*) as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund except as provided in subsection (t).

(t) Gulf Coast restoration and recovery

(1) State allocation and expenditures

(A) In general

Of the total amounts made available in any fiscal year from the Trust Fund, 35 percent shall be available, in accordance with the requirements of this section, to the Gulf Coast States in equal shares for expenditure for ecological and economic restoration of the Gulf Coast region in accordance with this subsection.

(B) Use of funds

(i) Eligible activities in the Gulf Coast region

Subject to clause (iii), amounts provided to the Gulf Coast States under this subsection may only be used to carry out 1 or more of the following activities in the Gulf Coast region:

(I) Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Mitigation of damage to fish, wildlife, and natural resources.

(III) Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring.

(IV) Workforce development and job creation.

(V) Improvements to or on State parks located in coastal areas affected by the Deepwater Horizon oil spill.

(VI) Infrastructure projects benefitting the economy or ecological resources, including port infrastructure.

(VII) Coastal flood protection and related infrastructure.

(VIII) Planning assistance.

(IX) Administrative costs of complying with this subsection.

(ii) Activities to promote tourism and seafood in the Gulf Coast region

Amounts provided to the Gulf Coast States under this subsection may be used to carry out 1 or more of the following activities:

(I) Promotion of tourism in the Gulf Coast Region, including recreational fishing.

(II) Promotion of the consumption of seafood harvested from the Gulf Coast Region.

(iii) Limitation

(I) In general

Of the amounts received by a Gulf Coast State under this subsection, not more than 3 percent may be used for administrative costs eligible under clause (i)(IX).

(II) Claims for compensation

Activities funded under this subsection may not be included in any claim for compensation paid out by the Oil Spill Liability Trust Fund after July 6, 2012.

(C) Coastal political subdivisions

(i) Distribution

In the case of a State where the coastal zone includes the entire State—

(I) 75 percent of funding shall be provided directly to the 8 disproportionately affected counties impacted by the Deepwater Horizon oil spill; and

(II) 25 percent shall be provided directly to nondisproportionately impacted counties within the State.

(ii) Nondisproportionately impacted counties

The total amounts made available to coastal political subdivisions in the State of Florida under clause (i)(II) shall be distributed according to the following weighted formula:

(I) 34 percent based on the weighted average of the population of the county.

(II) 33 percent based on the weighted average of the county per capita sales tax collections estimated for fiscal year 2012.

(III) 33 percent based on the inverse proportion of the weighted average distance from the Deepwater Horizon oil rig to each of the nearest and farthest points of the shoreline.

(D) Louisiana

(i) In general

Of the total amounts made available to the State of Louisiana under this paragraph:

(I) 70 percent shall be provided directly to the State in accordance with this subsection.

(II) 30 percent shall be provided directly to parishes in the coastal zone (as

defined in section 1453 of title 16) of the State of Louisiana according to the following weighted formula:

(aa) 40 percent based on the weighted average of miles of the parish shoreline oiled.

(bb) 40 percent based on the weighted average of the population of the parish.

(cc) 20 percent based on the weighted average of the land mass of the parish.

(ii) Conditions

(I) Land use plan

As a condition of receiving amounts allocated under this paragraph, the chief executive of the eligible parish shall certify to the Governor of the State that the parish has completed a comprehensive land use plan.

(II) Other conditions

A coastal political subdivision receiving funding under this paragraph shall meet all of the conditions in subparagraph (E).

(E) Conditions

As a condition of receiving amounts from the Trust Fund, a Gulf Coast State, including the entities described in subparagraph (F), or a coastal political subdivision shall—

(i) agree to meet such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund will be used in accordance with this subsection;

(ii) certify in such form and in such manner as the Secretary of the Treasury determines necessary that the project or program for which the Gulf Coast State or coastal political subdivision is requesting amounts—

(I) is designed to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, or economy of the Gulf Coast;

(II) carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B);

(III) was selected based on meaningful input from the public, including broad-based participation from individuals, businesses, and nonprofit organizations; and

(IV) in the case of a natural resource protection or restoration project, is based on the best available science;

(iii) certify that the project or program and the awarding of a contract for the expenditure of amounts received under this paragraph are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements; and

(iv) develop and submit a multiyear implementation plan for the use of such amounts, which may include milestones, projected completion of each activity, and a mechanism to evaluate the success of each activity in helping to restore and protect the Gulf Coast region impacted by the Deepwater Horizon oil spill.

(F) Approval by State entity, task force, or agency

The following Gulf Coast State entities, task forces, or agencies shall carry out the duties of a Gulf Coast State pursuant to this paragraph:

(i) Alabama

(I) In general

In the State of Alabama, the Alabama Gulf Coast Recovery Council, which shall be comprised of only the following:

(aa) The Governor of Alabama, who shall also serve as Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council.

(bb) The Director of the Alabama State Port Authority, who shall also serve as Vice Chairperson and preside over the meetings of the Alabama Gulf Coast Recovery Council in the absence of the Chairperson.

(cc) The Chairman of the Baldwin County Commission.

(dd) The President of the Mobile County Commission.

(ee) The Mayor of the city of Bayou La Batre.

(ff) The Mayor of the town of Dauphin Island.

(gg) The Mayor of the city of Fairhope.

(hh) The Mayor of the city of Gulf Shores.

(ii) The Mayor of the city of Mobile.

(jj) The Mayor of the city of Orange Beach.

(II) Vote

Each member of the Alabama Gulf Coast Recovery Council shall be entitled to 1 vote.

(III) Majority vote

All decisions of the Alabama Gulf Coast Recovery Council shall be made by majority vote.

(IV) Limitation on administrative expenses

Administrative duties for the Alabama Gulf Coast Recovery Council may only be performed by public officials and employees that are subject to the ethics laws of the State of Alabama.

(ii) Louisiana

In the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana.

(iii) Mississippi

In the State of Mississippi, the Mississippi Department of Environmental Quality.

(iv) Texas

In the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

(G) Compliance with eligible activities

If the Secretary of the Treasury determines that an expenditure by a Gulf Coast State or coastal political subdivision of amounts made available under this subsection does not meet one of the activities described in clauses (i) and (ii) of subparagraph (B), the Secretary shall make no additional amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until such time as an amount equal to the amount expended for the unauthorized use—

(i) has been deposited by the Gulf Coast State or coastal political subdivision in the Trust Fund; or

(ii) has been authorized by the Secretary of the Treasury for expenditure by the Gulf Coast State or coastal political subdivision for a project or program that meets the requirements of this subsection.

(H) Compliance with conditions

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), where applicable, the Secretary of the Treasury shall make no amounts from the Trust Fund available to that Gulf Coast State or coastal political subdivision until all conditions of this paragraph are met.

(I) Public input

In meeting any condition of this paragraph, a Gulf Coast State may use an appropriate procedure for public consultation in that Gulf Coast State, including consulting with one or more established task forces or other entities, to develop recommendations for proposed projects and programs that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(J) Previously approved projects and programs

A Gulf Coast State or coastal political subdivision shall be considered to have met the conditions of subparagraph (E) for a specific project or program if, before July 6, 2012—

(i) the Gulf Coast State or coastal political subdivision has established conditions for carrying out projects and programs that are substantively the same as the conditions described in subparagraph (E); and

(ii) the applicable project or program carries out 1 or more of the activities described in clauses (i) and (ii) of subparagraph (B).

(K) Local preference

In awarding contracts to carry out a project or program under this paragraph, a Gulf Coast State or coastal political subdivision may give a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in the State of project execution.

(L) Unused funds

Funds allocated to a State or coastal political subdivision under this paragraph shall remain in the Trust Fund until such time as the State or coastal political subdivision develops and submits a plan identifying uses for those funds in accordance with subparagraph (E)(iv).

(M) Judicial review

If the Secretary of the Treasury determines that a Gulf Coast State or coastal political subdivision does not meet the requirements of this paragraph, including the conditions of subparagraph (E), the Gulf Coast State or coastal political subdivision may obtain expedited judicial review within 90 days after that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

(N) Cost-sharing

(i) In general

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available under this paragraph to that Gulf Coast State or coastal political subdivision to satisfy the non-Federal share of the cost of any project or program authorized by Federal law that is an eligible activity described in clauses (i) and (ii) of subparagraph (B).

(ii) Effect on other funds

The use of funds made available from the Trust Fund to satisfy the non-Federal share of the cost of a project or program that meets the requirements of clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

(2) Council establishment and allocation

(A) In general

Of the total amount made available in any fiscal year from the Trust Fund, 30 percent shall be disbursed to the Council to carry out the Comprehensive Plan.

(B) Council expenditures

(i) In general

In accordance with this paragraph, the Council shall expend funds made available from the Trust Fund to undertake projects and programs, using the best available science, that would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.

(ii) Allocation and expenditure procedures

The Secretary of the Treasury shall develop such conditions, including audit requirements, as the Secretary of the Treasury determines necessary to ensure that amounts disbursed from the Trust Fund to the Council to implement the Comprehensive Plan will be used in accordance with this paragraph.

(iii) Administrative expenses

Of the amounts received by the Council under this paragraph, not more than 3 per-

cent may be used for administrative expenses, including staff.

(C) Gulf Coast Ecosystem Restoration Council

(i) Establishment

There is established as an independent entity in the Federal Government a council to be known as the ''Gulf Coast Ecosystem Restoration Council''.

(ii) Membership

The Council shall consist of the following members, or in the case of a Federal agency, a designee at the level of the Assistant Secretary or the equivalent:

(I) The Secretary of the Interior.

(II) The Secretary of the Army.

(III) The Secretary of Commerce.

(IV) The Administrator of the Environmental Protection Agency.

(V) The Secretary of Agriculture.

(VI) The head of the department in which the Coast Guard is operating.

(VII) The Governor of the State of Alabama.

(VIII) The Governor of the State of Florida.

(IX) The Governor of the State of Louisiana.

(X) The Governor of the State of Mississippi.

(XI) The Governor of the State of Texas.

(iii) Alternate

A Governor appointed to the Council by the President may designate an alternate to represent the Governor on the Council and vote on behalf of the Governor.

(iv) Chairperson

From among the Federal agency members of the Council, the representatives of States on the Council shall select, and the President shall appoint, 1 Federal member to serve as Chairperson of the Council.

(v) Presidential appointment

All Council members shall be appointed by the President.

(vi) Council actions

(I) In general

The following actions by the Council shall require the affirmative vote of the Chairperson and a majority of the State members to be effective:

(aa) Approval of a Comprehensive Plan and future revisions to a Comprehensive Plan.

(bb) Approval of State plans pursuant to paragraph (3)(B)(iv).

(cc) Approval of reports to Congress pursuant to clause (vii)(VII).

(dd) Approval of transfers pursuant to subparagraph (E)(ii)(I).

(ee) Other significant actions determined by the Council.

(II) Quorum

A majority of State members shall be required to be present for the Council to take any significant action.

(III) Affirmative vote requirement considered met

For approval of State plans pursuant to paragraph (3)(B)(iv), the certification by a State member of the Council that the plan satisfies all requirements of clauses (i) and (ii) of paragraph (3)(B), when joined by an affirmative vote of the Federal Chairperson of the Council, shall be considered to satisfy the requirements for affirmative votes under subclause (I).

(IV) Public transparency

Appropriate actions of the Council, including significant actions and associated deliberations, shall be made available to the public via electronic means prior to any vote.

(vii) Duties of Council

The Council shall—

(I) develop the Comprehensive Plan and future revisions to the Comprehensive Plan;

(II) identify as soon as practicable the projects that—

(aa) have been authorized prior to July 6, 2012, but not yet commenced; and

(bb) if implemented quickly, would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, barrier islands, dunes, and coastal wetlands of the Gulf Coast region;

(III) establish such other 1 or more advisory committees as may be necessary to assist the Council, including a scientific advisory committee and a committee to advise the Council on public policy issues;

(IV) collect and consider scientific and other research associated with restoration of the Gulf Coast ecosystem, including research, observation, and monitoring carried out pursuant to sections 1604 and 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(V) develop standard terms to include in contracts for projects and programs awarded pursuant to the Comprehensive Plan that provide a preference to individuals and companies that reside in, are headquartered in, or are principally engaged in business in a Gulf Coast State;

(VI) prepare an integrated financial plan and recommendations for coordinated budget requests for the amounts proposed to be expended by the Federal agencies represented on the Council for projects and programs in the Gulf Coast States; and

(VII) submit to Congress an annual report that—

(aa) summarizes the policies, strategies, plans, and activities for addressing the restoration and protection of the Gulf Coast region;

(bb) describes the projects and programs being implemented to restore and protect the Gulf Coast region, including—

(AA) a list of each project and program;

(BB) an identification of the funding provided to projects and programs identified in subitem (AA);

(CC) an identification of each recipient for funding identified in subitem (BB); and

(DD) a description of the length of time and funding needed to complete the objectives of each project and program identified in subitem (AA);

(cc) makes such recommendations to Congress for modifications of existing laws as the Council determines necessary to implement the Comprehensive Plan;

(dd) reports on the progress on implementation of each project or program—

(AA) after 3 years of ongoing activity of the project or program, if applicable; and

(BB) on completion of the project or program;

(ee) includes the information required to be submitted under section 1605(c)(4) of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ff) submits the reports required under item (dd) to—

(AA) the Committee on Science, Space, and Technology, the Committee on Natural Resources, the Committee on Transportation and Infrastructure, and the Committee on Appropriations of the House of Representatives; and

(BB) the Committee on Environment and Public Works, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, and the Committee on Appropriations of the Senate.

(viii) Application of Federal Advisory Committee Act

The Council, or any other advisory committee established under this subparagraph, shall not be considered an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.).

(ix) Sunset

The authority for the Council, and any other advisory committee established under this subparagraph, shall terminate on the date all funds in the Trust Fund have been expended.

(D) Comprehensive plan

(i) Proposed plan

(I) In general

Not later than 180 days after July 6, 2012, the Chairperson, on behalf of the Council and after appropriate public input, review, and comment, shall publish a proposed plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Inclusions

The proposed plan described in subclause (I) shall include and incorporate the findings and information prepared by the President's Gulf Coast Restoration Task Force.

(ii) Publication

(I) Initial plan

Not later than 1 year after July 6, 2012, and after notice and opportunity for public comment, the Chairperson, on behalf of the Council and after approval by the Council, shall publish in the Federal Register the initial Comprehensive Plan to restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(II) Cooperation with Gulf Coast Restoration Task Force

The Council shall develop the initial Comprehensive Plan in close coordination with the President's Gulf Coast Restoration Task Force.

(III) Considerations

In developing the initial Comprehensive Plan and subsequent updates, the Council shall consider all relevant findings, reports, or research prepared or funded under section 1604 or 1605 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(IV) Contents

The initial Comprehensive Plan shall include—

(aa) such provisions as are necessary to fully incorporate in the Comprehensive Plan the strategy, projects, and programs recommended by the President's Gulf Coast Restoration Task Force;

(bb) a list of any project or program authorized prior to July 6, 2012, but not yet commenced, the completion of which would further the purposes and goals of this subsection and of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012;

(cc) a description of the manner in which amounts from the Trust Fund projected to be made available to the Council for the succeeding 10 years will be allocated; and

(dd) subject to available funding in accordance with clause (iii), a prioritized list of specific projects and pro-

grams to be funded and carried out during the 3-year period immediately following the date of publication of the initial Comprehensive Plan, including a table that illustrates the distribution of projects and programs by the Gulf Coast State.

(V) Plan updates

The Council shall update—

(aa) the Comprehensive Plan every 5 years in a manner comparable to the manner established in this subparagraph for each 5-year period for which amounts are expected to be made available to the Gulf Coast States from the Trust Fund; and

(bb) the 3-year list of projects and programs described in subclause (IV)(dd) annually.

(iii) Restoration priorities

Except for projects and programs described in clause (ii)(IV)(bb), in selecting projects and programs to include on the 3-year list described in clause (ii)(IV)(dd), based on the best available science, the Council shall give highest priority to projects that address 1 or more of the following criteria:

(I) Projects that are projected to make the greatest contribution to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region, without regard to geographic location within the Gulf Coast region.

(II) Large-scale projects and programs that are projected to substantially contribute to restoring and protecting the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast ecosystem.

(III) Projects contained in existing Gulf Coast State comprehensive plans for the restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region.

(IV) Projects that restore long-term resiliency of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands most impacted by the Deepwater Horizon oil spill.

(E) Implementation

(i) In general

The Council, acting through the Federal agencies represented on the Council and Gulf Coast States, shall expend funds made available from the Trust Fund to carry out projects and programs adopted in the Comprehensive Plan.

(ii) Administrative responsibility

(I) In general

Primary authority and responsibility for each project and program included in the Comprehensive Plan shall be assigned by the Council to a Gulf Coast State represented on the Council or a Federal agency.

(II) Transfer of amounts

Amounts necessary to carry out each project or program included in the Comprehensive Plan shall be transferred by the Secretary of the Treasury from the Trust Fund to that Federal agency or Gulf Coast State as the project or program is implemented, subject to such conditions as the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, established pursuant to section 1602 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012.

(III) Limitation on transfers

(aa) Grants to nongovernmental entities

In the case of funds transferred to a Federal or State agency under subclause (II), the agency shall not make 1 or more grants or cooperative agreements to a nongovernmental entity if the total amount provided to the entity would equal or exceed 10 percent of the total amount provided to the agency for that particular project or program, unless the 1 or more grants have been reported in accordance with item (bb).

(bb) Reporting of grantees

At least 30 days prior to making a grant or entering into a cooperative agreement described in item (aa), the name of each grantee, including the amount and purpose of each grant or cooperative agreement, shall be published in the Federal Register and delivered to the congressional committees listed in subparagraph (C)(vii)(VII)(ff).

(cc) Annual reporting of grantees

Annually, the name of each grantee, including the amount and purposes of each grant or cooperative agreement, shall be published in the Federal Register and delivered to Congress as part of the report submitted pursuant to subparagraph (C)(vii)(VII).

(IV) Project and program limitation

The Council, a Federal agency, or a State may not carry out a project or program funded under this paragraph outside of the Gulf Coast region.

(F) Coordination

The Council and the Federal members of the Council may develop memoranda of understanding establishing integrated funding and implementation plans among the member agencies and authorities.

(3) Oil spill restoration impact allocation

(A) In general

(i) Disbursement

Of the total amount made available from the Trust Fund, 30 percent shall be disbursed pursuant to the formula in clause (ii) to the Gulf Coast States on the approval of the plan described in subparagraph (B)(i).

(ii) Formula

Subject to subparagraph (B), for each Gulf Coast State, the amount disbursed under this paragraph shall be based on a formula established by the Council by regulation that is based on a weighted average of the following criteria:

(I) 40 percent based on the proportionate number of miles of shoreline in each Gulf Coast State that experienced oiling on or before April 10, 2011, compared to the total number of miles of shoreline that experienced oiling as a result of the Deepwater Horizon oil spill.

(II) 40 percent based on the inverse proportion of the average distance from the mobile offshore drilling unit *Deepwater Horizon* at the time of the explosion to the nearest and farthest point of the shoreline that experienced oiling of each Gulf Coast State.

(III) 20 percent based on the average population in the 2010 decennial census of coastal counties bordering the Gulf of Mexico within each Gulf Coast State.

(iii) Minimum allocation

The amount disbursed to a Gulf Coast State for each fiscal year under clause (ii) shall be at least 5 percent of the total amounts made available under this paragraph.

(B) Disbursement of funds

(i) In general

The Council shall disburse amounts to the respective Gulf Coast States in accordance with the formula developed under subparagraph (A) for projects, programs, and activities that will improve the ecosystems or economy of the Gulf Coast region, subject to the condition that each Gulf Coast State submits a plan for the expenditure of amounts disbursed under this paragraph that meets the following criteria:

(I) All projects, programs, and activities included in the plan are eligible activities pursuant to clauses (i) and (ii) of paragraph (1)(B).

(II) The projects, programs, and activities included in the plan contribute to the overall economic and ecological recovery of the Gulf Coast.

(III) The plan takes into consideration the Comprehensive Plan and is consistent with the goals and objectives of the Plan, as described in paragraph (2)(B)(i).

(ii) Funding

(I) In general

Except as provided in subclause (II), the plan described in clause (i) may use not more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i).

(II) Exception

The plan described in clause (i) may propose to use more than 25 percent of the funding made available for infrastructure projects eligible under subclauses (VI) and (VII) of paragraph (1)(B)(i) if the plan certifies that—

(aa) ecosystem restoration needs in the State will be addressed by the projects in the proposed plan; and

(bb) additional investment in infrastructure is required to mitigate the impacts of the Deepwater Horizon Oil Spill to the ecosystem or economy.

(iii) Development

The plan described in clause (i) shall be developed by—

(I) in the State of Alabama, the Alabama Gulf Coast Recovery Council established under paragraph (1)(F)(i);

(II) in the State of Florida, a consortia[4] of local political subdivisions that includes at a minimum 1 representative of each affected county;

(III) in the State of Louisiana, the Coastal Protection and Restoration Authority of Louisiana;

(IV) in the State of Mississippi, the Office of the Governor or an appointee of the Office of the Governor; and

(V) in the State of Texas, the Office of the Governor or an appointee of the Office of the Governor.

(iv) Approval

Not later than 60 days after the date on which a plan is submitted under clause (i), the Council shall approve or disapprove the plan based on the conditions of clause (i).

(C) Disapproval

If the Council disapproves a plan pursuant to subparagraph (B)(iv), the Council shall—

(i) provide the reasons for disapproval in writing; and

(ii) consult with the State to address any identified deficiencies with the State plan.

(D) Failure to submit adequate plan

If a State fails to submit an adequate plan under this paragraph, any funds made available under this paragraph shall remain in the Trust Fund until such date as a plan is submitted and approved pursuant to this paragraph.

(E) Judicial review

If the Council fails to approve or take action within 60 days on a plan, as described in subparagraph (B)(iv), the State may obtain expedited judicial review within 90 days of that decision in a district court of the United States, of appropriate jurisdiction and venue, that is located within the State seeking the review.

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[4] So in original. Probably should be ''consortium''.

(F) Cost-sharing

(i) In general

A Gulf Coast State or coastal political subdivision may use, in whole or in part, amounts made available to that Gulf Coast State or coastal political subdivision under this paragraph to satisfy the non-Federal share of any project or program that—

(I) is authorized by other Federal law; and

(II) is an eligible activity described in clause (i) or (ii) of paragraph (1)(B).

(ii) Effect on other funds

The use of funds made available from the Trust Fund under this paragraph to satisfy the non-Federal share of the cost of a project or program described in clause (i) shall not affect the priority in which other Federal funds are allocated or awarded.

(4) Authorization of interest transfers

Of the total amount made available for any fiscal year from the Trust Fund that is equal to the interest earned by the Trust Fund and proceeds from investments made by the Trust Fund in the preceding fiscal year—

(A) 50 percent shall be divided equally between—

(i) the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program authorized in section 1604 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012; and

(ii) the centers of excellence research grants authorized in section 1605 of that Act; and

(B) 50 percent shall be made available to the Gulf Coast Ecosystem Restoration Council to carry out the Comprehensive Plan pursuant to paragraph (2).

(June 30, 1948, ch. 758, title III, §311, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 862; amended Pub. L. 93–207, §1(4), Dec. 28, 1973, 87 Stat. 906; Pub. L. 95–217, §§57, 58(a)–(g), (i), (k)–(m), Dec. 27, 1977, 91 Stat. 1593–1596; Pub. L. 95–576, §1(b), Nov. 2, 1978, 92 Stat. 2467; Pub. L. 96–478, §13(b), Oct. 21, 1980, 94 Stat. 2303; Pub. L. 96–483, §8, Oct. 21, 1980, 94 Stat. 2362; Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97–164, title I, §161(5), Apr. 2, 1982, 96 Stat. 49; Pub. L. 100–4, title V, §502(b), Feb. 4, 1987, 101 Stat. 75; Pub. L. 101–380, title II, §2002(b), title IV, §§4201(a), (b), (b)[(c)], 4202(a), (c), 4204, 4301(a), (b), 4305, 4306, Aug. 18, 1990, 104 Stat. 507, 523–527, 532, 533, 540, 541; Pub. L. 102–388, title III, §349, Oct. 6, 1992, 106 Stat. 1554; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41; Pub. L. 104–324, title XI, §§1143, 1144, Oct. 19, 1996, 110 Stat. 3992; Pub. L. 105–383, title IV, §411, Nov. 13, 1998, 112 Stat. 3432; Pub. L. 108–293, title VII, §701(a), (b), (d), Aug. 9, 2004, 118 Stat. 1067, 1068; Pub. L. 109–241, title VI, §608, title IX, §901(i), July 11, 2006, 120 Stat. 558, 564; Pub. L. 112–90, §10, Jan. 3, 2012, 125 Stat. 1912; Pub. L. 112–141, div. A, title I, §1603, July 6, 2012, 126 Stat. 589; Pub. L. 113–281, title III, §313, Dec. 18, 2014, 128 Stat. 3048; Pub. L. 115–91, div. C, title XXXV, §3508(b)(2), Dec. 12, 2017, 131 Stat. 1916; Pub. L. 115–232, div. C, title XXXV, §3541(b)(5), Aug. 13, 2018, 132 Stat. 2323.)

REFERENCES IN TEXT

Section 1001 of the Oil Pollution Act, referred to in subsec. (a)(11), probably means section 1001 of Pub. L. 101–380, known as the Oil Pollution Act of 1990, which is classified to section 2701 of this title.

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012, referred to in subsecs. (a)(35) and (t)(2)(C)(vii)(IV), (VII)(ee), (D)(ii)(III), (IV)(bb), (E)(ii)(II), (4)(A), is subtitle F (§§1601–1608) of title I of div. A of Pub. L. 112–141, July 6, 2012, 126 Stat. 588, which is set out as a note below.

The Outer Continental Shelf Lands Act, referred to in subsecs. (b)(1), (2)(A), (3) and (r), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Deepwater Port Act of 1974, referred to in subsecs. (b)(1), (2)(A), (3) and (r), is Pub. L. 93–627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (§1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), (2)(A), (3), is Pub. L. 94–265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (§1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B), probably means the date of enactment of Pub. L. 95–576, which amended subsec. (b)(2)(B) and which was approved Nov. 2, 1978.

The penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92–500, referred to in subsec. (b)(2)(B), probably means the penalty provision of subsec. (b)(2)(B)(iii)(bb) of this section as added by Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 864, prior to the amendment to subsec. (b)(2)(B) by section 1(b)(3) of Pub. L. 95–576. Prior to amendment, subsec. (b)(2)(B)(iii)(bb) read as follows: ''a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than $5,000,000 in the case of a discharge from a vessel and $500,000 in the case of a discharge from an onshore or offshore facility.''

Section 4367 of the Revised Statutes of the United States (46 U.S.C. App. 313), referred to in subsec. (b)(12)(B), was repealed by Pub. L. 103–182, title VI, §690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

Section 1443 of title 19, referred to in subsec. (b)(12)(C), was repealed by Pub. L. 103–182, title VI, §690(b)(6), Dec. 8, 1993, 107 Stat. 2223.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (c)(4)(B)(ii), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

The Oil Pollution Act of 1990, referred to in subsecs. (c)(5)(B), (d)(2)(H), and (j)(5)(H), is Pub. L. 101–380, Aug. 18, 1990, 104 Stat. 484, which is classified principally to chapter 40 (§2701 et seq.) of this title. Title I of the Act is classified generally to subchapter I (§2701 et seq.) of

chapter 40 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Subsection (c)(2) of this section, referred to in subsec. (j)(1), was generally amended by Pub. L. 101–380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523, and no longer contains provisions establishing a National Contingency Plan. However, such provisions are contained in subsec. (d) of this section.

Par. (3) of section 1901(a) of this title, referred to in subsec. (j)(5)(B), was redesignated par. (4) by Pub. L. 110–280, §3(1), July 21, 2008, 122 Stat. 2611.

Subsection (i)(*l*), referred to in subsec. (n), probably should be ''subsection (i)(1)''. The par. (1) designation was struck out from subsec. (i) by Pub. L. 101–380, title II, §2002(b)(1), Aug. 18, 1990, 104 Stat. 507.

The Federal Advisory Committee Act, referred to in subsec. (t)(2)(C)(viii), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In subsec. (b)(12)(A), ''section 60105 of title 46'' substituted for ''section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)'' on authority of Pub. L. 109–304, §18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

AMENDMENTS

2018—Subsec. (a)(26)(D). Pub. L. 115–232 substituted ''section 2101(23)'' for ''section 2101(17a)''.

2017—Subsec. (a)(11). Pub. L. 115–91 substituted ''any facility'' for ''and any facility'' and inserted '', and, for the purposes of applying subsections (b), (c), (e), and (*o*), any foreign offshore unit (as defined in section 1001 of the Oil Pollution Act) or any other facility located seaward of the exclusive economic zone'' after ''public vessel''.

2014—Subsec. (j)(4)(A). Pub. L. 113–281, §313(1), substituted ''qualified—'' for ''qualified personnel of Federal, State, and local agencies.'' in introductory provisions and added cls. (i) and (ii).

Subsec. (j)(4)(B)(ii). Pub. L. 113–281, §313(2), substituted '', local, and tribal'' for ''and local'' and ''wildlife, including advance planning with respect to the closing and reopening of fishing areas following a discharge;'' for ''wildlife;''.

Subsec. (j)(4)(B)(iii). Pub. L. 113–281, §313(3), substituted '', local, and tribal'' for ''and local''.

Subsec. (j)(4)(C)(iv). Pub. L. 113–281, §313(4)(A), substituted '', Federal, State, and local agencies, and tribal governments'' for ''and Federal, State, and local agencies''.

Subsec. (j)(4)(C)(vii) to (ix). Pub. L. 113–281, §313(4)(B), (C), added cl. (vii) and redesignated former cls. (vii) and (viii) as (viii) and (ix), respectively.

2012—Subsec. (a)(27) to (35). Pub. L. 112–141, §1603(1), added pars. (27) to (35).

Subsec. (b)(6)(A). Pub. L. 112–90, §10(b), substituted ''operating, the Secretary of Transportation, or'' for ''operating or'' in concluding provisions.

Subsec. (m)(2)(A), (B). Pub. L. 112–90, §10(a), which directed amendment of subpars. (A) and (B) by substituting ''Administrator, the Secretary of Transportation, or'' for ''Administrator or'' was executed by making the substitution the first place appearing in each subpar., to reflect the probable intent of Congress.

Subsec. (s). Pub. L. 112–141, §1603(2), inserted ''except as provided in subsection (t)'' before period at end.

Subsec. (t). Pub. L. 112–141, §1603(3), added subsec. (t).

2006—Subsec. (a)(26). Pub. L. 109–241, §608, amended par. (26) generally. Prior to amendment, par. (26) read as follows: '' 'nontank vessel' means a self-propelled vessel of 400 gross tons as measured under section 14302 of title 46 or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that—

''(A) is a vessel of the United States; or

''(B) operates on the navigable waters of the United States.''

Subsec. (j)(5)(A)(ii), (B), (F), and (G). Pub. L. 109–241, §901(i)(1), substituted ''nontank'' for ''non-tank'' wherever appearing.

Subsec. (j)(5)(H). Pub. L. 109–241, §901(i)(2), amended directory language of Pub. L. 108–293, §701(b)(9). See 2004 Amendment note below.

2004—Subsec. (a)(26). Pub. L. 108–293, §701(a), added par. (26).

Subsec. (j)(5). Pub. L. 108–293, §701(b)(1), inserted '', nontank vessel,'' after ''vessel'' in heading.

Subsec. (j)(5)(A). Pub. L. 108–293, §701(b)(2), (d)(3), designated existing text as cl. (i), substituted ''subparagraph (C)'' for ''subparagraph (B)'', and added cl. (ii).

Subsec. (j)(5)(B). Pub. L. 108–293, §701(d)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 108–293, §701(b)(3), (4), inserted '', nontank vessels,'' after ''vessels'' in introductory provisions, added cl. (ii), and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (j)(5)(C). Pub. L. 108–293, §701(d)(1), (4), redesignated subpar. (B) as (C) and substituted ''subparagraphs (A) and (B)'' for ''subparagraph (A)'' in introductory provisions. Former subpar. (C) redesignated (D).

Subsec. (j)(5)(D). Pub. L. 108–293, §701(d)(1), redesignated subpar. (C) as (D). Former subpar (D) redesignated (E).

Pub. L. 108–293, §701(b)(5), inserted '', nontank vessel,'' after ''vessel'' in introductory provisions and added cl. (v).

Subsec. (j)(5)(E). Pub. L. 108–293, §701(d)(1), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Pub. L. 108–293, §701(b)(6), inserted ''non-tank vessel,'' after ''vessel,'' in two places.

Subsec. (j)(5)(F). Pub. L. 108–293, §701(d)(1), (5), redesignated subpar. (E) as (F) and substituted ''subparagraph (E),'' for ''subparagraph (D),'' in cl. (i). Former subpar. (F) redesignated (G).

Pub. L. 108–293, §701(b)(7), inserted ''non-tank vessel,'' after ''vessel,'' and substituted ''vessel, non-tank vessel, or'' for ''vessel or''.

Subsec. (j)(5)(G). Pub. L. 108–293, §701(d)(1), redesignated subpar. (F) as (G). Former subpar. (G) redesignated (H).

Pub. L. 108–293, §701(b)(8), inserted ''nontank vessel,'' after ''vessel,''.

Subsec. (j)(5)(H). Pub. L. 108–293, §701(d)(1), redesignated subpar. (G) as (H). Former subpar. (H) redesignated (I).

Pub. L. 108–293, §701(b)(9), as amended by Pub. L. 109–241, §901(i)(2), inserted ''and nontank vessel'' after ''each tank vessel''.

Subsec. (j)(5)(I). Pub. L. 108–293, §701(d)(1), redesignated subpar. (H) as (I).

Subsec. (j)(6). Pub. L. 108–293, §701(b)(10), substituted ''The President may require—'' for ''Not later than 2 years after August 18, 1990, the President shall require—'' in introductory provisions.

Subsec. (j)(6)(B). Pub. L. 108–293, §701(b)(11), inserted '', and nontank vessels carrying oil of any kind as fuel for main propulsion,'' after ''cargo''.

Subsec. (j)(7). Pub. L. 108–293, §701(b)(12), inserted '', nontank vessel,'' after ''vessel''.

1998—Subsec. (a)(2). Pub. L. 105–383, §411(b), substituted '', (C)'' for ''and (C)'' and inserted '', and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section'' before semicolon at end.

Subsec. (a)(8). Pub. L. 105–383, §411(a)(1), substituted ''to prevent, minimize, or mitigate damage'' for ''to minimize or mitigate damage''.

Subsec. (a)(25). Pub. L. 105–383, §411(a)(2), added par. (25).

Subsec. (c)(4)(A). Pub. L. 105–383, §411(a)(3), inserted ''relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance'' before period at end.

1996—Subsec. (b)(1), (2)(A), (3). Pub. L. 104–208 substituted ''Magnuson-Stevens Fishery'' for ''Magnuson Fishery'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 104–324, §1144, inserted '', except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects'' before period at end.

Subsec. (j)(2)(A). Pub. L. 104–324, §1143(1), inserted ''and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and'' after ''paragraph (4),''.

Subsec. (j)(4)(C)(v). Pub. L. 104–324, §1143(2), inserted ''compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and'' before ''describe''.

1992—Subsec. (b)(12). Pub. L. 102–388 added par. (12).

Subsec. (i). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (a)(8). Pub. L. 101–380, §4201(b)(1)[(c)(1)], inserted ''containment and'' after ''refers to''.

Subsec. (a)(16). Pub. L. 101–380, §4201(b)(2)[(c)(2)], substituted semicolon for period at end.

Subsec. (a)(17). Pub. L. 101–380, §4201(b)(3)[(c)(3)], substituted ''otherwise'' for ''Otherwise'' and semicolon for period at end.

Subsec. (a)(18) to (24). Pub. L. 101–380, §4201(b)(4)[(c)(4)], added pars. (18) to (24).

Subsec. (b)(4). Pub. L. 101–380, §4204, inserted ''or the environment'' after ''the public health or welfare''.

Subsec. (b)(5). Pub. L. 101–380, §4301(a), inserted after first sentence ''The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance.'', substituted ''fined in accordance with title 18, United States Code, or imprisoned for not more than 5 years, or both'' for ''fined not more than $10,000, or imprisoned for not more than one year, or both'', struck out ''or information obtained by the exploitation of such notification'' before ''shall not be used'', and inserted ''natural'' before ''person in any''.

Subsec. (b)(6) to (11). Pub. L. 101–380, §4301(b), added pars. (6) to (11) and struck out former par. (6) which related to assessment of civil penalties, limited to $5,000 for each offense, against any owner, operator, or person in charge of any onshore or offshore facility from which oil or a hazardous substance was discharged in violation of par. (3).

Subsec. (c). Pub. L. 101–380, §4201(a), amended subsec. (c) generally, substituting present provisions for provisions authorizing President to arrange for removal of discharge of oil or a hazardous substance into or upon the navigable waters of the U.S., unless he determined such removal would be properly conducted by owner or operator of the vessel causing discharge, and directed President to prepare and publish a National Contingency Plan within 60 days after October 18, 1972.

Subsec. (d). Pub. L. 101–380, §4201(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.''

Subsec. (e). Pub. L. 101–380, §4306, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.''

Subsec. (i). Pub. L. 101–380, §2002(b)(1), struck out par. (1) designation before ''In any case'' and struck out pars. (2) and (3) which read as follows:

''(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

''(3) Any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section shall be paid from the funds established pursuant to subsection (k).''

Subsec. (j). Pub. L. 101–380, §4202(a), amended heading, inserted heading for par. (1) and realigned its margin, added pars. (2) to (8), and struck out former par. (2) which read as follows: ''Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.''

Subsec. (k). Pub. L. 101–380, §2002(b)(2), struck out subsec. (k) which authorized appropriations and supplemental appropriations to create and maintain a revolving fund to carry out subsecs. (c), (d), (i), and (*l*) of this section.

Subsec. (*l*). Pub. L. 101–380, §2002(b)(3), struck out after first sentence ''Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.''

Subsec. (m). Pub. L. 101–380, §4305, amended subsec. (m) generally. Prior to amendment, subsec. (m) read as follows: ''Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant

arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.''

Subsec. (*o*)(2). Pub. L. 101–380, § 4202(c), inserted '', or with respect to any removal activities related to such discharge'' after ''within such State''.

Subsec. (p). Pub. L. 101–380, § 2002(b)(4), struck out subsec. (p) which provided for establishment and maintenance of evidence of financial responsibility by vessels over 300 gross tons carrying oil or hazardous substances.

Subsec. (s). Pub. L. 101–380, § 2002(b)(5), added subsec. (s).

1987—Subsec. (a)(5). Pub. L. 100–4 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Canal Zone''.

1982—Subsec. (i)(1), (3). Pub. L. 97–164 substituted ''Claims Court'' for ''Court of Claims''.

1980—Subsec. (b)(1), (2)(A), (3). Pub. L. 96–561 substituted ''Magnuson Fishery Conservation and Management Act'' for ''Fishery Conservation and Management Act of 1976''.

Subsec. (b)(3)(A). Pub. L. 96–478 struck out ''of oil'' after ''in the case of such discharges'' and substituted ''Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973'' for ''International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended''.

Subsec. (c)(1). Pub. L. 96–561 substituted ''Magnuson Fishery Conservation and Management Act'' for ''Fishery Conservation and Management Act of 1976''.

Subsec. (k). Pub. L. 96–483 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(2). Pub. L. 95–576, § 1(b)(1), excluded discharges described in cls. (A) to (C) from term ''discharge''.

Subsec. (a)(17). Pub. L. 95–576, § 1(b)(2), added par. (17).

Subsec. (b)(2)(B). Pub. L. 95–576, § 1(b)(3), substituted requirement that a study be made respecting methods, mechanisms, and procedures for creating incentives to achieve higher standard of care in management and movement of hazardous substances, including consideration of enumerated items, and a report made to Congress within 18 months after Nov. 2, 1978, for provisions concerning actual removability of any designated hazardous substance, liability during two year period commencing Oct. 18, 1972 based on toxicity, degradability, and dispersal characteristics of the substance limited to $50,000 and without limitation in cases of willful negligence or willful misconduct, liability after such two year period ranging from $500 to $5,000 based on toxicity, etc., or liability for penalty determined by number of units discharged multiplied by amount established for the unit limited to $5,000,000 in the case of a discharge from a vessel and to $500,000 in the case of a discharge from onshore or offshore facility, establishment by regulation of a unit of measurement based upon the usual trade practice for each designated hazardous substance and establishment for such unit a fixed monetary amount ranging from $100 to $1,000 based on toxicity, etc.

Subsec. (b)(3). Pub. L. 95–576, § 1(b)(4), substituted ''such quantities as may be harmful'' for ''harmful quantities''.

Subsec. (b)(4). Pub. L. 95–576, § 1(b)(5), struck out '', to be issued as soon as possible after October 18, 1972,'' after ''regulation'' and substituted ''substances'' for ''substance'' and ''discharge of which may be harmful'' for ''discharge of which, at such times, locations, circumstances, and conditions, will be harmful''.

Subsec. (b)(5). Pub. L. 95–576, § 1(b)(6), inserted ''at the time of the discharge'' after ''otherwise subject to the jurisdiction of the United States''.

Subsec. (b)(6)(A) to (E). Pub. L. 95–576, § 1(b)(7), designated existing provisions as subpar. (A), inserted ''at the time of the discharge'' after ''jurisdiction of the United States'', and added subpars. (B) to (E).

1977—Subsec. (a)(11). Pub. L. 95–217, § 58(k), inserted '', and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters,'' after ''United States''.

Subsec. (a)(15), (16). Pub. L. 95–217, § 58(d)(1), added pars. (15) and (16).

Subsec. (b)(1). Pub. L. 95–217, § 58(a)(1), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(A). Pub. L. 95–217, § 58(a)(2), inserted reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(B)(v). Pub. L. 95–217, § 57, added cl. (v).

Subsec. (b)(3). Pub. L. 95–217, § 58(a)(3), (4), designated part of existing provisions preceding cl. (A) as cl. (i) and added cl. (ii), and, in cl. (A), inserted ''or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)'' after ''waters of the contiguous zone'' and struck out ''article IV of'' before ''the International Convention for the Prevention of Pollution of the Sea by Oil, 1954''.

Subsec. (b)(4). Pub. L. 95–217, § 58(a)(5), struck out provisions under which, in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threatened the fishery resources of the contiguous zone or threatened to pollute or contribute to the pollution of the territory or the territorial sea of the United States could be determined to be harmful.

Subsec. (b)(5). Pub. L. 95–217, § 58(a)(6), added cls. (A), (B), and (C) between ''Any such person'' and ''who fails to notify''.

Subsec. (b)(6). Pub. L. 95–217, § 58(a)(7), (8), substituted ''Any owner, operator, or person in charge of any onshore facility, or offshore facility'' for ''Any owner or operator of any vessel, onshore facility, or offshore facility'' in provision relating to violations of par. (3) of this subsection, and inserted provisions directing the assessment of a civil penalty of not more than $5,000 for each offense by the Secretary of the department in which the Coast Guard is operating to be assessed against any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States.

Subsec. (c)(1). Pub. L. 95–217, § 58(b), (c)(1), inserted ''or there is a substantial threat of such discharge,'' after ''Whenever any oil or a hazardous substance is discharged,'' and ''or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)'' after ''waters of the contiguous zone,''.

Subsec. (c)(2)(D). Pub. L. 95–217, § 58(e), substituted ''and imminent threats of such discharges to the appropriate State and Federal agencies;'' for ''to the appropriate Federal agency;''.

Subsec. (d). Pub. L. 95–217, § 58(c)(2), inserted ''or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)'' after ''Any expense incurred under this subsection''.

Subsec. (f)(1). Pub. L. 95–217, § 58(d)(2), substituted '', in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous sub-

stances as cargo, $250,000), whichever is greater,'' for ''$100 per gross ton of such vessel or $14,000,000, whichever is lesser,''.

Subsec. (f)(2), (3). Pub. L. 95–217, §58(d)(5), (6), substituted ''$50,000,000'' for ''$8,000,000''.

Subsec. (f)(4), (5). Pub. L. 95–217, §58(g), added pars. (4) and (5).

Subsec. (g). Pub. L. 95–217, §58(d)(3), (f), substituted '', in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater'' for ''$100 per gross ton of such vessel or $14,000,000, whichever is the lesser'' in the existing provisions and inserted provision under which, where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsec. (b) of this section, alleges that the discharge was caused solely by an act or omission of a third party, the owner or operator must pay to the United States Government the actual costs incurred under subsec. (c) of this section for removal of the oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover the costs from the third party under this subsection.

Subsec. (i)(2). Pub. L. 95–217, §58(m), inserted reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub. L. 95–217, §58(c)(3), inserted provision that subsec. (j)(2) shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsec. (b)(3)(ii) of this section unless the owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States.

Subsec. (k). Pub. L. 95–217, §58(*l*), substituted ''such sums as may be necessary to maintain such fund at a level of $35,000,000'' for ''not to exceed $35,000,000''.

Subsec. (p)(1). Pub. L. 95–217, §58(d)(4), substituted '', in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater,'' for ''$100 per gross ton, or $14,000,000 whichever is the lesser,''.

Subsecs. (q), (r). Pub. L. 95–217, §58(i), added subsecs. (q) and (r).

1973—Subsec. (f). Pub. L. 93–207, §1(4)(A), (B), substituted ''(b)(3)'' for ''(b)(2)'' wherever appearing in pars. (1) to (3), and substituted ''Administrator'' for ''Secretary'' in last sentence of par. (2).

Subsecs. (g), (i). Pub. L. 93–207, §1(4)(C), substituted ''(b)(3)'' for ''(b)(2)'' wherever appearing.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–241, title IX, §901(i)(2), July 11, 2006, 120 Stat. 564, provided in part that the amendment made by section 901(i)(2) is effective Aug. 9, 2004.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009–41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101–380, set out as an Effective Date note under section 2701 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Pub. L. 96–561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

Amendment by Pub. L. 96–478 effective Oct. 2, 1983, see section 14(a) of Pub. L. 96–478, set out as an Effective Date note under section 1901 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95–217, §58(h), Dec. 27, 1977, 91 Stat. 1596, provided that: ''The amendments made by paragraphs (5) and (6) of subsection (d) of this section [amending this section] shall take effect 180 days after the date of enactment of the Clean Water Act of 1977 [Dec. 27, 1977].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

DELEGATION OF FUNCTIONS

For delegation of certain functions of President under this section, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct.

1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

COAST GUARD RESPONSE PLAN REQUIREMENTS

Pub. L. 115–282, title VIII, § 823(a), Dec. 4, 2018, 132 Stat. 4311, provided that:

''(1) IN GENERAL.—For purposes of the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), the Commandant of the Coast Guard may approve a vessel response plan under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for a vessel operating in any area covered by the Captain of the Port Zone (as established by the Commandant) that includes the Arctic, if the Commandant verifies that—

''(A) equipment required to be available for response under the plan has been tested and proven capable of operating in the environmental conditions expected in the area in which it is intended to be operated; and

''(B) the operators of such equipment have conducted training on the equipment within the area covered by such Captain of the Port Zone.

''(2) POST-APPROVAL REQUIREMENTS.—In approving a vessel response plan under paragraph (1), the Commandant shall—

''(A) require that the oil spill removal organization identified in the vessel response plan conduct regular exercises and drills using the response resources identified in the plan in the area covered by the Captain of the Port Zone that includes the Arctic; and

''(B) allow such oil spill removal organization to take credit for a response to an actual spill or release in the area covered by such Captain of the Port Zone, instead of conducting an exercise or drill required under subparagraph (A), if the oil spill removal organization—

''(i) documents which exercise or drill requirements were met during the response; and

''(ii) submits a request for credit to, and receives approval from, the Commandant.''

Pub. L. 113–281, title III, § 317, Dec. 18, 2014, 128 Stat. 3050, provided that:

''(a) VESSEL RESPONSE PLAN CONTENTS.—The Secretary of the department in which the Coast Guard is operating shall require that each vessel response plan prepared for a mobile offshore drilling unit includes information from the facility response plan prepared for the mobile offshore drilling unit regarding the planned response to a worst case discharge, and to a threat of such a discharge.

''(b) DEFINITIONS.—In this section:

''(1) MOBILE OFFSHORE DRILLING UNIT.—The term 'mobile offshore drilling unit' has the meaning given that term in section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701).

''(2) RESPONSE PLAN.—The term 'response plan' means a response plan prepared under section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)).

''(3) WORST CASE DISCHARGE.—The term 'worst case discharge' has the meaning given that term under section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the Coast Guard to review or approve a facility response plan for a mobile offshore drilling unit.''

RESOURCES AND ECOSYSTEMS SUSTAINABILITY, TOURIST OPPORTUNITIES, AND REVIVED ECONOMIES OF THE GULF COAST STATES

Pub. L. 112–141, div. A, title I, subtitle F, July 6, 2012, 126 Stat. 588, provided that:

''SEC. 1601. SHORT TITLE.

''This subtitle may be cited as the 'Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012'.

''SEC. 1602. GULF COAST RESTORATION TRUST FUND.

''(a) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund to be known as the 'Gulf Coast Restoration Trust Fund' (referred to in this section as the 'Trust Fund'), consisting of such amounts as are deposited in the Trust Fund under this Act [probably means this subtitle] or any other provision of law.

''(b) TRANSFERS.—The Secretary of the Treasury shall deposit in the Trust Fund an amount equal to 80 percent of all administrative and civil penalties paid by responsible parties after the date of enactment of this Act [July 6, 2012] in connection with the explosion on, and sinking of, the mobile offshore drilling unit *Deepwater Horizon* pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

''(c) EXPENDITURES.—Amounts in the Trust Fund, including interest earned on advances to the Trust Fund and proceeds from investment under subsection (d), shall—

''(1) be available for expenditure, without further appropriation, solely for the purpose and eligible activities of this subtitle and the amendments made by this subtitle [amending this section]; and

''(2) remain available until expended, without fiscal year limitation.

''(d) INVESTMENT.—Amounts in the Trust Fund shall be invested in accordance with section 9702 of title 31, United States Code, and any interest on, and proceeds from, any such investment shall be available for expenditure in accordance with this subtitle and the amendments made by this subtitle.

''(e) ADMINISTRATION.—Not later than 180 days after the date of enactment of this Act, after providing notice and an opportunity for public comment, the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Secretary of Commerce, shall establish such procedures as the Secretary determines to be necessary to deposit amounts in, and expend amounts from, the Trust Fund pursuant to this subtitle, including—

''(1) procedures to assess whether the programs and activities carried out under this subtitle and the amendments made by this subtitle achieve compliance with applicable requirements, including procedures by which the Secretary of the Treasury may determine whether an expenditure by a Gulf Coast State or coastal political subdivision (as those terms are defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321)) pursuant to such a program or activity achieves compliance;

''(2) auditing requirements to ensure that amounts in the Trust Fund are expended as intended; and

''(3) procedures for identification and allocation of funds available to the Secretary under other provisions of law that may be necessary to pay the administrative expenses directly attributable to the management of the Trust Fund.

''(f) SUNSET.—The authority for the Trust Fund shall terminate on the date all funds in the Trust Fund have been expended.

''SEC. 1603. GULF COAST NATURAL RESOURCES RESTORATION AND ECONOMIC RECOVERY.

''[Amended this section.]

''SEC. 1604. GULF COAST ECOSYSTEM RESTORATION SCIENCE, OBSERVATION, MONITORING, AND TECHNOLOGY PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the National Oceanic and Atmospheric Administration.

''(2) COMMISSION.—The term 'Commission' means the Gulf States Marine Fisheries Commission.

''(3) DIRECTOR.—The term 'Director' means the Director of the United States Fish and Wildlife Service.

''(4) PROGRAM.—The term 'program' means the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program established under this section.

''(b) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [July 6, 2012], the Administrator, in consultation with the Director, shall establish the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology program to carry out research, observation, and monitoring to support, to the maximum extent practicable, the long-term sustainability of the ecosystem, fish stocks, fish habitat, and the recreational, commercial, and charter fishing industry in the Gulf of Mexico.

''(2) EXPENDITURE OF FUNDS.—For each fiscal year, amounts made available to carry out this subsection may be expended for, with respect to the Gulf of Mexico—

''(A) marine and estuarine research;

''(B) marine and estuarine ecosystem monitoring and ocean observation;

''(C) data collection and stock assessments;

''(D) pilot programs for—

''(i) fishery independent data; and

''(ii) reduction of exploitation of spawning aggregations; and

''(E) cooperative research.

''(3) COOPERATION WITH THE COMMISSION.—For each fiscal year, amounts made available to carry out this subsection may be transferred to the Commission to establish a fisheries monitoring and research program, with respect to the Gulf of Mexico.

''(4) CONSULTATION.—The Administrator and the Director shall consult with the Regional Gulf of Mexico Fishery Management Council and the Commission in carrying out the program.

''(c) SPECIES INCLUDED.—The research, monitoring, assessment, and programs eligible for amounts made available under the program shall include all marine, estuarine, aquaculture, and fish species in State and Federal waters of the Gulf of Mexico.

''(d) RESEARCH PRIORITIES.—In distributing funding under this subsection, priority shall be given to integrated, long-term projects that—

''(1) build on, or are coordinated with, related research activities; and

''(2) address current or anticipated marine ecosystem, fishery, or wildlife management information needs.

''(e) DUPLICATION.—In carrying out this section, the Administrator, in consultation with the Director, shall seek to avoid duplication of other research and monitoring activities.

''(f) COORDINATION WITH OTHER PROGRAMS.—The Administrator, in consultation with the Director, shall develop a plan for the coordination of projects and activities between the program and other existing Federal and State science and technology programs in the States of Alabama, Florida, Louisiana, Mississippi, and Texas, as well as between the centers of excellence.

''(g) LIMITATION ON EXPENDITURES.—

''(1) IN GENERAL.—Not more than 3 percent of funds provided in subsection (h) shall be used for administrative expenses.

''(2) NOAA.—The funds provided in subsection (h) may not be used—

''(A) for any existing or planned research led by the National Oceanic and Atmospheric Administration, unless agreed to in writing by the grant recipient;

''(B) to implement existing regulations or initiate new regulations promulgated or proposed by the National Oceanic and Atmospheric Administration; or

''(C) to develop or approve a new limited access privilege program (as that term is used in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853a)) for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils.

''(h) FUNDING.—Of the total amount made available for each fiscal year for the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be available to carry out the program.

''(i) SUNSET.—The program shall cease operations when all funds in the Gulf Coast Restoration Trust Fund established under section 1602 have been expended.

''SEC. 1605. CENTERS OF EXCELLENCE RESEARCH GRANTS.

''(a) IN GENERAL.—Of the total amount made available for each fiscal year from the Gulf Coast Restoration Trust Fund established under section 1602, 2.5 percent shall be made available to the Gulf Coast States (as defined in section 311(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(a)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012)), in equal shares, exclusively for grants in accordance with subsection (c) to establish centers of excellence to conduct research only on the Gulf Coast Region (as defined in section 311 of the Federal Water Pollution Control Act (33. [sic] U.S.C. 1321)).

''(b) APPROVAL BY STATE ENTITY, TASK FORCE, OR AGENCY.—The duties of a Gulf Coast State under this section shall be carried out by the applicable Gulf Coast State entities, task forces, or agencies listed in section 311(t)(1)(F) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012), and for the State of Florida, a consortium of public and private research institutions within the State, which shall include the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission, for that Gulf Coast State.

''(c) GRANTS.—

''(1) IN GENERAL.—A Gulf Coast State shall use the amounts made available to carry out this section to award competitive grants to nongovernmental entities and consortia in the Gulf Coast region (including public and private institutions of higher education) for the establishment of centers of excellence as described in subsection (d).

''(2) APPLICATION.—To be eligible to receive a grant under this subsection, an entity or consortium described in paragraph (1) shall submit to a Gulf Coast State an application at such time, in such manner, and containing such information as the Gulf Coast State determines to be appropriate.

''(3) PRIORITY.—In awarding grants under this subsection, a Gulf Coast State shall give priority to entities and consortia that demonstrate the ability to establish the broadest cross-section of participants with interest and expertise in any discipline described in subsection (d) on which the proposal of the center of excellence will be focused.

''(4) REPORTING.—

''(A) IN GENERAL.—Each Gulf Coast State shall provide annually to the Gulf Coast Ecosystem Restoration Council established under section 311(t)(2)(C) of the Federal Water Pollution Control Act [31 U.S.C. 1321(t)(2)(C)] (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012) information regarding all grants, including the amount, discipline or disciplines, and recipients of the grants, and in the case of any grant awarded to a consortium, the membership of the consortium.

''(B) INCLUSION.—The Gulf Coast Ecosystem Restoration Council shall include the information received under subparagraph (A) in the annual report

to Congress of the Council required under section 311(t)(2)(C)(vii)(VII) of the Federal Water Pollution Control Act (as added by section 1603 of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012).

''(d) DISCIPLINES.—Each center of excellence shall focus on science, technology, and monitoring in at least 1 of the following disciplines:

''(1) Coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

''(2) Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region.

''(3) Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico.

''(4) Sustainable and resilient growth, economic and commercial development in the Gulf Coast Region.

''(5) Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

''SEC. 1606. EFFECT.

''(a) DEFINITION OF DEEPWATER HORIZON OIL SPILL.—In this section, the term 'Deepwater Horizon oil spill' has the meaning given the term in section 311(a) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)).

''(b) EFFECT AND APPLICATION.—Nothing in this subtitle or any amendment made by this subtitle—

''(1) supersedes or otherwise affects any other provision of Federal law, including, in particular, laws providing recovery for injury to natural resources under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) and laws for the protection of public health and the environment; or

''(2) applies to any fine collected under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) for any incident other than the Deepwater Horizon oil spill.

''(c) USE OF FUNDS.—Funds made available under this subtitle may be used only for eligible activities specifically authorized by this subtitle and the amendments made by this subtitle.

''SEC. 1607. RESTORATION AND PROTECTION ACTIVITY LIMITATIONS.

''(a) WILLING SELLER.—Funds made available under this subtitle may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller.

''(b) ACQUISITION OF FEDERAL LAND.—None of the funds made available under this subtitle may be used to acquire land in fee title by the Federal Government unless—

''(1) the land is acquired by exchange or donation; or

''(2) the acquisition is necessary for the restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region and has the concurrence of the Governor of the State in which the acquisition will take place.

''SEC. 1608. INSPECTOR GENERAL.

''The Office of the Inspector General of the Department of the Treasury shall have authority to conduct, supervise, and coordinate audits and investigations of projects, programs, and activities funded under this subtitle and the amendments made by this subtitle.''

RULEMAKINGS

Pub. L. 111–281, title VII, §701(a), (b), Oct. 15, 2010, 124 Stat. 2980, provided that:

''(a) STATUS REPORT.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Oct. 15, 2010], the Secretary of the department in which the Coast Guard is operating shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required or otherwise being developed (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

''(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

''(A) a detailed explanation with respect to each such rulemaking as to—

''(i) what steps have been completed;

''(ii) what areas remain to be addressed; and

''(iii) the cause of any delays; and

''(B) the date by which a final rule may reasonably be expected to be issued.

''(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later than 18 months after the date of enactment of this Act.''

IMPLEMENTATION DATE FOR VESSEL RESPONSE PLANS FOR NONTANK VESSELS

Pub. L. 108–293, title VII, §701(c), Aug. 9, 2004, 118 Stat. 1068, provided that: ''No later than one year after the date of enactment of this Act [Aug. 9, 2004], the owner or operator of a nontank vessel (as defined [sic] section 311(j)(9) [311(a)(26)] of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(9) [1321(a)(26)], as amended by this section) shall prepare and submit a vessel response plan for such vessel.''

REPORT ON OIL SPILL RESPONDER IMMUNITY

Pub. L. 107–295, title IV, §440, Nov. 25, 2002, 116 Stat. 2130, provided that:

''(a) REPORT TO CONGRESS.—Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, jointly with the Secretary of Commerce and the Secretary of the Interior, and after consultation with the Administrator of the Environmental Protection Agency and the Attorney General, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the immunity from criminal and civil penalties provided under existing law of a private responder (other than a responsible party) in the case of the incidental take of federally listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by that responder during an oil spill removal activity where the responder was acting in a manner consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator for the spill, and on the circumstances under which such penalties have been or could be imposed on a private responder. The report shall take into consideration the procedures under the Inter-Agency Memorandum for addressing incidental takes.

''(b) DEFINITIONS.—In this section—

''(1) the term 'Federal On-Scene Coordinator' has the meaning given that term in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

''(2) the term 'incidental take' has the meaning given that term in the Inter-Agency Memorandum;

''(3) the term 'Inter-Agency Memorandum' means the Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act's National Oil and Hazardous Substances Pollution Contingency Plan and the Endangered Species Act [of 1973, 16 U.S.C. 1531 et seq.], effective on July 22, 2001;

''(4) the terms 'National Contingency Plan', 'removal', and 'responsible party' have the meanings given those terms under section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701); and

''(5) the term 'private responder' means a nongovernmental entity or individual that is carrying

out an oil spill removal activity at the direction of a Federal agency or a responsible party.''

OIL SPILL LIABILITY UNDER OIL POLLUTION ACT OF 1990

Pub. L. 101–380, title II, §2002(a), Aug. 18, 1990, 104 Stat. 507, provided that: ''Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) shall not apply with respect to any incident for which liability is established under section 1002 of this Act [33 U.S.C. 2702].''

TRANSFER OF MONEYS TO OIL SPILL LIABILITY TRUST FUND

Pub. L. 101–380, title II, §2002(b)(2), Aug. 18, 1990, 104 Stat. 507, provided that: ''Subsection (k) [of this section] is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the [Oil Spill Liability Trust] Fund. The Fund shall assume all liability incurred by the revolving fund established under that subsection.''

REVISION OF NATIONAL CONTINGENCY PLAN

Pub. L. 101–380, title IV, §4201(c)[(d)], Aug. 18, 1990, 104 Stat. 527, provided that: ''Not later than one year after the date of the enactment of this Act [Aug. 18, 1990], the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c)(2)] (as in effect immediately before the date of the enactment of this Act) to implement the amendments made by this section and section 4202 [amending this section].''

[For delegation of functions of President under section 4201(c) of Pub. L. 101–380, set out above, see Ex. Ord. No. 12580, Jan. 23, 1987, 52 F.R. 2923, as amended, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

IMPLEMENTATION OF NATIONAL PLANNING AND RESPONSE SYSTEM

Pub. L. 101–380, title IV, §4202(b), Aug. 18, 1990, 104 Stat. 531, provided that:

''(1) AREA COMMITTEES AND CONTINGENCY PLANS.—(A) Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act [33 U.S.C. 1321(j)(4)], as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

''(B) Not later than 18 months after the date of the enactment of this Act, each Area Committee established under that section shall submit to the President the Area Contingency Plan required under that section.

''(C) Not later than 24 months after the date of the enactment of this Act, the President shall—

''(i) promptly review each plan;

''(ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act; and

''(iii) approve each plan that meets the requirements of that section.

''(2) NATIONAL RESPONSE UNIT.—Not later than one year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act.

''(3) COAST GUARD DISTRICT RESPONSE GROUPS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act.

''(4) TANK VESSEL AND FACILITY RESPONSE PLANS; TRANSITION PROVISION; EFFECTIVE DATE OF PROHIBITION.—(A) Not later than 24 months after the date of the enactment of this Act, the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act.

''(B) During the period beginning 30 months after the date of the enactment of this paragraph [Aug. 18, 1990] and ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

''(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act, shall take effect 36 months after the date of the enactment of this Act.''

DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to this section and sections 1319(c) and 1501 et seq. of this title to be deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101–380, set out as a note under section 9509 of Title 26.

ALLOWABLE DELAY IN ESTABLISHING FINANCIAL RESPONSIBILITY FOR INCREASE IN AMOUNTS UNDER 1977 AMENDMENT

Pub. L. 95–217, §58(j), Dec. 27, 1977, 91 Stat. 1596, provided that: ''No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978.''

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

EXECUTIVE ORDER NO. 11735

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, as amended by Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which assigned functions of the President regarding water pollution, was revoked by Ex. Ord. No. 12777, §8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

EXECUTIVE ORDER NO. 12418

Ex. Ord. No. 12418, May 5, 1983, 48 F.R. 20891, which transferred certain functions relating to the financial responsibility of vessels for water pollution and established authority of Federal agencies to respond to discharges or substantial threats of discharges of oil and hazardous substances, was revoked by Ex. Ord. No. 12777, §8(i), Oct. 18, 1991, 56 F.R. 54769, set out below.

EX. ORD. NO. 12777. IMPLEMENTATION OF THIS SECTION AND OIL POLLUTION ACT OF 1990

Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54757, as amended by Ex. Ord. No. 13286, §34, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13638, §1, Mar. 15, 2013, 78 F.R. 17589, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, (''FWPCA'') (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 (Public Law 101–380) (''OPA''), and by Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. *National Contingency Plan, Area Committees, and Area Contingency Plans.* (a) [Amended Ex. Ord. No.

12580, set out as a note under section 9615 of Title 42, The Public Health and Welfare.]

(b) The functions vested in the President by Section 311(j)(4) of FWPCA, and Section 4202(b)(1) of OPA [set out as a note above], respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (''Administrator'') for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone (inland and coastal zones are defined in the NCP).

SEC. 2. *National Response System.* (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA, respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports [Port] Act of 1974 (''DPA'') [33 U.S.C. 1501 et seq.], are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA, respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA, respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA [set out as a note above], respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA and Section 4202(b)(4) of OPA, respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA, respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(B) of FWPCA, respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA, respecting periodic drills of removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision of law other than Section 311(j) of FWPCA or Section 4202(b)(4) of OPA.

(i) The functions vested in the President by Section 311(j) of FWPCA or Section 4202(b)(4) of OPA which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

SEC. 3. *Removal.* The functions vested in the President by Section 311(c) of FWPCA and Section 1011 of OPA [33 U.S.C. 2711], respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel, the issuance of directions, consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 4. *Liability Limit Adjustment.* (a)(1) The following functions vested in the President by section 1004(d) of

OPA are delegated to the Secretary of the department in which the Coast Guard is operating, acting in consultation with the Administrator, the Secretary of Transportation, the Secretary of the Interior, and the Attorney General:

(A) the adjustment of the limits of liability listed in section 1004(a) of OPA for vessels, onshore facilities, and deepwater ports subject to the DPA, to reflect significant increases in the Consumer Price Index;

(B) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1), and of any limits of liability established under section 1004(d)(2) with respect to deepwater ports subject to the DPA, to reflect significant increases in the Consumer Price Index; and

(C) the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels, marine transportation-related onshore facilities, and deepwater ports subject to the DPA.

(2) The Administrator and the Secretary of Transportation will provide necessary regulatory analysis support to ensure timely regulatory Consumer Price Index adjustments by the Secretary of the department in which the Coast Guard is operating of the limits of liability listed in section 1004(a) of OPA for onshore facilities under subparagraph (a)(1)(A) of this section.

(b) The following functions vested in the President by section 1004(d) of OPA are delegated to the Administrator, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Transportation, the Secretary of the Interior, the Secretary of Energy, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Administrator to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities.

(c) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of Transportation, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of the Interior, and the Attorney General:

(1) the establishment of limits of liability under section 1004(d)(1), with respect to classes or categories of non-marine transportation-related onshore facilities, and the adjustment of any such limits of liability established under section 1004(d)(1) by the Secretary of Transportation to reflect significant increases in the Consumer Price Index; and

(2) the reporting to Congress on the desirability of adjusting limits of liability, with respect to non-marine transportation-related onshore facilities.

(d) The following functions vested in the President by section 1004(d) of OPA are delegated to the Secretary of the Interior, acting in consultation with the Secretary of the department in which the Coast Guard is operating, the Administrator, the Secretary of Transportation, and the Attorney General:

(1) the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA; and

(2) the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA.

SEC. 5. *Financial Responsibility*. (a)(1) The functions vested in the President by Section 1016(e) of OPA [33 U.S.C. 2716(e)], respecting (in the case of offshore facilities other than deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA, respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b)(1) The functions vested in the President by Section 4303 of OPA [33 U.S.C. 2716a], respecting (in cases involving vessels) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by Section 4303 of OPA, respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 6. *Enforcement*. (a) The functions vested in the President by Section 311(m)(1) of FWPCA, respecting the enforcement of Section 311 with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA, respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

SEC. 7. *Management of the Oil Spill Liability Trust Fund and Claims*. (a)(1)(A) The functions vested in the President by Section 1012(a)(1), (3), and (4) of OPA [33 U.S.C. 2712(a)(1), (3), (4)] respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary of the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA [33 U.S.C. 2752(b)] respecting making amounts, not to exceed $50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA, and (ii) to initiate the assessment of natural resources damages required under Section 1006 of OPA [33 U.S.C. 2706] are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA.

(2) The functions vested in the President by Section 1012(a)(2) of OPA [33 U.S.C. 2712(a)(2)], respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA, respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 and subsections (b), (c), (d), (j) and (*l*) of Section 311 of FWPCA, are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA, respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA, respecting the obligation of the Trust Fund on the request of a Governor or pursuant to an agreement with a State, entrance into agreements with States, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA [33 U.S.C. 2713(e)], respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA, respecting the payment of costs, damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, *inter alia*, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d)(1) The Coast Guard is designated the ''appropriate agency'' for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA, and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA [33 U.S.C. 2714], respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

SEC. 8. *Miscellaneous*. (a) The functions vested in the President by Section 311(b)(3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990, respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions, which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2)(G) of FWPCA, respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b)(3) and (4) of OPA [33 U.S.C. 2706(b)(3), (4)] respecting the receipt of designations of State and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA [104 Stat. 508], with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Secretary of State.

(e) The functions vested in the President by Section 4113 of OPA [104 Stat. 516], respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA [33 U.S.C. 2732(c)(2)(D)], respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(g) The functions vested in the President by Section 5002(*o*) of OPA, respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) The function vested in the President by Section 7001(a)(3) of OPA [33 U.S.C. 2761(a)(3)], respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(i) Executive Order No. 11735 of August 3, 1973, Executive Order No. 12123 of February 26, 1979, Executive Order No. 12418 of May 5, 1983 and the memorandum of August 24, 1990, delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

SEC. 9. *Consultation*. Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with statutory responsibilities which may be significantly affected, including, but not limited to, the Department of Justice.

SEC. 10. *Litigation*. (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Oil Pollution Act of 1990 [see Short Title note set out under section 2701 of this title] shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, the Secretary of the Department in which the Coast Guard is operating, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990.

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.

EX. ORD. NO. 13626. GULF COAST ECOSYSTEM RESTORATION

Ex. Ord. No. 13626, Sept. 10, 2012, 77 F.R. 56749, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. 2706), and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy*. Executive Order 13554 of October 5, 2010, was issued after the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, and resulted in the largest oil spill in U.S. history (Deepwater Horizon Oil Spill). Executive Order 13554 recognized the Gulf Coast as a national treasure and addressed the longstanding ecological decline of that region, which was compounded by the Deepwater Horizon Oil Spill. In doing so, Execu-

tive Order 13554 established a Gulf Coast Ecosystem Restoration Task Force (Task Force) to coordinate intergovernmental efforts, planning, and the exchange of information in order to better implement Gulf Coast ecosystem restoration and facilitate appropriate accountability and support throughout the restoration process.

Since the implementation of Executive Order 13554, the Federal Government's Gulf Coast ecosystem restoration planning efforts have advanced significantly. The Task Force's Gulf of Mexico Regional Ecosystem Restoration Strategy (Strategy), created with input from Federal, State, tribal, and local governments, and thousands of involved citizens and organizations across the region, serves as a comprehensive restoration plan for addressing ecological concerns in the Gulf of Mexico. In light of the release of the Strategy, the ongoing work of the Natural Resource Damage Trustee Council (Trustee Council) under the Oil Pollution Act, and the recent passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (title I, subtitle F of Public Law 112–141), this order affirms the Federal Government's Gulf Coast ecosystem restoration efforts and realigns responsibilities to ensure the most effective governmental planning and coordination to reach these goals.

SEC. 2. *Termination of the Gulf Coast Ecosystem Restoration Task Force.* The progress of the Task Force is noteworthy. It has completed the Strategy and the preliminary planning and coordination tasks that it was intended to produce and has significantly advanced important ecosystem restoration goals for the Gulf of Mexico. In light of the recent creation, described below, of the Gulf Coast Ecosystem Restoration Council (Gulf Restoration Council), which will build upon the Task Force's already successful collaboration between Federal, State, and tribal governments and, as directed by statute, include and incorporate in its proposed comprehensive plan the findings and information prepared by the Task Force, the Task Force shall terminate no later than 60 days after the Gulf Restoration Council commences its work. The functions of the Task Force will be performed by the Gulf Restoration Council and the Trustee Council to the extent practicable, as set forth in this order. Prior to its termination, the Task Force will provide such assistance as is appropriate to the Gulf Restoration Council.

SEC. 3. *The Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council.*

(a) *Gulf Coast Restoration Trust Fund.* The RESTORE Act, which was signed into law as part of the Moving Ahead for Progress in the 21st Century Act (Public Law 112–141), established a mechanism for providing funding to the Gulf region to restore ecosystems and rebuild local economies damaged by the Deepwater Horizon Oil Spill. The RESTORE Act established in the Treasury of the United States the Gulf Coast Restoration Trust Fund (Trust Fund), consisting of 80 percent of an amount equal to any administrative and civil penalties paid after the date of the RESTORE Act by the responsible parties in connection with the Deepwater Horizon Oil Spill to the United States pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the FWPCA (33 U.S.C. 1321).

(b) *Gulf Coast Ecosystem Restoration Council.* The RESTORE Act established the Gulf Restoration Council, an independent entity charged with developing a comprehensive plan for ecosystem restoration in the Gulf Coast (Comprehensive Plan), as well as any future revisions to the Comprehensive Plan. Among its other duties, the Gulf Restoration Council is tasked with identifying projects and programs aimed at restoring and protecting the natural resources and ecosystems of the Gulf Coast region, to be funded from a portion of the Trust Fund; establishing such other advisory committees as may be necessary to assist the Gulf Restoration Council, including a scientific advisory committee and a committee to advise the Gulf Restoration Council on public policy issues; gathering information relevant to Gulf Coast restoration, including through research, modeling, and monitoring; and providing an annual report to the Congress on implementation progress. Consistent with the RESTORE Act, the Comprehensive Plan developed by the Gulf Restoration Council will include provisions necessary to fully incorporate the Strategy, projects, and programs recommended by the Task Force.

(c) Federal members of the Gulf Restoration Council and Trustee Council, as well as all Federal entities involved in Gulf Coast restoration, shall work closely with one another to advance their common goals, reduce duplication, and maximize consistency among their efforts. All Federal members are directed to consult with each other and with all non-federal members in carrying out their duties on the Gulf Restoration Council.

SEC. 4. *Ongoing Role of the Natural Resource Damage Assessment Trustee Council.* (a) Executive Order 13554 recognized the role of the Trustee Council, and designated trustees as provided in 33 U.S.C. 2706, with trusteeship over natural resources injured, lost, or destroyed as a result of the Deepwater Horizon Oil Spill. Specifically, Executive Order 13554 recognized the importance of carefully coordinating the work of the Task Force with the Trustee Council, whose members have statutory responsibility to assess natural resources damages from the Deepwater Horizon Oil Spill, to restore trust resources, and seek compensation for lost use of those trust resources. Section 3(b) of Executive Order 13554 instructed the Task Force to ''support the Natural Resource Damage Assessment process by referring potential ecosystem restoration actions to the * * * Trustee Council for consideration and facilitating coordination among the relevant departments, agencies, and offices, as appropriate, subject to the independent statutory responsibilities of the trustees.'' The Department of Commerce (through the National Oceanic and Atmospheric Administration), the Department of the Interior (through the Fish and Wildlife Service and the National Park Service), and the Department of Justice have worked to identify linkages and opportunities for the Task Force to complement the restoration progress of the Trustee Council.

(b) Section 7(e) of Executive Order 13554 provides that nothing in that order shall interfere with the statutory responsibilities and authority of the Trustee Council or the individual trustees to carry out their statutory responsibilities to assess natural resource damages and implement restoration actions under 33 U.S.C. 2706 and other applicable law. Agencies that were members of the Task Force shall continue to comply with these requirements.

SEC. 5. *Designating Trustees for Natural Resource Damage Assessment.* Given their authorities, programs, and expertise, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) have institutional capacities that can contribute significantly to the Natural Resource Damage Assessment and restoration efforts, including scientific and policy expertise as well as experience gained in the Task Force process and other planning efforts in the Gulf area. In addition, EPA's and USDA's relevant authorities cover a range of natural resources and their supporting ecosystems, including waters, sediments, barrier islands, wetlands, soils, land management, air resources, and drinking water supplies. The inclusion of EPA and USDA as trustees participating in the Natural Resource Damage Assessment and restoration efforts will maximize coordination across the Federal Government and enhance overall efficiencies regarding Gulf Coast ecosystem restoration. Accordingly, without limiting the designations in Executive Order 12777 of October 18, 1991, or any other existing designations, and pursuant to section 2706(b)(2) of title 33, United States Code, I hereby designate the Administrator of EPA and the Secretary of Agriculture as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or

loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The addition of these Federal trustees does not, in and of itself, alter any existing agreements among or between the trustees and any other entity. All Federal trustees are directed to consult, coordinate, and cooperate with each other in carrying out all of their trustee duties and responsibilities.

The Administrator of EPA is hereby directed to revise Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in this section.

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Trustee Council, or those of the Director of the Office of Management and Budget, relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Executive Order 13554 of October 5, 2010, is hereby revoked concurrent with the termination of the Task Force under the terms described in section 2 of this order.

BARACK OBAMA.

§ 1321a. Prevention of small oil spills

(a) Prevention and education program

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education program for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 1126 of this title and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

(b) Authorization of appropriations

There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and Atmosphere to carry out this section, $10,000,000 for each of fiscal years 2010 through 2014.

(Pub. L. 111–281, title VII, § 705, Oct. 15, 2010, 124 Stat. 2982.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1321b. Improved coordination with tribal governments

(a) In general

Within 6 months after October 15, 2010, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

(b) Inclusion of tribal government

The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

(c) Cooperative arrangements

The Coast Guard may enter into memoranda of agreement and associated protocols with In-

dian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team cochaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

(d) Funding for tribal participation

Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant $500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

(Pub. L. 111–281, title VII, §706, Oct. 15, 2010, 124 Stat. 2983.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1321c. International efforts on enforcement

The Secretary of the department in which the Coast Guard is operating, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

(Pub. L. 111–281, title VII, §709, Oct. 15, 2010, 124 Stat. 2986.)

CODIFICATION

Section was enacted as part of the Coast Guard Authorization Act of 2010, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1322. Marine sanitation devices; discharges incidental to the normal operation of vessels

(a) Definitions

In this section, the term—

(1) ''new vessel'' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) ''existing vessel'' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) ''public vessel'' means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) ''United States'' includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) ''marine sanitation device'' includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) ''sewage'' means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater;

(7) ''manufacturer'' means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices, marine pollution control device equipment, or vessels subject to standards and regulations promulgated under this section;

(8) ''person'' means an individual, partnership, firm, corporation, association, or agency of the United States, but does not include an individual on board a public vessel;

(9) ''discharge'' includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(10) ''commercial vessels'' means those vessels used in the business of transporting property for compensation or hire, or in transporting property in the business of the owner, lessee, or operator of the vessel;

(11) ''graywater'' means galley, bath, and shower water;

(12) ''discharge incidental to the normal operation of a vessel''—

(A) means a discharge, including—

(i) graywater, bilge water, cooling water, weather deck runoff, ballast water, oil

water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective, preservative, or absorptive application to the hull of the vessel; and

(ii) a discharge in connection with the testing, maintenance, and repair of a system described in clause (i) whenever the vessel is waterborne; and

(B) does not include—

(i) a discharge of rubbish, trash, garbage, or other such material discharged overboard;

(ii) an air emission resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator; or

(iii) a discharge that is not covered by part 122.3 of title 40, Code of Federal Regulations (as in effect on February 10, 1996);

(13) ''marine pollution control device'' means, except as provided in subsection (p), any equipment or management practice, for installation or use on board a vessel of the Armed Forces, that is—

(A) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

(B) determined by the Administrator and the Secretary of Defense to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations set forth in subsection (n)(2)(B); and

(14) ''vessel of the Armed Forces'' means—

(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

(B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A).

(b) Federal standards of performance

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as ''standards'') which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards and standards established under subsection (c)(1)(B) of this section shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and subsection (c) of this section and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

(c) Initial standards; effective dates; revision; waiver

(1)(A) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(B) The Administrator shall, with respect to commercial vessels on the Great Lakes, establish standards which require at a minimum the equivalent of secondary treatment as defined under section 1314(d) of this title. Such standards and regulations shall take effect for existing vessels after such time as the Administrator determines to be reasonable for the upgrading of marine sanitation devices to attain such standard.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

(d) Vessels owned and operated by the United States

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

(e) Pre-promulgation consultation

Before the standards and regulations under this section are promulgated, the Administrator

and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health and Human Services; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of title 5.

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage

(1)(A) Except as provided in subparagraph (B), after the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(B) A State may adopt and enforce a statute or regulation with respect to the design, manufacture, or installation or use of any marine sanitation device on a houseboat, if such statute or regulation is more stringent than the standards and regulations promulgated under this section. For purposes of this paragraph, the term ''houseboat'' means a vessel which, for a period of time determined by the State in which the vessel is located, is used primarily as a residence and is not used primarily as a means of transportation.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4)(A) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(B) Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.

(g) Sales limited to certified devices; certification of test device; recordkeeping; reports

(1) No manufacturer of a marine sanitation device or marine pollution control device equipment shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine sanitation device or marine pollution control device equipment manufactured after the effective date of the standards and regulations promulgated under this section unless such device or equipment is in all material respects substantially the same as a test device or equipment certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device or marine pollution control device equipment if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device or equipment in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device or equipment is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device or equipment. Any device or equipment manufactured by such manufacturer which is in all material respects substantially the same as the certified test device or equipment shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the Department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the con-

struction of a vessel by an individual for his own use.

(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices

(1) In general

Subject to paragraph (2), after the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(A) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device and marine pollution control device equipment which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(B) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device or any certified marine pollution control device equipment or element of design of such equipment installed in such vessel;

(C) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(D) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

(2) Effect of subsection

Nothing in this subsection requires certification of a marine pollution control device for use on any vessel of the Armed Forces.

(i) Jurisdiction to restrain violations; contempts

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Penalties

Any person who violates subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable to a civil penalty of not more than $5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than $2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) Enforcement authority

(1) Administrator

This section shall be enforced by the Administrator, to the extent provided in section 1319 of this title.

(2) Secretary

(A) In general

This section shall be enforced by the Secretary of the department in which the Coast Guard is operating, who may use, by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

(B) Inspections

For purposes of ensuring compliance with this section, the Secretary—

(i) may carry out an inspection (including the taking of ballast water samples) of any vessel at any time; and

(ii) shall—

(I) establish procedures for—

(aa) reporting violations of this section; and

(bb) accumulating evidence regarding those violations; and

(II) use appropriate and practicable measures of detection and environmental monitoring of vessels.

(C) Detention

The Secretary may detain a vessel if the Secretary—

(i) has reasonable cause to believe that the vessel—

(I) has failed to comply with an applicable requirement of this section; or

(II) is being operated in violation of such a requirement; and

(ii) the Secretary provides to the owner or operator of the vessel a notice of the intent to detain.

(3) States

(A) In general

This section may be enforced by a State or political subdivision of a State (including the attorney general of a State), including by filing a civil action in an appropriate Federal district court to enforce any violation of subsection (p).

(B) Jurisdiction

The appropriate Federal district court shall have jurisdiction with respect to a civil

action filed pursuant to subparagraph (A), without regard to the amount in controversy or the citizenship of the parties—

(i) to enforce the requirements of this section; and

(ii) to apply appropriate civil penalties under this section or section 1319(d) of this title, as appropriate.

(*l*) Boarding and inspection of vessels; execution of warrants and other process

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(m) Enforcement in United States possessions

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone.

(n) Uniform national discharge standards for vessels of Armed Forces

(1) Applicability

This subsection shall apply to vessels of the Armed Forces and discharges, other than sewage, incidental to the normal operation of a vessel of the Armed Forces, unless the Secretary of Defense finds that compliance with this subsection would not be in the national security interests of the United States.

(2) Determination of discharges required to be controlled by marine pollution control devices

(A) In general

The Administrator and the Secretary of Defense, after consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall jointly determine the discharges incidental to the normal operation of a vessel of the Armed Forces for which it is reasonable and practicable to require use of a marine pollution control device to mitigate adverse impacts on the marine environment. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the determinations in accordance with such section. The Secretary of Defense shall require the use of a marine pollution control device on board a vessel of the Armed Forces in any case in which it is determined that the use of such a device is reasonable and practicable.

(B) Considerations

In making a determination under subparagraph (A), the Administrator and the Secretary of Defense shall take into consideration—

(i) the nature of the discharge;

(ii) the environmental effects of the discharge;

(iii) the practicability of using the marine pollution control device;

(iv) the effect that installation or use of the marine pollution control device would have on the operation or operational capability of the vessel;

(v) applicable United States law;

(vi) applicable international standards; and

(vii) the economic costs of the installation and use of the marine pollution control device.

(3) Performance standards for marine pollution control devices

(A) In general

For each discharge for which a marine pollution control device is determined to be required under paragraph (2), the Administrator and the Secretary of Defense, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of State, the Secretary of Commerce, other interested Federal agencies, and interested States, shall jointly promulgate Federal standards of performance for each marine pollution control device required with respect to the discharge. Notwithstanding subsection (a)(1) of section 553 of title 5, the Administrator and the Secretary of Defense shall promulgate the standards in accordance with such section.

(B) Considerations

In promulgating standards under this paragraph, the Administrator and the Secretary of Defense shall take into consideration the matters set forth in paragraph (2)(B).

(C) Classes, types, and sizes of vessels

The standards promulgated under this paragraph may—

(i) distinguish among classes, types, and sizes of vessels;

(ii) distinguish between new and existing vessels; and

(iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

(4) Regulations for use of marine pollution control devices

The Secretary of Defense, after consultation with the Administrator and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations governing the design, construction, installation, and use of marine pollution control devices on board vessels of the Armed Forces as are necessary to achieve the standards promulgated under paragraph (3).

(5) Deadlines; effective date

(A) Determinations

The Administrator and the Secretary of Defense shall—

(i) make the initial determinations under paragraph (2) not later than 2 years after February 10, 1996; and

(ii) every 5 years—

(I) review the determinations; and

(II) if necessary, revise the determinations based on significant new information.

(B) Standards

The Administrator and the Secretary of Defense shall—

(i) promulgate standards of performance for a marine pollution control device under paragraph (3) not later than 2 years after the date of a determination under paragraph (2) that the marine pollution control device is required; and

(ii) every 5 years—

(I) review the standards; and

(II) if necessary, revise the standards, consistent with paragraph (3)(B) and based on significant new information.

(C) Regulations

The Secretary of Defense shall promulgate regulations with respect to a marine pollution control device under paragraph (4) as soon as practicable after the Administrator and the Secretary of Defense promulgate standards with respect to the device under paragraph (3), but not later than 1 year after the Administrator and the Secretary of Defense promulgate the standards. The regulations promulgated by the Secretary of Defense under paragraph (4) shall become effective upon promulgation unless another effective date is specified in the regulations.

(D) Petition for review

The Governor of any State may submit a petition requesting that the Secretary of Defense and the Administrator review a determination under paragraph (2) or a standard under paragraph (3), if there is significant new information, not considered previously, that could reasonably result in a change to the particular determination or standard after consideration of the matters set forth in paragraph (2)(B). The petition shall be accompanied by the scientific and technical information on which the petition is based. The Administrator and the Secretary of Defense shall grant or deny the petition not later than 2 years after the date of receipt of the petition.

(6) Effect on other laws

(A) Prohibition on regulation by States or political subdivisions of States

Beginning on the effective date of—

(i) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(ii) regulations promulgated by the Secretary of Defense under paragraph (4);

except as provided in paragraph (7), neither a State nor a political subdivision of a State may adopt or enforce any statute or regulation of the State or political subdivision with respect to the discharge or the design, construction, installation, or use of any marine pollution control device required to control discharges from a vessel of the Armed Forces.

(B) Federal laws

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a vessel.

(7) Establishment of State no-discharge zones

(A) State prohibition

(i) In general

After the effective date of—

(I) a determination under paragraph (2) that it is not reasonable and practicable to require use of a marine pollution control device regarding a particular discharge incidental to the normal operation of a vessel of the Armed Forces; or

(II) regulations promulgated by the Secretary of Defense under paragraph (4);

if a State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters. No prohibition shall apply until the Administrator makes the determinations described in subclauses (II) and (III) of subparagraph (B)(i).

(ii) Documentation

To the extent that a prohibition under this paragraph would apply to vessels of the Armed Forces and not to other types of vessels, the State shall document the technical or environmental basis for the distinction.

(B) Prohibition by the Administrator

(i) In general

Upon application of a State, the Administrator shall by regulation prohibit the discharge from a vessel of 1 or more discharges incidental to the normal operation of a vessel, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(I) the protection and enhancement of the quality of the specified waters within the State require a prohibition of the discharge into the waters;

(II) adequate facilities for the safe and sanitary removal of the discharge incidental to the normal operation of a vessel are reasonably available for the waters to which the prohibition would apply; and

(III) the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel.

(ii) Approval or disapproval

The Administrator shall approve or disapprove an application submitted under clause (i) not later than 90 days after the date on which the application is submitted to the Administrator. Notwithstanding clause (i)(II), the Administrator shall not disapprove an application for the sole reason that there are not adequate facilities to remove any discharge incidental to the normal operation of a vessel from vessels of the Armed Forces.

(C) Applicability to foreign flagged vessels

A prohibition under this paragraph—

(i) shall not impose any design, construction, manning, or equipment standard on a foreign flagged vessel engaged in innocent passage unless the prohibition implements a generally accepted international rule or standard; and

(ii) that relates to the prevention, reduction, and control of pollution shall not apply to a foreign flagged vessel engaged in transit passage unless the prohibition implements an applicable international regulation regarding the discharge of oil, oily waste, or any other noxious substance into the waters.

(8) Prohibition relating to vessels of the Armed Forces

After the effective date of the regulations promulgated by the Secretary of Defense under paragraph (4), it shall be unlawful for any vessel of the Armed Forces subject to the regulations to—

(A) operate in the navigable waters of the United States or the waters of the contiguous zone, if the vessel is not equipped with any required marine pollution control device meeting standards established under this subsection; or

(B) discharge overboard any discharge incidental to the normal operation of a vessel in waters with respect to which a prohibition on the discharge has been established under paragraph (7).

(9) Enforcement

This subsection shall be enforceable, as provided in subsections (j) and (k), against any agency of the United States responsible for vessels of the Armed Forces notwithstanding any immunity asserted by the agency.

(*o*) Management practices for recreational vessels

(1) Applicability

This subsection applies to any discharge, other than a discharge of sewage, from a recreational vessel that is—

(A) incidental to the normal operation of the vessel; and

(B) exempt from permitting requirements under section 1342(r) of this title.

(2) Determination of discharges subject to management practices

(A) Determination

(i) In general

The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and interested States, shall determine the discharges incidental to the normal operation of a recreational vessel for which it is reasonable and practicable to develop management practices to mitigate adverse impacts on the waters of the United States.

(ii) Promulgation

The Administrator shall promulgate the determinations under clause (i) in accordance with section 553 of title 5.

(iii) Management practices

The Administrator shall develop management practices for recreational vessels in any case in which the Administrator determines that the use of those practices is reasonable and practicable.

(B) Considerations

In making a determination under subparagraph (A), the Administrator shall consider—

(i) the nature of the discharge;

(ii) the environmental effects of the discharge;

(iii) the practicability of using a management practice;

(iv) the effect that the use of a management practice would have on the operation, operational capability, or safety of the vessel;

(v) applicable Federal and State law;

(vi) applicable international standards; and

(vii) the economic costs of the use of the management practice.

(C) Timing

The Administrator shall—

(i) make the initial determinations under subparagraph (A) not later than 1 year after July 29, 2008; and

(ii) every 5 years thereafter—

(I) review the determinations; and

(II) if necessary, revise the determinations based on any new information available to the Administrator.

(3) Performance standards for management practices

(A) In general

For each discharge for which a management practice is developed under paragraph (2), the Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, other interested Federal agencies, and interested States, shall promulgate, in accordance with section 553 of title 5, Federal standards of performance for each management practice required with respect to the discharge.

(B) Considerations

In promulgating standards under this paragraph, the Administrator shall take into account the considerations described in paragraph (2)(B).

(C) Classes, types, and sizes of vessels

The standards promulgated under this paragraph may—

(i) distinguish among classes, types, and sizes of vessels;

(ii) distinguish between new and existing vessels; and

(iii) provide for a waiver of the applicability of the standards as necessary or appropriate to a particular class, type, age, or size of vessel.

(D) Timing

The Administrator shall—

(i) promulgate standards of performance for a management practice under subparagraph (A) not later than 1 year after the date of a determination under paragraph (2) that the management practice is reasonable and practicable; and

(ii) every 5 years thereafter—

(I) review the standards; and

(II) if necessary, revise the standards, in accordance with subparagraph (B) and based on any new information available to the Administrator.

(4) Regulations for the use of management practices

(A) In general

The Secretary of the department in which the Coast Guard is operating shall promulgate such regulations governing the design, construction, installation, and use of management practices for recreational vessels as are necessary to meet the standards of performance promulgated under paragraph (3).

(B) Regulations

(i) In general

The Secretary shall promulgate the regulations under this paragraph as soon as practicable after the Administrator promulgates standards with respect to the practice under paragraph (3), but not later than 1 year after the date on which the Administrator promulgates the standards.

(ii) Effective date

The regulations promulgated by the Secretary under this paragraph shall be effective upon promulgation unless another effective date is specified in the regulations.

(iii) Consideration of time

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall consider the period of time necessary to communicate the existence of the regulation to persons affected by the regulation.

(5) Effect of other laws

This subsection shall not affect the application of section 1321 of this title to discharges incidental to the normal operation of a recreational vessel.

(6) Prohibition relating to recreational vessels

After the effective date of the regulations promulgated by the Secretary of the department in which the Coast Guard is operating under paragraph (4), the owner or operator of a recreational vessel shall neither operate in nor discharge any discharge incidental to the normal operation of the vessel into, the waters of the United States or the waters of the contiguous zone, if the owner or operator of the vessel is not using any applicable management practice meeting standards established under this subsection.

(p) Uniform national standards for discharges incidental to normal operation of vessels

(1) Definitions

In this subsection:

(A) Aquatic nuisance species

The term ''aquatic nuisance species'' means a nonindigenous species that threatens—

(i) the diversity or abundance of a native species;

(ii) the ecological stability of—

(I) waters of the United States; or

(II) waters of the contiguous zone; or

(iii) a commercial, agricultural, aquacultural, or recreational activity that is dependent on—

(I) waters of the United States; or

(II) waters of the contiguous zone.

(B) Ballast water

(i) In general

The term ''ballast water'' means any water, suspended matter, and other materials taken onboard a vessel—

(I) to control or maintain trim, draught, stability, or stresses of the vessel, regardless of the means by which any such water or suspended matter is carried; or

(II) during the cleaning, maintenance, or other operation of a ballast tank or ballast water management system of the vessel.

(ii) Exclusion

The term ''ballast water'' does not include any substance that is added to the water described in clause (i) that is directly related to the operation of a properly functioning ballast water management system.

(C) Ballast water discharge standard

The term ''ballast water discharge standard'' means—

(i) the numerical ballast water discharge standard established by section 151.1511 or 151.2030 of title 33, Code of Federal Regulations (or successor regulations); or

(ii) if a standard referred to in clause (i) is superseded by a numerical standard of performance under this subsection, that superseding standard.

(D) Ballast water exchange

The term ''ballast water exchange'' means the replacement of water in a ballast water tank using 1 of the following methods:

(i) Flow-through exchange, in which ballast water is flushed out by pumping in midocean water at the bottom of the tank if practicable, and continuously overflowing the tank from the top, until 3 full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(ii) Empty and refill exchange, in which ballast water taken on in ports, estuarine waters, or territorial waters is pumped out until the pump loses suction, after which the ballast tank is refilled with midocean water.

(E) Ballast water management system

The term ''ballast water management system'' means any marine pollution control device (including all ballast water treatment equipment, ballast tanks, pipes, pumps, and all associated control and monitoring equipment) that processes ballast water—

(i) to kill, render nonviable, or remove organisms; or

(ii) to avoid the uptake or discharge of organisms.

(F) Best available technology economically achievable

The term ''best available technology economically achievable'' means—

(i) best available technology economically achievable (within the meaning of section 1311(b)(2)(A) of this title);

(ii) best available technology (within the meaning of section 1314(b)(2)(B) of this title); and

(iii) best available technology, as determined in accordance with section 125.3(d)(3) of title 40, Code of Federal Regulations (or successor regulations).

(G) Best conventional pollutant control technology

The term ''best conventional pollutant control technology'' means—

(i) best conventional pollutant control technology (within the meaning of section 1311(b)(2)(E) of this title);

(ii) best conventional pollutant control technology (within the meaning of section 1314(b)(4) of this title); and

(iii) best conventional pollutant control technology, as determined in accordance with section 125.3(d)(2) of title 40, Code of Federal Regulations (or successor regulations).

(H) Best management practice

(i) In general

The term ''best management practice'' means a schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of—

(I) the waters of the United States; or

(II) the waters of the contiguous zone.

(ii) Inclusions

The term ''best management practice'' includes any treatment requirement, operating procedure, or practice to control—

(I) vessel runoff;

(II) spillage or leaks;

(III) sludge or waste disposal; or

(IV) drainage from raw material storage.

(I) Best practicable control technology currently available

The term ''best practicable control technology currently available'' means—

(i) best practicable control technology currently available (within the meaning of section 1311(b)(1)(A) of this title);

(ii) best practicable control technology currently available (within the meaning of section 1314(b)(1) of this title); and

(iii) best practicable control technology currently available, as determined in accordance with section 125.3(d)(1) of title 40, Code of Federal Regulations (or successor regulations).

(J) Captain of the Port Zone

The term ''Captain of the Port Zone'' means a Captain of the Port Zone established by the Secretary pursuant to sections 92, 93, and 633[1] of title 14.

(K) Empty ballast tank

The term ''empty ballast tank'' means a tank that—

(i) has previously held ballast water that has been drained to the limit of the functional or operational capabilities of the tank (such as loss of suction);

(ii) is recorded as empty on a vessel log; and

(iii) contains unpumpable residual ballast water and sediment.

(L) Great Lakes Commission

The term ''Great Lakes Commission'' means the Great Lakes Commission established by article IV A of the Great Lakes Compact[2] to which Congress granted consent in the Act of July 24, 1968 (Public Law 90–419; 82 Stat. 414).

(M) Great Lakes State

The term ''Great Lakes State'' means any of the States of—

(i) Illinois;

(ii) Indiana;

(iii) Michigan;

(iv) Minnesota;

(v) New York;

(vi) Ohio;

(vii) Pennsylvania; and

(viii) Wisconsin.

(N) Great Lakes System

The term ''Great Lakes System'' has the meaning given the term in section 1268(a)(3) of this title.

(O) Internal waters

The term ''internal waters'' has the meaning given the term in section 2.24 of title 33, Code of Federal Regulations (or a successor regulation).

(P) Marine pollution control device

The term ''marine pollution control device'' means any equipment or management practice (or combination of equipment and a management practice), for installation or use onboard a vessel, that is—

(i) designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel; and

[1] See References in Text note below.

[2] So in original. Probably should be ''Great Lakes Basin Compact''.

(ii) determined by the Administrator and the Secretary to be the most effective equipment or management practice (or combination of equipment and a management practice) to reduce the environmental impacts of the discharge, consistent with the factors for consideration described in paragraphs (4) and (5).

(Q) Nonindigenous species

The term ''nonindigenous species'' means an organism of a species that enters an ecosystem beyond the historic range of the species.

(R) Organism

The term ''organism'' includes—

(i) an animal, including fish and fish eggs and larvae;

(ii) a plant;

(iii) a pathogen;

(iv) a microbe;

(v) a virus;

(vi) a prokaryote (including any archean or bacterium);

(vii) a fungus; and

(viii) a protist.

(S) Pacific Region

(i) In general

The term ''Pacific Region'' means any Federal or State water—

(I) adjacent to the State of Alaska, California, Hawaii, Oregon, or Washington; and

(II) extending from shore.

(ii) Inclusion

The term ''Pacific Region'' includes the entire exclusive economic zone (as defined in section 2701 of this title) adjacent to each State described in clause (i)(I).

(T) Port or place of destination

The term ''port or place of destination'' means a port or place to which a vessel is bound to anchor or moor.

(U) Render nonviable

The term ''render nonviable'', with respect to an organism in ballast water, means the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment.

(V) Saltwater flush

(i) In general

The term ''saltwater flush'' means—

(I)(aa) the addition of as much midocean water into each empty ballast tank of a vessel as is safe for the vessel and crew; and

(bb) the mixing of the flushwater with residual ballast water and sediment through the motion of the vessel; and

(II) the discharge of that mixed water, such that the resultant residual water remaining in the tank—

(aa) has the highest salinity possible; and

(bb) is at least 30 parts per thousand.

(ii) Multiple sequences

For purposes of clause (i), a saltwater flush may require more than 1 fill-mix-empty sequence, particularly if only small quantities of water can be safely taken onboard a vessel at 1 time.

(W) Secretary

The term ''Secretary'' means the Secretary of the department in which the Coast Guard is operating.

(X) Small Vessel General Permit

The term ''Small Vessel General Permit'' means the permit that is the subject of the notice of final permit issuance entitled ''Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet'' (79 Fed. Reg. 53702 (September 10, 2014)).

(Y) Small vessel or fishing vessel

The term ''small vessel or fishing vessel'' means a vessel that is—

(i) less than 79 feet in length; or

(ii) a fishing vessel, fish processing vessel, or fish tender vessel (as those terms are defined in section 2101 of title 46), regardless of the length of the vessel.

(Z) Vessel General Permit

The term ''Vessel General Permit'' means the permit that is the subject of the notice of final permit issuance entitled ''Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel'' (78 Fed. Reg. 21938 (April 12, 2013)).

(2) Applicability

(A) In general

Except as provided in subparagraph (B), this subsection applies to—

(i) any discharge incidental to the normal operation of a vessel; and

(ii) any discharge incidental to the normal operation of a vessel (such as most graywater) that is commingled with sewage, subject to the conditions that—

(I) nothing in this subsection prevents a State from regulating sewage discharges; and

(II) any such commingled discharge shall comply with all applicable requirements of—

(aa) this subsection; and

(bb) any law applicable to discharges of sewage.

(B) Exclusion

This subsection does not apply to any discharge incidental to the normal operation of a vessel—

(i) from—

(I) a vessel of the Armed Forces subject to subsection (n);

(II) a recreational vessel subject to subsection (*o*);

(III) a small vessel or fishing vessel, except that this subsection shall apply to any discharge of ballast water from a small vessel or fishing vessel; or

(IV) a floating craft that is permanently moored to a pier, including a

''floating'' casino, hotel, restaurant, or bar;

(ii) of ballast water from a vessel—

(I) that continuously takes on and discharges ballast water in a flow-through system, if the Administrator determines that system cannot materially contribute to the spread or introduction of an aquatic nuisance species into waters of the United States;

(II) in the National Defense Reserve Fleet that is scheduled for disposal, if the vessel does not have an operable ballast water management system;

(III) that discharges ballast water consisting solely of water taken onboard from a public or commercial source that, at the time the water is taken onboard, meets the applicable requirements or permit requirements of the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(IV) that carries all permanent ballast water in sealed tanks that are not subject to discharge; or

(V) that only discharges ballast water into a reception facility; or

(iii) that results from, or contains material derived from, an activity other than the normal operation of the vessel, such as material resulting from an industrial or manufacturing process onboard the vessel.

(3) Continuation in effect of existing requirements

(A) Vessel general permit

Notwithstanding the expiration date of the Vessel General Permit or any other provision of law, all provisions of the Vessel General Permit shall remain in force and effect, and shall not be modified, until the applicable date described in subparagraph (C).

(B) Nonindigenous Aquatic Nuisance Prevention and Control Act regulations

Notwithstanding section 903(a)(2)(A) of the Vessel Incidental Discharge Act of 2018, all regulations promulgated by the Secretary pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before December 4, 2018), including the regulations contained in subparts C and D of part 151 of title 33, Code of Federal Regulations, and subpart 162.060 of part 162 of title 46, Code of Federal Regulations (as in effect on the day before December 4, 2018), shall remain in force and effect until the applicable date described in subparagraph (C).

(C) Repeal on existence of final, effective, and enforceable requirements

Effective beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, the requirements of the Vessel General Permit and the regulations described in subparagraph (B) shall have no force or effect.

(4) National standards of performance for marine pollution control devices and water quality orders

(A) Establishment

(i) In general

Not later than 2 years after December 4, 2018, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with interested Governors (subject to clause (iii)), shall promulgate Federal standards of performance for marine pollution control devices for each type of discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection.

(ii) Concurrence with Secretary

(I) Request

The Administrator shall submit to the Secretary a request for written concurrence with respect to a proposed standard of performance under clause (i).

(II) Effect of failure to concur

A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from promulgating the relevant standard of performance in accordance with the deadline under clause (i), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

(aa) documentation of the request submitted under subclause (I); and

(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the 60-day period beginning on the date of submission of the request.

(iii) Consultation with Governors

(I) In general

The Administrator, in promulgating a standard of performance under clause (i), shall develop the standard of performance—

(aa) in consultation with interested Governors; and

(bb) in accordance with the deadlines under that clause.

(II) Process

The Administrator shall develop a process for soliciting input from interested Governors, including information sharing relevant to such process, to allow interested Governors to inform the development of standards of performance under clause (i).

(III) Objection by governors

(aa) Submission

An interested Governor that objects to a proposed standard of performance under clause (i) may submit to the Administrator in writing a detailed objec-

tion to the proposed standard of performance, describing the scientific, technical, or operational factors that form the basis of the objection.

(bb) Response

Before finalizing a standard of performance under clause (i) that is subject to an objection under item (aa) from 1 or more interested Governors, the Administrator shall provide a written response to each interested Governor that submitted an objection under that item that details the scientific, technical, or operational factors that form the basis for that standard of performance.

(cc) Judicial review

A response of the Administrator under item (bb) shall not be subject to judicial review.

(iv) Procedure

The Administrator shall promulgate the standards of performance under this subparagraph in accordance with—

(I) this paragraph; and

(II) section 553 of title 5.

(B) Stringency

(i) In general

Subject to clause (iii), the standards of performance promulgated under this paragraph shall require—

(I) with respect to conventional pollutants, toxic pollutants, and nonconventional pollutants (including aquatic nuisance species), the application of the best practicable control technology currently available;

(II) with respect to conventional pollutants, the application of the best conventional pollutant control technology; and

(III) with respect to toxic pollutants and nonconventional pollutants (including aquatic nuisance species), the application of the best available technology economically achievable for categories and classes of vessels, which shall result in reasonable progress toward the national goal of eliminating discharges of all pollutants.

(ii) Best management practices

The Administrator shall require the use of best management practices to control or abate any discharge incidental to the normal operation of a vessel if—

(I) numeric standards of performance are infeasible under clause (i); or

(II) the best management practices are reasonably necessary—

(aa) to achieve the standards of performance; or

(bb) to carry out the purpose and intent of this subsection.

(iii) Minimum requirements

Subject to subparagraph (D)(ii)(II), the combination of any equipment or best management practice comprising a marine pollution control device shall not be less stringent than the following provisions of the Vessel General Permit:

(I) All requirements contained in parts 2.1 and 2.2 (relating to effluent limits and related requirements), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

(II) All requirements contained in part 5 (relating to vessel class-specific requirements) that concern effluent limits and authorized discharges (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes.

(C) Classes, types, and sizes of vessels

The standards promulgated under this paragraph may distinguish—

(i) among classes, types, and sizes of vessels; and

(ii) between new vessels and existing vessels.

(D) Review and revision

(i) In general

Not less frequently than once every 5 years, the Administrator, in consultation with the Secretary, shall—

(I) review the standards of performance in effect under this paragraph; and

(II) if appropriate, revise those standards of performance—

(aa) in accordance with subparagraphs (A) through (C); and

(bb) as necessary to establish requirements for any discharge that is subject to regulation under this subsection.

(ii) Maintaining protectiveness

(I) In general

Except as provided in subclause (II), the Administrator shall not revise a standard of performance under this subsection to be less stringent than an applicable existing requirement.

(II) Exceptions

The Administrator may revise a standard of performance to be less stringent than an applicable existing requirement—

(aa) if information becomes available that—

(AA) was not reasonably available when the Administrator promulgated the initial standard of performance or comparable requirement of the Vessel General Permit, as applicable (including the subsequent scarcity or unavailability of materials used to control the relevant discharge); and

(BB) would have justified the application of a less-stringent standard of performance at the time of promulgation; or

(bb) if the Administrator determines that a material technical mistake or

misinterpretation of law occurred when promulgating the existing standard of performance or comparable requirement of the Vessel General Permit, as applicable.

(E) Best management practices for aquatic nuisance species emergencies and further protection of water quality

(i) In general

Notwithstanding any other provision of this subsection, the Administrator, in concurrence with the Secretary (subject to clause (ii)), and in consultation with States, may require, by order, the use of an emergency best management practice for any region or category of vessels in any case in which the Administrator determines that such a best management practice—

(I) is necessary to reduce the reasonably foreseeable risk of introduction or establishment of an aquatic nuisance species; or

(II) will mitigate the adverse effects of a discharge that contributes to a violation of a water quality requirement under section 1313 of this title, other than a requirement based on the presence of an aquatic nuisance species.

(ii) Concurrence with Secretary

(I) Request

The Administrator shall submit to the Secretary a request for written concurrence with respect to an order under clause (i).

(II) Effect of failure to concur

A failure by the Secretary to concur with the Administrator under clause (i) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under subclause (I) shall not prevent the Administrator from issuing the relevant order, subject to the condition that the Administrator shall include in the administrative record of the issuance—

(aa) documentation of the request submitted under subclause (I); and

(bb) the response of the Administrator to any written objections received from the Secretary relating to the proposed order during the 60-day period beginning on the date of submission of the request.

(iii) Duration

An order issued by the Administrator under clause (i) shall expire not later than the date that is 4 years after the date of issuance.

(iv) Extensions

The Administrator may reissue an order under clause (i) for such subsequent periods of not longer than 4 years as the Administrator determines to be appropriate.

(5) Implementation, compliance, and enforcement requirements

(A) Establishment

(i) In general

As soon as practicable, but not later than 2 years, after the date on which the Administrator promulgates any new or revised standard of performance under paragraph (4) with respect to a discharge, the Secretary, in consultation with States, shall promulgate the regulations required under this paragraph with respect to that discharge.

(ii) Minimum requirements

Subject to subparagraph (C)(ii)(II), the regulations promulgated under this paragraph shall not be less stringent with respect to ensuring, monitoring, and enforcing compliance than—

(I) the requirements contained in part 3 of the Vessel General Permit (relating to corrective actions);

(II) the requirements contained in part 4 of the Vessel General Permit (relating to inspections, monitoring, reporting, and recordkeeping), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes;

(III) the requirements contained in part 5 of the Vessel General Permit (relating to vessel class-specific requirements) regarding monitoring, inspection, and educational and training requirements (within the meaning of that part), including with respect to waters subject to Federal protection, in whole or in part, for conservation purposes; and

(IV) any comparable, existing requirements promulgated under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) (including section 1101 of that Act (16 U.S.C. 4711) (as in effect on the day before December 4, 2018)) applicable to that discharge.

(iii) Coordination with States

The Secretary, in coordination with the Governors of the States, shall develop, publish, and periodically update inspection, monitoring, data management, and enforcement procedures for the enforcement by States of Federal standards and requirements under this subsection.

(iv) Effective date

In determining the effective date of a regulation promulgated under this paragraph, the Secretary shall take into consideration the period of time necessary—

(I) to communicate to affected persons the applicability of the regulation; and

(II) for affected persons reasonably to comply with the regulation.

(v) Procedure

The Secretary shall promulgate the regulations under this subparagraph in accordance with—

(I) this paragraph; and
(II) section 553 of title 5.

(B) Implementation regulations for marine pollution control devices

The Secretary shall promulgate such regulations governing the design, construction, testing, approval, installation, and use of marine pollution control devices as are necessary to ensure compliance with the standards of performance promulgated under paragraph (4).

(C) Compliance assurance

(i) In general

The Secretary shall promulgate requirements (including requirements for vessel owners and operators with respect to inspections, monitoring, reporting, sampling, and recordkeeping) to ensure, monitor, and enforce compliance with—

(I) the standards of performance promulgated by the Administrator under paragraph (4); and

(II) the implementation regulations promulgated by the Secretary under subparagraph (B).

(ii) Maintaining protectiveness

(I) In general

Except as provided in subclause (II), the Secretary shall not revise a requirement under this subparagraph or subparagraph (B) to be less stringent with respect to ensuring, monitoring, or enforcing compliance than an applicable existing requirement.

(II) Exceptions

The Secretary may revise a requirement under this subparagraph or subparagraph (B) to be less stringent than an applicable existing requirement—

(aa) in accordance with this subparagraph or subparagraph (B), as applicable;

(bb) if information becomes available that—

(AA) the Administrator determines was not reasonably available when the Administrator promulgated the existing requirement of the Vessel General Permit, or that the Secretary determines was not reasonably available when the Secretary promulgated the existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or the applicable existing requirement under this subparagraph, as applicable (including subsequent scarcity or unavailability of materials used to control the relevant discharge); and

(BB) would have justified the application of a less-stringent requirement at the time of promulgation; or

(cc) if the Administrator determines that a material technical mistake or misinterpretation of law occurred when promulgating an existing requirement of the Vessel General Permit, or if the Secretary determines that a material mistake or misinterpretation of law occurred when promulgating an existing requirement under the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.) or this subsection.

(D) Data availability

Beginning not later than 1 year after December 4, 2018, the Secretary shall provide to the Governor of a State, on request by the Governor, access to Automated Identification System arrival data for inbound vessels to specific ports or places of destination in the State.

(6) Additional provisions regarding ballast water

(A) In general

In addition to the other applicable requirements of this subsection, the requirements of this paragraph shall apply with respect to any discharge incidental to the normal operation of a vessel that is a discharge of ballast water.

(B) Empty ballast tanks

(i) Requirements

Except as provided in clause (ii), the owner or operator of a vessel with empty ballast tanks bound for a port or place of destination subject to the jurisdiction of the United States shall, prior to arriving at that port or place of destination, conduct a ballast water exchange or saltwater flush—

(I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or

(II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

(ii) Exceptions

Clause (i) shall not apply—

(I) if the unpumpable residual waters and sediments of an empty ballast tank were subject to treatment, in compliance with applicable requirements, through a type-approved ballast water management system approved by the Secretary;

(II) except as otherwise required under this subsection, if the unpumpable residual waters and sediments of an empty ballast tank were sourced within—

(aa) the same port or place of destination; or

(bb) contiguous portions of a single Captain of the Port Zone;

(III) if complying with an applicable requirement of clause (i)—

(aa) would compromise the safety of the vessel; or

(bb) is otherwise prohibited by any Federal, Canadian, or international

law (including regulations) pertaining to vessel safety;

(IV) if design limitations of the vessel prevent a ballast water exchange or saltwater flush from being conducted in accordance with clause (i); or

(V) if the vessel is operating exclusively within the internal waters of the United States or Canada.

(C) Period of use of installed ballast water management systems

(i) In general

Except as provided in clause (ii), a vessel shall be deemed to be in compliance with a standard of performance for a marine pollution control device that is a ballast water management system if the ballast water management system—

(I) is maintained in proper working condition, as determined by the Secretary;

(II) is maintained and used in accordance with manufacturer specifications;

(III) continues to meet the ballast water discharge standard applicable to the vessel at the time of installation, as determined by the Secretary; and

(IV) has in effect a valid type-approval certificate issued by the Secretary.

(ii) Limitation

Clause (i) shall cease to apply with respect to any vessel on, as applicable—

(I) the expiration of the service life, as determined by the Secretary, of—

(aa) the ballast water management system; or

(bb) the vessel;

(II) the completion of a major conversion (as defined in section 2101 of title 46) of the vessel; or

(III) a determination by the Secretary that there are other type-approved systems for the vessel or category of vessels, with respect to the use of which the environmental, health, and economic benefits would exceed the costs.

(D) Review of ballast water management system type-approval testing methods

(i) Definition of live; living

Notwithstanding any other provision of law (including regulations), for purposes of section 151.1511 of title 33, and part 162 of title 46, Code of Federal Regulations (or successor regulations), the terms ''live'' and ''living'' shall not—

(I) include an organism that has been rendered nonviable; or

(II) preclude the consideration of any method of measuring the concentration of organisms in ballast water that are capable of reproduction.

(ii) Draft policy

Not later than 180 days after December 4, 2018, the Secretary, in coordination with the Administrator, shall publish a draft policy letter, based on the best available science, describing type-approval testing methods and protocols for ballast water management systems, if any, that—

(I) render nonviable organisms in ballast water; and

(II) may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations)—

(aa) to measure the concentration of organisms in ballast water that are capable of reproduction;

(bb) to certify the performance of each ballast water management system under this subsection; and

(cc) to certify laboratories to evaluate applicable treatment technologies.

(iii) Public comment

The Secretary shall provide a period of not more than 60 days for public comment regarding the draft policy letter published under clause (ii).

(iv) Final policy

(I) In general

Not later than 1 year after December 4, 2018, the Secretary, in coordination with the Administrator, shall publish a final policy letter describing type-approval testing methods, if any, for ballast water management systems that render nonviable organisms in ballast water.

(II) Method of evaluation

The ballast water management systems under subclause (I) shall be evaluated by measuring the concentration of organisms in ballast water that are capable of reproduction based on the best available science that may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations).

(III) Revisions

The Secretary shall revise the final policy letter under subclause (I) in any case in which the Secretary, in coordination with the Administrator, determines that additional testing methods are capable of measuring the concentration of organisms in ballast water that have not been rendered nonviable.

(v) Factors for consideration

In developing a policy letter under this subparagraph, the Secretary, in coordination with the Administrator—

(I) shall take into consideration a testing method that uses organism grow-out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction; and

(II) shall not take into consideration a testing method that relies on a staining method that measures the concentration of—

(aa) organisms greater than or equal to 10 micrometers; and

(bb) organisms less than or equal to 50 micrometers.

(E) Intergovernmental response framework

(i) In general

The Secretary, in consultation with the Administrator and acting in coordination with, or through, the Aquatic Nuisance Species Task Force established by section 1201(a) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4721(a)), shall establish a framework for Federal and intergovernmental response to aquatic nuisance species risks from discharges from vessels subject to ballast water and incidental discharge compliance requirements under this subsection, including the introduction, spread, and establishment of aquatic nuisance species populations.

(ii) Ballast discharge risk response

The Administrator, in coordination with the Secretary and taking into consideration information from the National Ballast Information Clearinghouse developed under section 1102(f) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4712(f)), shall establish a risk assessment and response framework using ballast water discharge data and aquatic nuisance species monitoring data for the purposes of—

(I) identifying and tracking populations of aquatic invasive species;

(II) evaluating the risk of any aquatic nuisance species population tracked under subclause (I) establishing and spreading in waters of the United States or waters of the contiguous zone; and

(III) establishing emergency best management practices that may be deployed rapidly, in a local or regional manner, to respond to emerging aquatic nuisance species threats.

(7) Petitions by Governors for review

(A) In general

The Governor of a State (or a designee) may submit to the Administrator or the Secretary a petition—

(i) to issue an order under paragraph (4)(E); or

(ii) to review any standard of performance, regulation, or policy promulgated under paragraph (4), (5), or (6), respectively, if there exists new information that could reasonably result in a change to—

(I) the standard of performance, regulation, or policy; or

(II) a determination on which the standard of performance, regulation, or policy was based.

(B) Inclusion

A petition under subparagraph (A) shall include a description of any applicable scientific or technical information that forms the basis of the petition.

(C) Determination

(i) Timing

The Administrator or the Secretary, as applicable, shall grant or deny—

(I) a petition under subparagraph (A)(i) by not later than the date that is 180 days after the date on which the petition is submitted; and

(II) a petition under subparagraph (A)(ii) by not later than the date that is 1 year after the date on which the petition is submitted.

(ii) Effect of grant

If the Administrator or the Secretary determines under clause (i) to grant a petition—

(I) in the case of a petition under subparagraph (A)(i), the Administrator shall immediately issue the relevant order under paragraph (4)(E); or

(II) in the case of a petition under subparagraph (A)(ii), the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a notice of proposed rulemaking to revise the relevant standard, requirement, regulation, or policy under paragraph (4), (5), or (6), as applicable.

(iii) Notice of denial

If the Administrator or the Secretary determines under clause (i) to deny a petition, the Administrator or Secretary shall publish in the Federal Register, by not later than 30 days after the date of that determination, a detailed explanation of the scientific, technical, or operational factors that form the basis of the determination.

(iv) Review

A determination by the Administrator or the Secretary under clause (i) to deny a petition shall be—

(I) considered to be a final agency action; and

(II) subject to judicial review in accordance with section 1369 of this title, subject to clause (v).

(v) Exceptions

(I) Venue

Notwithstanding section 1369(b) of this title, a petition for review of a determination by the Administrator or the Secretary under clause (i) to deny a petition submitted by the Governor of a State under subparagraph (A) may be filed in any United States district court of competent jurisdiction.

(II) Deadline for filing

Notwithstanding section 1369(b) of this title, a petition for review of a determination by the Administrator or the Secretary under clause (i) shall be filed by not later than 180 days after the date on which the justification for the determination is published in the Federal Register under clause (iii).

(8) Prohibition

(A) In general

It shall be unlawful for any person to violate—

(i) a provision of the Vessel General Permit in force and effect under paragraph (3)(A);

(ii) a regulation promulgated pursuant to section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) (as in effect on the day before December 4, 2018) in force and effect under paragraph (3)(B); or

(iii) an applicable requirement or regulation under this subsection.

(B) Compliance with regulations

Effective beginning on the effective date of a regulation promulgated under paragraph (4), (5), (6), or (10), as applicable, it shall be unlawful for the owner or operator of a vessel subject to the regulation—

(i) to discharge any discharge incidental to the normal operation of the vessel into waters of the United States or waters of the contiguous zone, except in compliance with the regulation; or

(ii) to operate in waters of the United States or waters of the contiguous zone, if the vessel is not equipped with a required marine pollution control device that complies with the requirements established under this subsection, unless—

(I) the owner or operator of the vessel denotes in an entry in the official logbook of the vessel that the equipment was not operational; and

(II) either—

(aa) the applicable discharge was avoided; or

(bb) an alternate compliance option approved by the Secretary as meeting the applicable standard was employed.

(C) Affirmative defense

No person shall be found to be in violation of this paragraph if—

(i) the violation was in the interest of ensuring the safety of life at sea, as determined by the Secretary; and

(ii) the applicable emergency circumstance was not the result of negligence or malfeasance on the part of—

(I) the owner or operator of the vessel;

(II) the master of the vessel; or

(III) the person in charge of the vessel.

(D) Treatment

Each day of continuing violation of an applicable requirement of this subsection shall constitute a separate offense.

(E) In rem liability

A vessel operated in violation of this subsection is liable in rem for any civil penalty assessed for the violation.

(F) Revocation of clearance

The Secretary shall withhold or revoke the clearance of a vessel required under section 60105 of title 46 if the owner or operator of the vessel is in violation of this subsection.

(9) Effect on other laws

(A) State authority

(i) In general

Except as provided in clauses (ii) through (v) and paragraph (10), effective beginning on the date on which the requirements promulgated by the Secretary under subparagraphs (A), (B), and (C) of paragraph (5) with respect to every discharge incidental to the normal operation of a vessel that is subject to regulation under this subsection are final, effective, and enforceable, no State, political subdivision of a State, or interstate agency may adopt or enforce any law, regulation, or other requirement of the State, political subdivision, or interstate agency with respect to any such discharge.

(ii) Identical or lesser State laws

Clause (i) shall not apply to any law, regulation, or other requirement of a State, political subdivision of a State, or interstate agency in effect on or after December 4, 2018—

(I) that is identical to a Federal requirement under this subsection applicable to the relevant discharge; or

(II) compliance with which would be achieved concurrently in achieving compliance with a Federal requirement under this subsection applicable to the relevant discharge.

(iii) State enforcement of Federal requirements

A State may enforce any standard of performance or other Federal requirement of this subsection in accordance with subsection (k) or other applicable Federal authority.

(iv) Exception for certain fees

(I) In general

Subject to subclauses (II) and (III), a State that assesses any fee pursuant to any State or Federal law relating to the regulation of a discharge incidental to the normal operation of a vessel before December 4, 2018, may assess or retain a fee to cover the costs of administration, inspection, monitoring, and enforcement activities by the State to achieve compliance with the applicable requirements of this subsection.

(II) Maximum amount

(aa) In general

Except as provided in item (bb), a State may assess a fee for activities under this clause equal to not more than $1,000 against the owner or operator of a vessel that—

(AA) has operated outside of that State; and

(BB) arrives at a port or place of destination in the State (excluding movement entirely within a single port or place of destination).

(bb) Vessels engaged in coastwise trade

A State may assess against the owner or operator of a vessel registered in accordance with applicable Federal law and lawfully engaged in the coastwise trade not more than $5,000 in fees under this clause per vessel during a calendar year.

(III) Adjustment for inflation

(aa) In general

A State may adjust the amount of a fee authorized under this clause not more frequently than once every 5 years to reflect the percentage by which the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October immediately preceding the date of adjustment exceeds the Consumer Price Index for All Urban Consumers published by the Department of Labor for the month of October that immediately precedes the date that is 5 years before the date of adjustment.

(bb) Effect of subclause

Nothing in this subclause prevents a State from adjusting a fee in effect before December 4, 2018, to the applicable maximum amount under subclause (II).

(cc) Applicability

This subclause applies only to increases in fees to amounts greater than the applicable maximum amount under subclause (II).

(v) Alaska graywater

Clause (i) shall not apply with respect to any discharge of graywater (as defined in section 1414 of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–323)) from a passenger vessel (as defined in section 2101 of title 46) in the State of Alaska (including all waters in the Alexander Archipelago) carrying 50 or more passengers.

(vi) Preservation of authority

Nothing in this subsection preempts any State law, public initiative, referendum, regulation, requirement, or other State action, except as expressly provided in this subsection.

(B) Established regimes

Except as expressly provided in this subsection, nothing in this subsection affects the applicability to a vessel of any other provision of Federal law, including—

(i) this section;

(ii) section 1321 of this title;

(iii) the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.); and

(iv) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.).

(C) Permitting

Effective beginning on December 4, 2018—

(i) the Small Vessel General Permit is repealed; and

(ii) the Administrator, or a State in the case of a permit program approved under section 1342 of this title, shall not require, or in any way modify, a permit under that section for—

(I) any discharge that is subject to regulation under this subsection;

(II) any discharge incidental to the normal operation of a vessel from a small vessel or fishing vessel, regardless of whether that discharge is subject to regulation under this subsection; or

(III) any discharge described in paragraph (2)(B)(ii).

(D) No effect on civil or criminal actions

Nothing in this subsection, or any standard, regulation, or requirement established under this subsection, modifies or otherwise affects, preempts, or displaces—

(i) any cause of action; or

(ii) any provision of Federal or State law establishing a remedy for civil relief or criminal penalty.

(E) No effect on certain secretarial authority

Nothing in this subsection affects the authority of the Secretary of Commerce or the Secretary of the Interior to administer any land or waters under the administrative control of the Secretary of Commerce or the Secretary of the Interior, respectively.

(F) No limitation on State inspection authority

Nothing in this subsection limits the authority of a State to inspect a vessel pursuant to paragraph (5)(A)(iii) in order to monitor compliance with an applicable requirement of this section.

(10) Additional regional requirements

(A) Minimum Great Lakes System requirements

(i) In general

Except as provided in clause (ii), the owner or operator of a vessel entering the St. Lawrence Seaway through the mouth of the St. Lawrence River shall conduct a complete ballast water exchange or saltwater flush—

(I) not less than 200 nautical miles from any shore for a voyage originating outside the United States or Canadian exclusive economic zone; or

(II) not less than 50 nautical miles from any shore for a voyage originating within the United States or Canadian exclusive economic zone.

(ii) Exceptions

Clause (i) shall not apply to a vessel if—

(I) complying with an applicable requirement of clause (i)—

(aa) would compromise the safety of the vessel; or

(bb) is otherwise prohibited by any Federal, Canadian, or international law (including regulations) pertaining to vessel safety;

(II) design limitations of the vessel prevent a ballast water exchange from being conducted in accordance with an applicable requirement of clause (i);

(III) the vessel—

(aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or

(bb) retains all ballast water while in waters subject to the requirement; or

(IV) empty ballast tanks on the vessel are sealed and certified by the Secretary in a manner that ensures that—

(aa) no discharge or uptake occurs; and

(bb) any subsequent discharge of ballast water is subject to the requirement.

(B) Enhanced Great Lakes System requirements

(i) Petitions by Governors for proposed enhanced standards and requirements

(I) In general

The Governor of a Great Lakes State (or a State employee designee) may submit a petition in accordance with subclause (II) to propose that other Governors of Great Lakes States endorse an enhanced standard of performance or other requirement with respect to any discharge that—

(aa) is subject to regulation under this subsection; and

(bb) occurs within the Great Lakes System.

(II) Submission

A Governor shall submit a petition under subclause (I), in writing, to—

(aa) the Executive Director of the Great Lakes Commission, in such manner as may be prescribed by the Great Lakes Commission;

(bb) the Governor of each other Great Lakes State; and

(cc) the Director of the Great Lakes National Program Office established by section 1268(b) of this title.

(III) Preliminary assessment by Great Lakes Commission

(aa) In general

After the date of receipt of a petition under subclause (II)(aa), the Great Lakes Commission (acting through the Great Lakes Panel on Aquatic Nuisance Species, to the maximum extent practicable) may develop a preliminary assessment regarding each enhanced standard of performance or other requirement described in the petition.

(bb) Provisions

The preliminary assessment developed by the Great Lakes Commission under item (aa)—

(AA) may be developed in consultation with relevant experts and stakeholders;

(BB) may be narrative in nature;

(CC) may include the preliminary views, if any, of the Great Lakes Commission on the propriety of the proposed enhanced standard of performance or other requirement;

(DD) shall be submitted, in writing, to the Governor of each Great Lakes State and the Director of the Great Lakes National Program Office and published on the internet website of the Great Lakes National Program Office; and

(EE) except as provided in clause (iii), shall not be taken into consideration, or provide a basis for review, by the Administrator or the Secretary for purposes of that clause.

(ii) Proposed enhanced standards and requirements

(I) Publication in Federal Register

(aa) Request by Governor

Not earlier than the date that is 90 days after the date on which the Executive Director of the Great Lakes Commission receives from a Governor of a Great Lakes State a petition under clause (i)(II)(aa), the Governor may request the Director of the Great Lakes National Program Office to publish, for a period requested by the Governor of not less than 30 days, and the Director shall so publish, in the Federal Register for public comment—

(AA) a copy of the petition; and

(BB) if applicable as of the date of publication, any preliminary assessment of the Great Lakes Commission developed under clause (i)(III) relating to the petition.

(bb) Review of public comments

On receipt of a written request of a Governor of a Great Lakes State, the Director of the Great Lakes National Program Office shall make available all public comments received in response to the notice under item (aa).

(cc) No response required

Notwithstanding any other provision of law, a Governor of a Great Lakes State or the Director of the Great Lakes National Program Office shall not be required to provide a response to any comment received in response to the publication of a petition or preliminary assessment under item (aa).

(dd) Purpose

Any public comments received in response to the publication of a petition or preliminary assessment under item (aa) shall be used solely for the purpose of providing information and feedback to the Governor of each Great Lakes State regarding the decision to endorse the proposed standard or requirement.

(ee) Effect of petition

A proposed standard or requirement developed under subclause (II) may differ from the proposed standard or requirement described in a petition published under item (aa).

(II) Coordination to develop proposed standard or requirement

After the expiration of the public comment period for the petition under subclause (I), any interested Governor of a Great Lakes State may work in coordi-

nation with the Great Lakes Commission to develop a proposed standard of performance or other requirement applicable to a discharge referred to in the petition.

(III) Requirements

A proposed standard of performance or other requirement under subclause (II)—

(aa) shall be developed—

(AA) in consultation with representatives from the Federal and provincial governments of Canada;

(BB) after notice and opportunity for public comment on the petition published under subclause (I); and

(CC) taking into consideration the preliminary assessment, if any, of the Great Lakes Commission under clause (i)(III);

(bb) shall be specifically endorsed in writing by—

(AA) the Governor of each Great Lakes State, if the proposed standard or requirement would impose any additional equipment requirement on a vessel; or

(BB) not fewer than 5 Governors of Great Lakes States, if the proposed standard or requirement would not impose any additional equipment requirement on a vessel; and

(cc) in the case of a proposed requirement to prohibit 1 or more types of discharge regulated under this subsection, whether treated or not treated, into waters within the Great Lakes System, shall not apply outside the waters of the Great Lakes States of the Governors endorsing the proposed requirement under item (bb).

(iii) Promulgation by Administrator and Secretary

(I) Submission

(aa) In general

The Governors endorsing a proposed standard or requirement under clause (ii)(III)(bb) may jointly submit to the Administrator and the Secretary for approval each proposed standard of performance or other requirement developed and endorsed pursuant to clause (ii).

(bb) Inclusion

Each submission under item (aa) shall include an explanation regarding why the applicable standard of performance or other requirement is—

(AA) at least as stringent as a comparable standard of performance or other requirement under this subsection;

(BB) in accordance with maritime safety; and

(CC) in accordance with applicable maritime and navigation laws and regulations.

(cc) Withdrawal

(AA) In general

The Governor of any Great Lakes State that endorses a proposed standard or requirement under clause (ii)(III)(bb) may withdraw the endorsement by not later than the date that is 90 days after the date on which the Administrator and the Secretary receive the proposed standard or requirement.

(BB) Effect on Federal review

If, after the withdrawal of an endorsement under subitem (AA), the proposed standard or requirement does not have the applicable number of endorsements under clause (ii)(III)(bb), the Administrator and the Secretary shall terminate the review under this clause.

(dd) Dissenting opinions

The Governor of a Great Lakes State that does not endorse a proposed standard or requirement under clause (ii)(III)(bb) may submit to the Administrator and the Secretary any dissenting opinions of the Governor.

(II) Joint notice

On receipt of a proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall publish in the Federal Register a joint notice that, at minimum—

(aa) states that the proposed standard or requirement is publicly available; and

(bb) provides an opportunity for public comment regarding the proposed standard or requirement during the 90-day period beginning on the date of receipt by the Administrator and the Secretary of the proposed standard or requirement.

(III) Review

(aa) In general

As soon as practicable after the date of publication of a joint notice under subclause (II)—

(AA) the Administrator shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is at least as stringent as comparable standards and requirements under this subsection; and

(BB) the Secretary shall commence a review of each proposed standard of performance or other requirement covered by the notice to determine whether that standard or requirement is in accordance with maritime safety and applicable maritime and navigation laws and regulations.

(bb) Consultation

In carrying out item (aa), the Administrator and the Secretary—

(AA) shall consult with the Governor of each Great Lakes State and representatives from the Federal and provincial governments of Canada;

(BB) shall take into consideration any relevant data or public comments received under subclause (II)(bb); and

(CC) shall not take into consideration any preliminary assessment by the Great Lakes Commission under clause (i)(III), or any dissenting opinion under subclause (I)(dd), except to the extent that such an assessment or opinion is relevant to the criteria for the applicable determination under item (aa).

(IV) Approval or disapproval

Not later than 180 days after the date of receipt of each proposed standard of performance or other requirement under subclause (I), the Administrator and the Secretary shall—

(aa) determine, as applicable, whether each proposed standard or other requirement satisfies the criteria under subclause (III)(aa);

(bb) approve each proposed standard or other requirement, unless the Administrator or the Secretary, as applicable, determines under item (aa) that the proposed standard or other requirement does not satisfy the criteria under subclause (III)(aa); and

(cc) submit to the Governor of each Great Lakes State, and publish in the Federal Register, a notice of the determination under item (aa).

(V) Action on disapproval

(aa) Rationale and recommendations

If the Administrator and the Secretary disapprove a proposed standard of performance or other requirement under subclause (IV)(bb), the notices under subclause (IV)(cc) shall include—

(AA) a description of the reasons why the standard or requirement is, as applicable, less stringent than a comparable standard or requirement under this subsection, inconsistent with maritime safety, or inconsistent with applicable maritime and navigation laws and regulations; and

(BB) any recommendations regarding changes the Governors of the Great Lakes States could make to conform the disapproved portion of the standard or requirement to the requirements of this subparagraph.

(bb) Review

Disapproval of a proposed standard or requirement by the Administrator and the Secretary under this subparagraph shall be considered to be a final agency action subject to judicial review under section 1369 of this title.

(VI) Action on approval

On approval by the Administrator and the Secretary of a proposed standard of performance or other requirement under subclause (IV)(bb)—

(aa) the Administrator shall establish, by regulation, the proposed standard or requirement within the Great Lakes System in lieu of any comparable standard or other requirement promulgated under paragraph (4); and

(bb) the Secretary shall establish, by regulation, any requirements necessary to implement, ensure compliance with, and enforce the standard or requirement under item (aa), or to apply the proposed requirement, within the Great Lakes System in lieu of any comparable requirement promulgated under paragraph (5).

(VII) No judicial review for certain actions

An action or inaction of a Governor of a Great Lakes State or the Great Lakes Commission under this subparagraph shall not be subject to judicial review.

(VIII) Great Lakes Compact

Nothing in this subsection limits, alters, or amends the Great Lakes Compact[2] to which Congress granted consent in the Act of July 24, 1968 (Public Law 90–419; 82 Stat. 414).

(IX) Authorization of appropriations

There is authorized to be appropriated to the Great Lakes Commission $5,000,000, to be available until expended.

(C) Minimum Pacific Region requirements

(i) Definition of commercial vessel

In this subparagraph, the term ''commercial vessel'' means a vessel operating between—

(I) 2 ports or places of destination within the Pacific Region; or

(II) a port or place of destination within the Pacific Region and a port or place of destination on the Pacific Coast of Canada or Mexico north of parallel 20 degrees north latitude, inclusive of the Gulf of California.

(ii) Ballast water exchange

(I) In general

Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel shall conduct a complete ballast water exchange in waters more than 50 nautical miles from shore.

(II) Exemptions

Subclause (I) shall not apply to a commercial vessel—

(aa) using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary; or

(bb) voyaging—

(AA) between or to a port or place of destination in the State of Washington, if the ballast water to be discharged from the commercial vessel

originated solely from waters located between the parallel 46 degrees north latitude, including the internal waters of the Columbia River, and the internal waters of Canada south of parallel 50 degrees north latitude, including the waters of the Strait of Georgia and the Strait of Juan de Fuca;

(BB) between ports or places of destination in the State of Oregon, if the ballast water to be discharged from the commercial vessel originated solely from waters located between the parallel 40 degrees north latitude and the parallel 50 degrees north latitude;

(CC) between ports or places of destination in the State of California within the San Francisco Bay area east of the Golden Gate Bridge, including the Port of Stockton and the Port of Sacramento, if the ballast water to be discharged from the commercial vessel originated solely from ports or places within that area;

(DD) between the Port of Los Angeles, the Port of Long Beach, and the El Segundo offshore marine oil terminal, if the ballast water to be discharged from the commercial vessel originated solely from the Port of Los Angeles, the Port of Long Beach, or the El Segundo offshore marine oil terminal;

(EE) between a port or place of destination in the State of Alaska within a single Captain of the Port Zone;

(FF) between ports or places of destination in different counties of the State of Hawaii, if the vessel may conduct a complete ballast water exchange in waters that are more than 10 nautical miles from shore and at least 200 meters deep; or

(GG) between ports or places of destination within the same county of the State of Hawaii, if the vessel does not transit outside State marine waters during the voyage.

(iii) Low-salinity ballast water

(I) In general

Except as provided in subclause (II) and clause (iv), the owner or operator of a commercial vessel that transports ballast water sourced from waters with a measured salinity of less than 18 parts per thousand and voyages to a Pacific Region port or place of destination with a measured salinity of less than 18 parts per thousand shall conduct a complete ballast water exchange—

(aa) not less than 50 nautical miles from shore, if the ballast water was sourced from a Pacific Region port or place of destination; or

(bb) more than 200 nautical miles from shore, if the ballast water was not sourced from a Pacific Region port or place of destination.

(II) Exception

Subclause (I) shall not apply to a commercial vessel voyaging to a port or place of destination in the Pacific Region that is using, in compliance with applicable requirements, a type-approved ballast water management system approved by the Secretary to achieve standards of performance of—

(aa) less than 1 organism per 10 cubic meters, if that organism—

(AA) is living, or has not been rendered nonviable; and

(BB) is 50 or more micrometers in minimum dimension;

(bb) less than 1 organism per 10 milliliters, if that organism—

(AA) is living, or has not been rendered nonviable; and

(BB) is more than 10, but less than 50, micrometers in minimum dimension;

(cc) concentrations of indicator microbes that are less than—

(AA) 1 colony-forming unit of toxicogenic Vibrio cholera (serotypes O1 and O139) per 100 milliliters or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;

(BB) 126 colony-forming units of escherichia coli per 100 milliliters; and

(CC) 33 colony-forming units of intestinal enterococci per 100 milliliters; and

(dd) concentrations of such additional indicator microbes and viruses as may be specified in the standards of performance established by the Administrator under paragraph (4).

(iv) General exceptions

The requirements of clauses (ii) and (iii) shall not apply to a commercial vessel if—

(I) complying with the requirement would compromise the safety of the commercial vessel;

(II) design limitations of the commercial vessel prevent a ballast water exchange from being conducted in accordance with clause (ii) or (iii), as applicable;

(III) the commercial vessel—

(aa) is certified by the Secretary as having no residual ballast water or sediments onboard; or

(bb) retains all ballast water while in waters subject to those requirements; or

(IV) empty ballast tanks on the commercial vessel are sealed and certified by the Secretary in a manner that ensures that—

(aa) no discharge or uptake occurs; and

(bb) any subsequent discharge of ballast water is subject to those requirements.

(D) Establishment of State no-discharge zones

(i) State prohibition

Subject to clause (ii), after the effective date of regulations promulgated by the Secretary under paragraph (5), if any State determines that the protection and enhancement of the quality of some or all of the waters within the State require greater environmental protection, the State may prohibit 1 or more types of discharge regulated under this subsection, whether treated or not treated, into such waters.

(ii) Applicability

A prohibition by a State under clause (i) shall not apply until the date on which the Administrator makes the applicable determinations described in clause (iii).

(iii) Prohibition by Administrator

(I) Determination

On application of a State, the Administrator, in concurrence with the Secretary (subject to subclause (II)), shall, by regulation, prohibit the discharge from a vessel of 1 or more discharges subject to regulation under this subsection, whether treated or not treated, into the waters covered by the application if the Administrator determines that—

(aa) prohibition of the discharge would protect and enhance the quality of the specified waters within the State;

(bb) adequate facilities for the safe and sanitary removal and treatment of the discharge are reasonably available for the water and all vessels to which the prohibition would apply;

(cc) the discharge can be safely collected and stored until a vessel reaches a discharge facility or other location; and

(dd) in the case of an application for the prohibition of discharges of ballast water in a port (or in any other location where cargo, passengers, or fuel are loaded and unloaded)—

(AA) the adequate facilities described in item (bb) are reasonably available for commercial vessels, after considering, at a minimum, water depth, dock size, pumpout facility capacity and flow rate, availability of year-round operations, proximity to navigation routes, and the ratio of pumpout facilities to the population and discharge capacity of commercial vessels operating in those waters; and

(BB) the prohibition will not unreasonably interfere with the safe loading and unloading of cargo, passengers, or fuel.

(II) Concurrence with Secretary

(aa) Request

The Administrator shall submit to the Secretary a request for written concurrence with respect to a prohibition under subclause (I).

(bb) Effect of failure to concur

A failure by the Secretary to concur with the Administrator under subclause (I) by the date that is 60 days after the date on which the Administrator submits a request for concurrence under item (aa) shall not prevent the Administrator from prohibiting the relevant discharge in accordance with subclause (III), subject to the condition that the Administrator shall include in the administrative record of the promulgation—

(AA) documentation of the request submitted under item (aa); and

(BB) the response of the Administrator to any written objections received from the Secretary relating to the proposed standard of performance during the 60-day period beginning on the date of submission of the request.

(III) Timing

The Administrator shall approve or disapprove an application submitted under subclause (I) by not later than 90 days after the date on which the application is submitted to the Administrator.

(E) Maintenance in effect of more-stringent standards

In any case in which a requirement established under this paragraph is more stringent or environmentally protective than a comparable requirement established under paragraph (4), (5), or (6), the more-stringent or more-protective requirement shall control.

(June 30, 1948, ch. 758, title III, §312, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 871; amended Pub. L. 95–217, §59, Dec. 27, 1977, 91 Stat. 1596; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100–4, title III, §311, Feb. 4, 1987, 101 Stat. 42; Pub. L. 104–106, div. A, title III, §325(b)–(c)(2), Feb. 10, 1996, 110 Stat. 254–259; Pub. L. 110–288, §4, July 29, 2008, 122 Stat. 2650; Pub. L. 115–282, title IX, §903(a)(1), (b), (c)(1), Dec. 4, 2018, 132 Stat. 4324, 4354, 4355.)

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsecs. (a)(4) and (m), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Sections 92, 93, and 633 of title 14, referred to in subsec. (p)(1)(J), were redesignated sections 501, 504, and 503, respectively, of title 14 by Pub. L. 115–282, title I, §105(b), Dec. 4, 2018, 132 Stat. 4200, and references to sections 92, 93, and 633 of title 14 deemed to refer to such redesignated sections, see section 123(b)(1) of Pub. L. 115–282, set out as a References to Sections of Title 14 as Redesignated by Pub. L. 115–282 note preceding section 101 of Title 14, Coast Guard.

The Act of July 24, 1968, referred to in subsec. (p)(1)(L), (10)(B)(iii)(VIII), is Pub. L. 90–419, July 24, 1968, 82 Stat. 414, which is not classified to the Code.

The Safe Drinking Water Act, referred to in subsec. (p)(2)(B)(ii)(III), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1660, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of Title 42, The Public Health and Wel-

fare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Section 903(a)(2)(A) of the Vessel Incidental Discharge Act of 2018, referred to in subsec. (p)(3)(B), is section 903(a)(2)(A) of title IX of Pub. L. 115–282, Dec. 4, 2018, 132 Stat. 4354, which repealed section 4711 of Title 16, Conservation, and provisions set out as a note under section 1342 of this title.

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, referred to in subsec. (p)(3)(B), (5)(A)(ii)(IV), (C)(ii)(II)(bb)(AA), (cc), is title I of Pub. L. 101–646, Nov. 29, 1990, 104 Stat. 4761, which is classified principally to chapter 67 (§ 4701 et seq.) of Title 16, Conservation. Section 1101 of the Act (as in effect on the day before December 4, 2018), means section 1101 of the Act, which was classified to section 4711 of Title 16, prior to repeal by Pub. L. 115–282, title IX, § 903(a)(2)(A)(i), Dec. 4, 2018, 132 Stat. 4354. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 16 and Tables.

Section 1414 of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–323), referred to in subsec. (p)(9)(A)(v), probably means section 1414 of title XIV of div. B of H.R. 5666 of the 106th Congress, as enacted into law by section 1(a)(4) of Pub. L. 106–554, Dec. 21, 2000, 114 Stat. 2763, 2763A–322, which is set out in a note under section 1901 of this title.

The Act to Prevent Pollution from Ships, referred to in subsec. (p)(9)(B)(iii), is Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297, which is classified principally to chapter 33 (§ 1901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of this title and Tables.

The Coast Guard Authorization Act of 2010, referred to in subsec. (p)(9)(B)(iv), is Pub. L. 111–281, Oct. 15, 2010, 124 Stat. 2905. Title X of the Act is classified principally to chapter 51 (§ 3801 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Pub. L. 115–282, § 903(b)(1), substituted ''Marine sanitation devices; discharges incidental to the normal operation of vessels'' for ''Marine sanitation devices'' in section catchline.

Subsec. (a). Pub. L. 115–282, § 903(b)(1), inserted heading and substituted ''In'' for ''For the purpose of'' in introductory provisions.

Subsec. (a)(7). Pub. L. 115–282, § 903(b)(2)(A), substituted ''devices, marine pollution control device equipment, or vessels'' for ''devices or of vessels''.

Subsec. (a)(13). Pub. L. 115–282, § 903(b)(2)(B), inserted '', except as provided in subsection (p),'' after ''means'' in introductory provisions.

Subsec. (g)(1). Pub. L. 115–282, § 903(b)(3)(A), (B), inserted ''or marine pollution control device equipment'' after ''marine sanitation device'' in two places and ''or equipment'' after ''such device'' and ''test device''.

Subsec. (g)(2). Pub. L. 115–282, § 903(b)(3)(A), (C), inserted ''or marine pollution control device equipment'' after ''marine sanitation device'' and ''or equipment'' after ''the device'', ''Any device'', and ''certified test device'' wherever appearing.

Subsec. (h). Pub. L. 115–282, § 903(b)(4)(D), inserted heading.

Subsec. (h)(1). Pub. L. 115–282, § 903(b)(4)(C), (D), designated existing provisions as par. (1), inserted heading, substituted ''Subject to paragraph (2), after'' for ''After'', redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), and realigned margins.

Pub. L. 115–282, § 903(b)(4)(A), inserted ''and marine pollution control device equipment'' after ''marine sanitation device''.

Subsec. (h)(2). Pub. L. 115–282, § 903(b)(4)(E), added par. (2). Former par. (2) redesignated subpar. (B) of subsec. (h)(1).

Pub. L. 115–282, § 903(b)(4)(B), inserted ''or any certified marine pollution control device equipment or element of design of such equipment'' after ''such device''.

Subsec. (h)(3), (4). Pub. L. 115–282, § 903(b)(4)(C), redesignated pars. (3) and (4) as subpars. (C) and (D), respectively, of subsec. (h)(1).

Subsec. (k). Pub. L. 115–282, § 903(c), designated first sentence of existing provisions as par. (2)(A), substituted ''This'' for ''The provisions of this'' and ''operating, who may use, by agreement'' for ''operating and he may utilize by agreement'' in par. (2)(A) as redesignated, inserted headings for subsec. (k), par. (2), and par. (2)(A), added pars. (1), (2)(B), (2)(C), and (3), and struck out former second sentence which read as follows: ''The provisions of this section may also be enforced by a State.''

Subsec. (p). Pub. L. 115–282, § 903(a)(1), added subsec. (p).

2008—Subsec. (*o*). Pub. L. 110–288 added subsec. (*o*).

1996—Subsec. (a)(8). Pub. L. 104–106, § 325(c)(1)(A), substituted ''corporation, association, or agency of the United States,'' for ''corporation, or association,''.

Subsec. (a)(12) to (14). Pub. L. 104–106, § 325(c)(1)(B), (C), added pars. (12) to (14).

Subsec. (j). Pub. L. 104–106, § 325(c)(2), substituted ''subsection (g)(1), clause (1) or (2) of subsection (h), or subsection (n)(8) shall be liable'' for ''subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable''.

Subsec. (n). Pub. L. 104–106, § 325(b), added subsec. (n).

1987—Subsec. (f)(1). Pub. L. 100–4, § 311(a), designated existing provision as subpar. (A), substituted ''Except as provided in subparagraph (B), after'' for ''After'', and added subpar. (B).

Subsec. (k). Pub. L. 100–4, § 311(b), inserted at end ''The provisions of this section may also be enforced by a State.''

1977—Subsec. (a)(6). Pub. L. 95–217, § 59(a), inserted ''except that, with respect to commercial vessels on the Great Lakes, such term shall include graywater'' after ''receive or retain body wastes''.

Subsec. (a)(10), (11). Pub. L. 95–217, § 59(b), added pars. (10) and (11).

Subsec. (b)(1). Pub. L. 95–217, § 59(c), inserted references to standards established under subsec. (c)(1)(B) of this section and to standards promulgated under subsec. (c) of this section.

Subsec. (c)(1). Pub. L. 95–217, § 59(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(4). Pub. L. 95–217, § 59(e), designated existing provisions as subpar. (A) and added subpar. (B).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (e) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Para-

graph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

PURPOSES OF 2018 AMENDMENT; FINDINGS

Pub. L. 115–282, title IX, § 902, Dec. 4, 2018, 132 Stat. 4322, provided that:

''(a) PURPOSES.—The purposes of this title [see Short Title of 2018 Amendment note set out under section 1251 of this title] are—

''(1) to provide for the establishment of uniform, environmentally sound standards and requirements for the management of discharges incidental to the normal operation of a vessel;

''(2) to charge the Environmental Protection Agency with primary responsibility for establishing standards relating to the discharge of pollutants from vessels;

''(3) to charge the Coast Guard with primary responsibility for prescribing, administering, and enforcing regulations, consistent with the discharge standards established by the Environmental Protection Agency, for the design, construction, installation, and operation of the equipment and management practices required onboard vessels; and

''(4) to preserve the flexibility of States, political subdivisions, and certain regions with respect to the administration and enforcement of standards relating to the discharge of pollutants from vessels engaged in maritime commerce and transportation.

''(b) FINDINGS.—Congress finds that—

''(1) the Environmental Protection Agency is the principal Federal authority charged under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) with regulating through the issuance of permits for the discharge of pollutants into the navigable waters of the United States;

''(2) the Coast Guard is the principal Federal authority charged with administering, enforcing, and prescribing regulations relating to the discharge of pollutants from vessels; and

''(3) during the period of 1973 to 2010—

''(A) the Environmental Protection Agency promulgated regulations exempting certain discharges incidental to the normal operation of vessels from otherwise applicable permitting requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

''(B) Congress enacted laws on numerous occasions governing the regulation of discharges incidental to the normal operation of vessels, including—

''(i) the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.);

''(ii) the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.);

''(iii) the National Invasive Species Act of 1996 (16 U.S.C. 4701 note; Public Law 104–332) [see Short Title of 1996 Amendment note set out under section 4701 of this title];

''(iv) section 415 of the Coast Guard Authorization Act of 1998 (Public Law 105–383; 112 Stat. 3434) and section 623 of the Coast Guard and Maritime Transportation Act of 2004 (33 U.S.C. 1901 note; Public Law 108–293), which established interim and permanent requirements, respectively, for the regulation of vessel discharges of certain bulk cargo residue;

''(v) title XIV of division B of Appendix D of the Consolidated Appropriations Act, 2001 (Public Law 106–554; 114 Stat. 2763A–315) [33 U.S.C. 1901 note], which prohibited or limited certain vessel discharges in certain areas of Alaska;

''(vi) section 204 of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1902a), which established requirements for the regulation of vessel discharges of agricultural cargo residue material in the form of hold washings; and

''(vii) title X of the Coast Guard Authorization Act of 2010 (33 U.S.C. 3801 et seq.), which provided for the implementation of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.''

PURPOSE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title III, § 325(a), Feb. 10, 1996, 110 Stat. 254, provided that: ''The purposes of this section [amending this section and section 1362 of this title and enacting provisions set out as a note below] are to—

''(1) enhance the operational flexibility of vessels of the Armed Forces domestically and internationally;

''(2) stimulate the development of innovative vessel pollution control technology; and

''(3) advance the development by the United States Navy of environmentally sound ships.''

COOPERATION IN NATIONAL DISCHARGE STANDARDS DEVELOPMENT

Pub. L. 104–106, div. A, title III, § 325(d), Feb. 10, 1996, 110 Stat. 259, provided that: ''The Administrator of the Environmental Protection Agency and the Secretary of Defense may, by mutual agreement, with or without reimbursement, provide for the use of information, reports, personnel, or other resources of the Environmental Protection Agency or the Department of Defense to carry out section 312(n) of the Federal Water Pollution Control Act [33 U.S.C. 1322(n)] (as added by subsection (b)), including the use of the resources—

''(1) to determine—

''(A) the nature and environmental effect of discharges incidental to the normal operation of a vessel of the Armed Forces;

''(B) the practicability of using marine pollution control devices on vessels of the Armed Forces; and

''(C) the effect that installation or use of marine pollution control devices on vessels of the Armed Forces would have on the operation or operational capability of the vessels; and

''(2) to establish performance standards for marine pollution control devices on vessels of the Armed Forces.''

CLEAN VESSELS

Pub. L. 102–587, title V, subtitle F, Nov. 4, 1992, 106 Stat. 5086, as amended by Pub. L. 109–59, title X, § 10131, Aug. 10, 2005, 119 Stat. 1931, provided that:

''SEC. 5601. SHORT TITLE.

''This subtitle may be cited as the 'Clean Vessel Act of 1992'.

''SEC. 5602. FINDINGS; PURPOSE.

''(a) FINDINGS.—The Congress finds the following:

''(1) The discharge of untreated sewage by vessels is prohibited under Federal law in all areas within the navigable waters of the United States.

''(2) The discharge of treated sewage by vessels is prohibited under either Federal or State law in many of the United States bodies of water where recreational boaters operate.

''(3) There is currently an inadequate number of pumpout stations for type III marine sanitation devices where recreational vessels normally operate.

''(4) Sewage discharged by recreational vessels because of an inadequate number of pumpout stations is a substantial contributor to localized degradation of water quality in the United States.

''(b) PURPOSE.—The purpose of this subtitle is to provide funds to States for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities.

''SEC. 5603. DETERMINATION AND PLAN REGARDING STATE MARINE SANITATION DEVICE PUMPOUT STATION NEEDS.

''(a) SURVEY.—Within 3 months after the notification under section 5605(b), each coastal State shall conduct a survey to determine—

''(1) the number and location of all operational pumpout stations and waste reception facilities at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone of the State; and

''(2) the number of recreational vessels in the coastal waters of the State with type III marine sanitation devices or portable toilets, and the areas of those coastal waters where those vessels congregate.

''(b) PLAN.—Within 6 months after the notification under section 5605(b), and based on the survey conducted under subsection (a), each coastal State shall—

''(1) develop and submit to the Secretary of the Interior a plan for any construction or renovation of pumpout stations and waste reception facilities that are necessary to ensure that, based on the guidance issued under section 5605(a), there are pumpout stations and waste reception facilities in the State that are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State; and

''(2) submit to the Secretary of the Interior with that plan a list of all stations and facilities in the coastal zone of the State which are operational on the date of submittal.

''(c) PLAN APPROVAL.—

''(1) IN GENERAL.—Not later than 60 days after a plan is submitted by a State under subsection (b), the Secretary of the Interior shall approve or disapprove the plan, based on—

''(A) the adequacy of the survey conducted by the State under subsection (a); and

''(B) the ability of the plan, based on the guidance issued under section 5605(a), to meet the construction and renovation needs of the recreational vessels identified in the survey.

''(2) NOTIFICATION OF STATE; MODIFICATION.—The Secretary of the Interior shall promptly notify the affected Governor of the approval or disapproval of a plan. If a plan is disapproved, the Secretary of the Interior shall recommend necessary modifications and return the plan to the affected Governor.

''(3) RESUBMITTAL.—Not later than 60 days after receiving a plan returned by the Secretary of the Interior, the Governor shall make the appropriate changes and resubmit the plan.

''(d) INDICATION OF STATIONS AND FACILITIES ON NOAA CHARTS.—

''(1) IN GENERAL.—The Under Secretary of Commerce for Oceans and Atmosphere shall indicate, on charts published by the National Oceanic and Atmospheric Administration for the use of operators of recreational vessels, the locations of pumpout stations and waste reception facilities.

''(2) NOTIFICATION OF NOAA.—

''(A) LISTS OF STATIONS AND FACILITIES.—The Secretary of the Interior shall transmit to the Under Secretary of Commerce for Oceans and Atmosphere each list of operational stations and facilities submitted by a State under subsection (b)(2), by not later than 30 days after the date of receipt of that list.

''(B) COMPLETION OF PROJECT.—The Director of the United States Fish and Wildlife Service shall notify the Under Secretary of the location of each station or facility at which a construction or renovation project is completed by a State with amounts made available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, by not later than 30 days after the date of notification by a State of the completion of the project.

''SEC. 5604. FUNDING.

''(a) TRANSFER.—[Amended section 777c of Title 16, Conservation.]

''(b) ACCESS INCREASE.—[Amended section 777g of Title 16, Conservation.]

''(c) GRANT PROGRAM.—

''(1) MATCHING GRANTS.—The Secretary of the Interior may obligate an amount not to exceed the amount made available under section 4(b)(2) of the Act of August 9, 1950 (16 U.S.C. 777c(b)(2) [now 16 U.S.C. 777c(b)(3)], as amended by this Act), to make grants to—

''(A) coastal States to pay not more than 75 percent of the cost to a coastal State of—

''(i) conducting a survey under section 5603(a);

''(ii) developing and submitting a plan and accompanying list under section 5603(b);

''(iii) constructing and renovating pumpout stations and waste reception facilities; and

''(iv) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

''(B) inland States, which can demonstrate to the Secretary of the Interior that there are an inadequate number of pumpout stations and waste reception facilities to meet the needs of recreational vessels in the waters of that State, to pay 75 percent of the cost to that State of—

''(i) constructing and renovating pumpout stations and waste reception facilities in the inland State; and

''(ii) conducting a program to educate recreational boaters about the problem of human body waste discharges from vessels and inform them of the location of pumpout stations and waste reception facilities.

''(2) PRIORITY.—In awarding grants under this subsection, the Secretary of the Interior shall give priority consideration to grant applications that—

''(A) provide for public/private partnership efforts to develop and operate pumpout stations and waste reception facilities; and

''(B) propose innovative ways to increase the availability and use of pumpout stations and waste reception facilities.

''(d) DISCLAIMER.—Nothing in this subtitle shall be interpreted to preclude a State from carrying out the provisions of this subtitle with funds other than those described in this section.

''SEC. 5605. GUIDANCE AND NOTIFICATION.

''(a) ISSUANCE OF GUIDANCE.—Not later than 3 months after the date of the enactment of this subtitle [Nov. 4, 1992], the Secretary of the Interior shall, after consulting with the Administrator of the Environmental Protection Agency, the Under Secretary of Commerce for Oceans and Atmosphere, and the Commandant of the Coast Guard, issue for public comment pumpout station and waste reception facility guidance. The Secretary of the Interior shall finalize the guidance not later than 6 months after the date of enactment of this subtitle. The guidance shall include—

''(1) guidance regarding the types of pumpout stations and waste reception facilities that may be appropriate for construction, renovation, operation, or maintenance with amounts available under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), as amended by this subtitle, and appropriate location of the stations and facilities within a marina or boatyard;

''(2) guidance defining what constitutes adequate and reasonably available pumpout stations and waste reception facilities in boating areas;

''(3) guidance on appropriate methods for disposal of vessel sewage from pumpout stations and waste reception facilities;

''(4) guidance on appropriate connector fittings to facilitate the sanitary and expeditious discharge of sewage from vessels;

''(5) guidance on the waters most likely to be affected by the discharge of sewage from vessels; and

''(6) other information that is considered necessary to promote the establishment of pumpout facilities to reduce sewage discharges from vessels and to protect United States waters.

''(b) NOTIFICATION.—Not later than one month after the guidance issued under subsection (a) is finalized,

the Secretary of the Interior shall provide notification in writing to the fish and wildlife, water pollution control, and coastal zone management authorities of each State, of—

''(1) the availability of amounts under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]) to implement the Clean Vessel Act of 1992; and

''(2) the guidance developed under subsection (a).

''SEC. 5606. EFFECT ON STATE FUNDING ELIGIBILITY.

''This subtitle shall not be construed or applied to jeopardize any funds available to a coastal State under the Act of August 9, 1950 (16 U.S.C. 777a et seq. [16 U.S.C. 777 et seq.]), if the coastal State is, in good faith, pursuing a survey and plan designed to meet the purposes of this subtitle.

''SEC. 5607. APPLICABILITY.

''The requirements of section 5603 shall not apply to a coastal State if within six months after the date of enactment of this subtitle [Nov. 4, 1992] the Secretary of the Interior certifies that—

''(1) the State has developed and is implementing a plan that will ensure that there will be pumpout stations and waste reception facilities adequate to meet the needs of recreational vessels in the coastal waters of the State; or

''(2) existing pumpout stations and waste reception facilities in the coastal waters of the State are adequate to meet those needs.

''SEC. 5608. DEFINITIONS.

''For the purposes of this subtitle the term:

''(1) 'coastal State'—

''(A) means a State of the United States in, or bordering on the Atlantic, Pacific, or Arctic Ocean; the Gulf of Mexico; Long Island Sound; or one or more of the Great Lakes;

''(B) includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

''(C) does not include a State for which the ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in section 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), is less than one.

''(2) 'coastal waters' means—

''(A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes; and

''(B) in other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bay, lagoons, bayous, ponds, and estuaries.

''(3) 'coastal zone' has the same meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1));

''(4) 'inland State' means a State which is not a coastal state;

''(5) 'type III marine sanitation device' means any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge human body wastes;

''(6) 'pumpout station' means a facility that pumps or receives human body wastes out of type III marine sanitation devices installed on board vessels;

''(7) 'recreational vessel' means a vessel—

''(A) manufactured for operation, or operated, primarily for pleasure; or

''(B) leased, rented, or chartered to another for the latter's pleasure; and

''(8) 'waste reception facility' means a facility specifically designed to receive wastes from portable toilets carried on vessels, and does not include lavatories.''

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1323. Federal facilities pollution control

(a) Compliance with pollution control requirements by Federal entities

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

President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b) Cooperation with Federal entities and limitation on facility construction

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

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

(c) Reasonable service charges

(1) In general

For the purposes of this chapter, reasonable service charges described in subsection (a) include any reasonable nondiscriminatory fee, charge, or assessment that is—

(A) based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution (in terms of quantities of pollutants, or volume or rate of stormwater discharge or runoff from the property or facility); and

(B) used to pay or reimburse the costs associated with any stormwater management program (whether associated with a separate storm sewer system or a sewer system that manages a combination of stormwater and sanitary waste), including the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge, regardless of whether that reasonable fee, charge, or assessment is denominated a tax.

(2) Limitation on accounts

(A) Limitation

The payment or reimbursement of any fee, charge, or assessment described in paragraph (1) shall not be made using funds from any permanent authorization account in the Treasury.

(B) Reimbursement or payment obligation of Federal Government

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government, as described in subsection (a), shall not be obligated to pay or reimburse any fee, charge, or assessment described in paragraph (1), except to the extent and in an amount provided in advance by any appropriations Act to pay or reimburse the fee, charge, or assessment.

(June 30, 1948, ch. 758, title III, § 313, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 95–217, §§ 60, 61(a), Dec. 27, 1977, 91 Stat. 1597, 1598; Pub. L. 111–378, § 1, Jan. 4, 2011, 124 Stat. 4128.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 111–378 added subsec. (c).

1977—Subsec. (a). Pub. L. 95–217, §§ 60, 61(a), designated existing provisions as subsec. (a) and inserted provisions making officers, agents, or employees of Federal departments, agencies, or instrumentalities subject to Federal, State, interstate, and local requirements, administrative authority, process, and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as non-governmental entities, including the payment of reasonable service charges, inserted provisions covering Federal employee liability, and inserted provisions relating to military source exemptions and the issuance of regulations covering those exemptions.

Subsec. (b). Pub. L. 95–217, § 60, added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

MARINE GUIDANCE SYSTEMS

Pub. L. 105–383, title IV, § 425(b), Nov. 13, 1998, 112 Stat. 3441, provided that: ''The Secretary of Transportation shall, within 12 months after the date of the enactment of this Act [Nov. 13, 1998], evaluate and report to the Congress on the suitability of marine sector laser lighting, cold cathode lighting, and ultraviolet enhanced vision technologies for use in guiding marine vessels and traffic.''

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with ap-

plicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11258

Ex. Ord. No. 11258, Nov. 17, 1965, 30 F.R. 14483, which related to prevention, control, and abatement of water pollution by federal activities, was superseded by Ex. Ord. No. 11286, July 2, 1966, 31 F.R. 9261.

EXECUTIVE ORDER NO. 11288

Ex. Ord. No. 11288, July 2, 1966, 31 F.R. 9261, which provided for prevention, control, and abatement of water pollution from federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

§ 1324. Clean lakes

(a) Establishment and scope of program

(1) State program requirements

Each State on a biennial basis shall prepare and submit to the Administrator for his approval—

(A) an identification and classification according to eutrophic condition of all publicly owned lakes in such State;

(B) a description of procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes;

(C) a description of methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes;

(D) methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;

(E) a list and description of those publicly owned lakes in such State for which uses are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and

(F) an assessment of the status and trends of water quality in lakes in such State, 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 lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

(2) Submission as part of 1315(b)(1) report

The information required under paragraph (1) shall be included in the report required under section 1315(b)(1) of this title, beginning with the report required under such section by April 1, 1988.

(3) Report of Administrator

Not later than 180 days after receipt from the States of the biennial information required under paragraph (1), 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 a report on the status of water quality in lakes in the United States, including the effectiveness of the methods and procedures described in paragraph (1)(D).

(4) Eligibility requirement

Beginning after April 1, 1988, a State must have submitted the information required under paragraph (1) in order to receive grant assistance under this section.

(b) Financial assistance to States

The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under subsection (a) of this section. The Administrator shall provide financial assistance to States to prepare the identification and classification surveys required in subsection (a)(1) of this section.

(c) Maximum amount of grant; authorization of appropriations

(1) The amount granted to any State for any fiscal year under subsection (b) of 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 subsection (a) of this section.

(2) There is authorized to be appropriated $50,000,000 for each of fiscal years 2001 through 2005 for grants to States under subsection (b) of 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 subsection (a) of this section.

(d) Demonstration program

(1) General requirements

The Administrator is authorized and directed to establish and conduct at locations throughout the Nation a lake water quality demonstration program. The program shall, at a minimum—

(A) develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lakes uses;

(B) control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;

(C) evaluate the feasibility of implementing regional consolidated pollution control strategies;

(D) demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;

(E) develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;

(F) construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and

(G) demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

(2) Geographical requirements

Demonstration projects authorized by this subsection shall be undertaken to reflect a va-

riety of geographical and environmental conditions. As a priority, the Administrator shall undertake demonstration projects at Lake Champlain, New York and Vermont; Lake Houston, Texas; Beaver Lake, Arkansas; Greenwood Lake and Belcher Creek, New Jersey; Deal Lake, New Jersey; Alcyon Lake, New Jersey; Gorton's Pond, Rhode Island; Lake Washington, Rhode Island; Lake Bomoseen, Vermont; Sauk Lake, Minnesota; Otsego Lake, New York; Oneida Lake, New York; Raystown Lake, Pennsylvania; Swan Lake, Itasca County, Minnesota; Walker Lake, Nevada; Lake Tahoe, California and Nevada; Ten Mile Lakes, Oregon; Woahink Lake, Oregon; Highland Lake, Connecticut; Lily Lake, New Jersey; Strawbridge Lake, New Jersey; Baboosic Lake, New Hampshire; French Pond, New Hampshire; Dillon Reservoir, Ohio; Tohopekaliga Lake, Florida; Lake Apopka, Florida; Lake George, New York; Lake Wallenpaupack, Pennsylvania; Lake Allatoona, Georgia; and Lake Worth, Texas.

(3) Reports

Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note; 109 Stat. 734–736), by January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate on work undertaken pursuant to this subsection. Upon completion of the program authorized by this subsection, the Administrator shall submit to such committees a final report on the results of such program, along with recommendations for further measures to improve the water quality of the Nation's lakes.

(4) Authorization of appropriations

(A) In general

There is authorized to be appropriated to carry out this subsection not to exceed $40,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

(B) Special authorizations

(i) Amount

There is authorized to be appropriated to carry out subsection (b) with respect to subsection (a)(1)(D) not to exceed $25,000,000 for fiscal years beginning after September 30, 1986, to remain available until expended.

(ii) Distribution of funds

The Administrator shall provide for an equitable distribution of sums appropriated pursuant to this subparagraph among States carrying out approved methods and procedures. Such distribution shall be based on the relative needs of each such State for the mitigation of the harmful effects on lakes and other surface waters of high acidity that may reasonably be due to acid deposition or acid mine drainage.

(iii) Grants as additional assistance

The amount of any grant to a State under this subparagraph shall be in addition to, and not in lieu of, any other Federal financial assistance.

(June 30, 1948, ch. 758, title III, § 314, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 95–217, §§ 4(f), 62(a), Dec. 27, 1977, 91 Stat. 1567, 1598; Pub. L. 96–483, § 1(f), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, § 101(g), title III, § 315(a), (b), (d), Feb. 4, 1987, 101 Stat. 9, 49, 50, 52; Pub. L. 101–596, title III, § 302, Nov. 16, 1990, 104 Stat. 3006; Pub. L. 104–66, title II, § 2021(c), Dec. 21, 1995, 109 Stat. 727; Pub. L. 105–362, title V, § 501(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–457, title VII, §§ 701, 702, Nov. 7, 2000, 114 Stat. 1976; Pub. L. 107–303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

REFERENCES IN TEXT

Section 3003 of the Federal Reports Elimination and Sunset Act of 1995, referred to in subsec. (d)(3), is section 3003 of Pub. L. 104–66, which is set out as a note under section 1113 of Title 31, Money and Finance.

AMENDMENTS

2002—Subsec. (a)(3), (4). Pub. L. 107–303 repealed Pub. L. 105–362, § 501(b). See 1998 Amendment note below.

2000—Subsec. (c)(2). Pub. L. 106–457, § 701, substituted ''$50,000,000 for each of fiscal years 2001 through 2005'' for ''$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, $30,000,000 for fiscal year 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $30,000,000 per fiscal year for each of the fiscal years 1986 through 1990''.

Subsec. (d)(2). Pub. L. 106–457, § 702(1), inserted ''Otsego Lake, New York; Oneida Lake, New York; Raystown Lake, Pennsylvania; Swan Lake, Itasca County, Minnesota; Walker Lake, Nevada; Lake Tahoe, California and Nevada; Ten Mile Lakes, Oregon; Woahink Lake, Oregon; Highland Lake, Connecticut; Lily Lake, New Jersey; Strawbridge Lake, New Jersey; Baboosic Lake, New Hampshire; French Pond, New Hampshire; Dillon Reservoir, Ohio; Tohopekaliga Lake, Florida; Lake Apopka, Florida; Lake George, New York; Lake Wallenpaupack, Pennsylvania; Lake Allatoona, Georgia;'' after ''Sauk Lake, Minnesota;''.

Subsec. (d)(3). Pub. L. 106–457, § 702(2), substituted ''Notwithstanding section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note; 109 Stat. 734–736), by'' for ''By''.

Subsec. (d)(4)(B)(i). Pub. L. 106–457, § 702(3), substituted ''$25,000,000'' for ''$15,000,000''.

1998—Subsec. (a)(3), (4). Pub. L. 105–362, § 501(b), which directed the redesignation of par. (4) as (3) and striking out of heading and text of par. (3), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

1995—Subsec. (d)(3). Pub. L. 104–66 substituted ''By January 1, 1997, and January 1 of every odd-numbered year thereafter, the Administrator shall report to the Committee on Transportation and Infrastructure'' for ''The Administrator shall report annually to the Committee on Public Works and Transportation''.

1990—Subsec. (d)(2). Pub. L. 101–596 inserted ''Lake Champlain, New York and Vermont;'' before ''Lake Houston, Texas''.

1987—Subsec. (a). Pub. L. 100–4, § 315(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Each State shall prepare or establish, and submit to the Administrator for his approval—

''(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.''

Subsec. (b). Pub. L. 100–4, §315(d)(1), substituted ''subsection (a) of this section'' for ''this section'' in first sentence.

Subsec. (c)(1). Pub. L. 100–4, §315(d)(2), substituted ''subsection (b) of this section'' for first reference to ''this section'' and ''subsection (a) of this section'' for second reference to ''this section''.

Subsec. (c)(2). Pub. L. 100–4, §§101(g), 315(d)(3), struck out ''and'' after ''1981,'' and inserted '', such sums as may be necessary for fiscal years 1983 through 1985, and $30,000,000 per fiscal year for each of the fiscal years 1986 through 1990'' after ''1982'', and substituted ''subsection (b) of this section'' for first reference to ''this section'' and ''subsection (a) of this section'' for second reference to ''this section''.

Subsec. (d). Pub. L. 100–4, §315(b), added subsec. (d).

1980—Subsec. (c)(2). Pub. L. 96–483 inserted authorization of $30,000,000 for each of fiscal years 1981 and 1982.

1977—Subsec. (b). Pub. L. 95–217, §62(a), inserted provision directing the Administrator to provide financial assistance to States to prepare the identification and classification surveys required in subsec. (a)(1) of this section.

Subsec. (c)(2). Pub. L. 95–217, §4(f), substituted ''$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, and $60,000,000 for fiscal year 1980'' for ''and $150,000,000 for the fiscal year 1975''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

§ 1325. National Study Commission

(a) Establishment

There is established a National Study Commission, which shall make a full and complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 in section 1311(b)(2) of this title.

(b) Membership; chairman

Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Environment and Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works and Transportation committee, appointed by the Speaker of the House, and five members of the public appointed by the President. The Chairman of such Commission shall be elected from among its members.

(c) Contract authority

In the conduct of such study, the Commission is authorized to contract with the National Academy of Sciences and the National Academy of Engineering (acting through the National Research Council), the National Institute of Ecology, Brookings Institution, and other nongovernmental entities, for the investigation of matters within their competence.

(d) Cooperation of departments, agencies, and instrumentalities of executive branch

The heads of the departments, agencies and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(e) Report to Congress

A report shall be submitted to the Congress of the results of such investigation and study, together with recommendations, not later than three years after October 18, 1972.

(f) Compensation and allowances

The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(g) Appointment of personnel

In addition to authority to appoint personnel subject to the provisions of title 5 governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43[1] of the Senate and House of Representatives, respectively.

(h) Authorization of appropriation

There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,250,000.

(June 30, 1948, ch. 758, title III, §315, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 875; amended Pub. L. 93–207, §1(5), Dec. 28, 1973, 87 Stat. 906; Pub. L. 93–592, §5, Jan. 2, 1975, 88 Stat. 1925; Pub. L. 94–238, Mar. 23, 1976, 90 Stat. 250; H. Res. 988, Oct. 8, 1974; S. Res. 4, Feb. 4, 1977.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to subsec. (f), probably refers to the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

[1] See References in Text note below.

The General Schedule, referred to in subsec. (g), is set out under section 5332 of Title 5.

The Rules of the House of Representatives for the One Hundred Sixth Congress were adopted and amended generally by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Provisions formerly appearing in rule 43, referred to in subsec. (g), were contained in rule XXIV, which was subsequently renumbered Rule XXIII by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

AMENDMENTS

1976—Subsec. (h). Pub. L. 94–238 substituted ''$17,250,000'' for ''$17,000,000''.

1975—Subsec. (h). Pub. L. 93–592 substituted ''$17,000,000'' for ''$15,000,000''.

1973—Subsecs. (g), (h). Pub. L. 93–207 added subsec. (g) and redesignated former subsec. (g) as (h).

CHANGE OF NAME

Committee on Public Works of Senate abolished and replaced by Committee on Environment and Public Works of Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of Senate, as amended by Senate Resolution No. 4 (popularly cited as the ''Committee System Reorganization Amendments of 1977''), approved Feb. 4, 1977.

Committee on Public Works of House of Representatives changed to Committee on Public Works and Transportation of House of Representatives, effective Jan. 3, 1975, by House Resolution No. 988, 93d Congress. Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1326. Thermal discharges

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

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

(b) Cooling water intake structures

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

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

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

(June 30, 1948, ch. 758, title III, § 316, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 876; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

§ 1327. Omitted

CODIFICATION

Section, act June 30, 1948, ch. 758, title III, § 317, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 877, authorized Administrator to investigate and study feasibility of alternate methods of financing cost of preventing, controlling, and abating pollution as directed by Water Quality Improvement Act of 1970 and to report to Congress, not later than two years after Oct. 18, 1972, the results of investigation and study accompanied by recommendations for financing these programs for fiscal years beginning after 1976.

§ 1328. Aquaculture

(a) Authority to permit discharge of specific pollutants

The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 1342 of this title.

(b) Procedures and guidelines

The Administrator shall by regulation establish any procedures and guidelines which the Administrator deems necessary to carry out this

section. Such regulations shall require the application to such discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

(c) State administration

Each State desiring to administer its own permit program within its jurisdiction for discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter.

(June 30, 1948, ch. 758, title III, § 318, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 877; amended Pub. L. 95–217, § 63, Dec. 27, 1977, 91 Stat. 1599.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–217 inserted ''pursuant to section 1342 of this title'' after ''Federal or State supervision''.

Subsec. (b). Pub. L. 95–217 struck out '', not later than January 1, 1974,'' after ''The Administrator shall by regulation'' in existing provisions and inserted provisions that the regulations require the application to the discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objectives of this chapter.

Subsec. (c). Pub. L. 95–217 added subsec. (c).

§ 1329. Nonpoint source management programs

(a) State assessment reports

(1) Contents

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

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

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

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

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

(2) Information used in preparation

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

(b) State management programs

(1) In general

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

(2) Specific contents

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

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

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

(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if

there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

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

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

(3) Utilization of local and private experts

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

(4) Development on watershed basis

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

(c) Administrative provisions

(1) Cooperation requirement

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

(2) Time period for submission of reports and management programs

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

(d) Approval or disapproval of reports and management programs

(1) Deadline

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

(2) Procedure for disapproval

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

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

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

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

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

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

(3) Failure of State to submit report

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

(e) Local management programs; technical assistance

If a State fails to submit a management program under subsection (b) or the Administrator

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

(f) Technical assistance for States

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

(g) Interstate management conference

(1) Convening of conference; notification; purpose

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

(2) State management program requirement

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

(h) Grant program

(1) Grants for implementation of management programs

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

(2) Applications

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

(3) Federal share

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

(4) Limitation on grant amounts

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

(5) Priority for effective mechanisms

For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection,

and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will—

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

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

(C) control interstate nonpoint source pollution problems; or

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

(6) Availability for obligation

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

(7) Limitation on use of funds

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

(8) Satisfactory progress

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

(9) Maintenance of effort

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

(10) Request for information

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

(11) Reporting and other requirements

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

(12) Limitation on administrative costs

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

(i) Grants for protecting groundwater quality

(1) Eligible applicants and activities

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

(2) Applications

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

(3) Federal share; maximum amount

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

(4) Report

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

(j) Authorization of appropriations

There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed

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

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

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

(*l*) Collection of information

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

(m) Reports of Administrator

(1) Annual reports

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

(2) Final report

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

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

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

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

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

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

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

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

(n) Set aside for administrative personnel

Not less than 5 percent of the funds appropriated pursuant to subsection (j) 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.

(June 30, 1948, ch. 758, title III, §319, as added Pub. L. 100–4, title III, §316(a), Feb. 4, 1987, 101 Stat. 52; amended Pub. L. 105–362, title V, §501(c), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 107–303, title III, §302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

REFERENCES IN TEXT

Executive Order 12372, referred to in subsecs. (b)(2)(F) and (k), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

The Colorado River Basin Salinity Control Act, referred to in subsec. (g)(1), is Pub. L. 93–320, June 24, 1974, 88 Stat. 266, as amended, which is classified principally to chapter 32A (§1571 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1571 of Title 43 and Tables.

AMENDMENTS

2002—Subsecs. (i)(4), (m), (n). Pub. L. 107–303 repealed Pub. L. 105–362, §501(c). See 1998 Amendment note below.

1998—Subsec. (i)(4). Pub. L. 105–362, §501(c)(1), which directed the striking out of heading and text of par. (4), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

Subsecs. (m), (n). Pub. L. 105–362, §501(c)(2), (3), which directed the redesignation of subsec. (n) as (m) and striking out of heading and text of former subsec. (m), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

CHANGE OF NAME

Committee on Public Works and Transportation of House of Representatives treated as referring to Committee on Transportation and Infrastructure of House

of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

§ 1330. National estuary program

(a) Management conference

(1) Nomination of estuaries

The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) Convening of conference

(A) In general

In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an 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 to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) Priority consideration

The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.

(3) Boundary dispute exception

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.

(b) Purposes of conference

The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(4) 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;

(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(6) monitor the effectiveness of actions taken pursuant to the plan; and

(7) review all Federal financial assistance programs and Federal development projects in accordance with 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 the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) Members of conference

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 or entities 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 having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

(d) Utilization of existing data

In developing a conservation and management 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, and local agencies.

(e) Period of conference

A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(f) Approval and implementation of plans

(1) Approval

Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

(2) Implementation

Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under subchapters II and VI of this chapter and section 1329 of this title may be used in accordance with the applicable requirements of this chapter to assist States with the implementation of such plan.

(g) Grants

(1) Recipients

The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(2) Purposes

Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.

(3) Federal share

The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year—

(A) shall not exceed—

(i) 75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and

(ii) 50 percent of the annual aggregate costs of the implementation of the plan; and

(B) shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.

(4) Competitive awards

(A) In general

Using the amounts made available under subsection (i)(2)(B), the Administrator shall make competitive awards under this paragraph.

(B) Application for awards

The Administrator shall solicit applications for awards under this paragraph from State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(C) Selection of recipients

In selecting award recipients under this paragraph, the Administrator shall select recipients that are best able to address urgent and challenging issues that threaten the ecological and economic well-being of coastal areas. Such issues shall include—

(i) extensive seagrass habitat losses resulting in significant impacts on fisheries and water quality;

(ii) recurring harmful algae blooms;

(iii) unusual marine mammal mortalities;

(iv) invasive exotic species that may threaten wastewater systems and cause other damage;

(v) jellyfish proliferation limiting community access to water during peak tourism seasons;

(vi) flooding that may be related to sea level rise or wetland degradation or loss; and

(vii) low dissolved oxygen conditions in estuarine waters and related nutrient management.

(h) Grant reporting

Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

(i) Authorization of appropriations

(1) In general

There is authorized to be appropriated to the Administrator $26,500,000 for each of fiscal years 2017 through 2021 for—

(A) expenses relating to the administration of grants or awards by the Administrator under this section, including the award and oversight of grants and awards, except that such expenses may not exceed 5 percent of the amount appropriated under this subsection for a fiscal year; and

(B) making grants and awards under subsection (g).

(2) Allocations

(A) Conservation and management plans

Not less than 80 percent of the amount made available under this subsection for a fiscal year shall be used by the Adminis-

trator to provide grant assistance for the development, implementation, and monitoring of each of the conservation and management plans eligible for grant assistance under subsection (g)(2).

(B) Competitive awards

Not less than 15 percent of the amount made available under this subsection for a fiscal year shall be used by the Administrator for making competitive awards described in subsection (g)(4).

(j) Research

(1) Programs

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 parameters 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) Reports

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 (b)(4) of this section.

(k) Definitions

For purposes of this section, the terms ''estuary'' and ''estuarine zone'' have the meanings such terms have in section 1254(n)(4) of this title, except that the term ''estuarine zone'' shall also include associated aquatic ecosystems and 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.

(June 30, 1948, ch. 758, title III, § 320, as added Pub. L. 100–4, title III, § 317(b), Feb. 4, 1987, 101 Stat. 61; amended Pub. L. 100–202, § 101(f) [title II, 201], Dec. 22, 1987, 101 Stat. 1329–187, 1329–197; Pub. L. 100–653, title X, § 1004, Nov. 14, 1988, 102 Stat. 3836; Pub. L. 100–688, title II, § 2001, Nov. 18, 1988, 102 Stat. 4151; Pub. L. 105–362, title V, § 501(a)(2), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–457, title III, §§ 301—303, Nov. 7, 2000, 114 Stat. 1972; Pub. L. 107–303, title III, § 302(b)(1), Nov. 27, 2002, 116 Stat. 2361; Pub. L. 108–399, § 1, Oct. 30, 2004, 118 Stat. 2253; Pub. L. 114–162, §§ 1, 2, May 20, 2016, 130 Stat. 409.)

REFERENCES IN TEXT

Executive Order 12372, referred to in subsec. (b), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

AMENDMENTS

2016—Subsec. (g)(4). Pub. L. 114–162, § 1, added par. (4).

Subsec. (i). Pub. L. 114–162, § 2, added subsec. (i) and struck out former subsec. (i) which related to authorization of appropriations for fiscal years 2001 through 2010.

2004—Subsec. (i). Pub. L. 108–399 substituted ''2010'' for ''2005'' in introductory provisions.

2002—Subsec. (k). Pub. L. 107–303 repealed Pub. L. 105–362, § 501(a)(2). See 1998 Amendment note below.

2000—Subsec. (a)(2)(B). Pub. L. 106–457, § 301, inserted ''Lake Pontchartrain Basin, Louisiana and Mississippi;'' before ''and Peconic Bay, New York.''

Subsec. (g)(2), (3). Pub. L. 106–457, § 302, added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

''(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

''(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.''

Subsec. (i). Pub. L. 106–457, § 303, substituted ''$35,000,000 for each of fiscal years 2001 through 2005'' for ''$12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991''.

1998—Subsec. (k). Pub. L. 105–362, § 501(a)(2), which directed the substitution of ''section 1254(n)(3)'' for ''sec-

tion 1254(n)(4)'', was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

1988—Subsec. (a)(2)(B). Pub. L. 100–653, §1004, and Pub. L. 100–688, §2001(1), made identical amendments, inserting ''Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);'' after ''Buzzards Bay, Massachusetts;''.

Pub. L. 100–688, §2001(2), substituted ''California; Galveston'' for ''California; and Galveston''.

Pub. L. 100–688, §2001(3), which directed insertion of ''; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; and Peconic Bay, New York'' after ''Galveston Bay, Texas;'' was executed by making insertion after ''Galveston Bay, Texas'' as probable intent of Congress.

1987—Subsec. (a)(2)(B). Pub. L. 100–202 inserted ''Santa Monica Bay, California;''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

MASSACHUSETTS BAY PROTECTION; DEFINITION; FINDINGS AND PURPOSE; FUNDING SOURCES

Pub. L. 100–653, title X, §§1002, 1003, 1005, Nov. 14, 1988, 102 Stat. 3835, 3836, provided that:

''SEC. 1002. DEFINITION.

''For purposes of this title [amending section 1330 of this title and enacting provisions set out as notes under sections 1251 and 1330 of this title], the term 'Massachusetts Bay' includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of an area extending from Cape Ann, Massachusetts south to the northern reach of Cape Cod, Massachusetts.

''SEC. 1003. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The Congress finds and declares that—

''(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

''(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

''(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600's, are home to over 4 million people and support a thriving industrial and recreational economy;

''(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

''(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

''(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

''(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

''(8) the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

''(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

''(b) PURPOSE.—The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay.

''SEC. 1005. FUNDING SOURCES.

''Within one year of enactment [Nov. 14, 1988], the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act [33 U.S.C. 1330], and shall make every effort to coordinate existing research, monitoring or control efforts with such activities.''

PURPOSES AND POLICIES OF NATIONAL ESTUARY PROGRAM

Pub. L. 100–4, title III, §317(a), Feb. 4, 1987, 101 Stat. 61, provided that:

''(1) FINDINGS.—Congress finds and declares that—

''(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

''(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

''(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

''(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

''(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

''(2) PURPOSES.—The purposes of this section [enacting this section] are to—

''(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

''(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

''(C) encourage the preparation of management plans for estuaries of national significance; and

''(D) enhance the coordination of estuarine research.''

SUBCHAPTER IV—PERMITS AND LICENSES

§ 1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title.

Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

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

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements

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

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees

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

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

(June 30, 1948, ch. 758, title IV, § 401, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 877; amended Pub. L. 95–217, §§ 61(b), 64, Dec. 27, 1977, 91 Stat. 1598, 1599.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–217 inserted reference to section 1313 of this title in pars. (1), (3), (4), and (5), struck out par. (6) which provided that no Federal agency be deemed an applicant for purposes of this subsection, and redesignated par. (7) as (6).

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

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

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

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

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

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

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from

the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

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

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

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

(i) violation of any condition of the permit;

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

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

(D) control the disposal of pollutants into wells;

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

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

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

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

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

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

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

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

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

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

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

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

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

(4) LIMITATIONS ON PARTIAL PERMIT PROGRAM RETURNS AND WITHDRAWALS.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

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

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

(d) Notification of Administrator

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

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

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

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

(e) Waiver of notification requirement

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

(f) Point source categories

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

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

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

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

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

(i) Federal enforcement not limited

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

(j) Public information

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

(k) Compliance with permits

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

***(l)* Limitation on permit requirement**

(1) Agricultural return flows

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

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

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

(3) Silvicultural activities

(A) NPDES PERMIT REQUIREMENTS FOR SILVICULTURAL ACTIVITIES.—The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance.

(B) OTHER REQUIREMENTS.—Nothing in this paragraph exempts a discharge from silvicultural activity from any permitting requirement under section 1344 of this title, existing permitting requirements under section 1342 of this title, or from any other federal law.

(C) The authorization provided in Section[1] 1365(a) of this title does not apply to any nonpermitting program established under 1342(p)(6)[2] of this title for the silviculture activities listed in 1342(*l*)(3)(A)[2] of this title, or to any other limitations that might be deemed to apply to the silviculture activities listed in 1342(*l*)(3)(A)[2] of this title.

(m) Additional pretreatment of conventional pollutants not required

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

(n) Partial permit program

(1) State submission

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

(2) Minimum coverage

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

(3) Approval of major category partial permit programs

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

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

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

(4) Approval of major component partial permit programs

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

(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 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(*o*) Anti-backsliding

(1) General prohibition

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

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be preceded by ''section''.

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

(2) Exceptions

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

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

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

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

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

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

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

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

(p) Municipal and industrial stormwater discharges

(1) General rule

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

(2) Exceptions

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

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

(B) A discharge associated with industrial activity.

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

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

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

(3) Permit requirements

(A) Industrial discharges

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

(B) Municipal discharge

Permits for discharges from municipal storm sewers—

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

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

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

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after February

4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

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

(5) Studies

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

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

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

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

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

(6) Regulations

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

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

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

(2) Water quality and designated use review guidance

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

(3) Report

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

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

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

(s) Integrated plans

(1) Definition of integrated plan

In this subsection, the term ''integrated plan'' means a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(2) In general

The Administrator (or a State, in the case of a permit program approved by the Administrator) shall inform municipalities of the opportunity to develop an integrated plan that may be incorporated into a permit under this section.

(3) Scope

(A) Scope of permit incorporating integrated plan

A permit issued under this section that incorporates an integrated plan may integrate all requirements under this chapter addressed in the integrated plan, including requirements relating to—

(i) a combined sewer overflow;

(ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;

(iii) a municipal stormwater discharge;

(iv) a municipal wastewater discharge; and

(v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(B) Inclusions in integrated plan

An integrated plan incorporated into a permit issued under this section may include the implementation of—

(i) projects, including innovative projects, to reclaim, recycle, or reuse water; and

(ii) green infrastructure.

(4) Compliance schedules

(A) In general

A permit issued under this section that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the schedule of compliance—

(i) is authorized by State water quality standards; and

(ii) meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on January 14, 2019).

(B) Time for compliance

For purposes of subparagraph (A)(ii), the requirement of section 122.47 of title 40, Code of Federal Regulations, for compliance by an applicable statutory deadline under this chapter does not prohibit implementation of an applicable water quality-based effluent limitation over more than 1 permit term.

(C) Review

A schedule of compliance incorporated into a permit issued under this section may be reviewed at the time the permit is renewed to determine whether the schedule should be modified.

(5) Existing authorities retained

(A) Applicable standards

Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this chapter.

(B) Flexibility

Nothing in this subsection reduces or eliminates any flexibility available under this chapter, including the authority of a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 1313(c) of this title.

(6) Clarification of State authority

(A) In general

Nothing in section 1311(b)(1)(C) of this title precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) Transition rule

In any case in which a discharge is subject to a judicial order or consent decree, as of January 14, 2019, resolving an enforcement action under this chapter, any schedule of compliance issued pursuant to an authorization in a State water quality standard may not revise a schedule of compliance in that order or decree to be less stringent, unless the order or decree is modified by agreement of the parties and the court.

(June 30, 1948, ch. 758, title IV, § 402, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 880; amended Pub. L. 95–217, §§ 33(c), 50, 54(c)(1), 65, 66, Dec. 27, 1977, 91 Stat. 1577, 1588, 1591, 1599, 1600; Pub. L. 100–4, title IV, §§ 401–404(a), 404(c), formerly 404(d), 405, Feb. 4, 1987, 101 Stat. 65–67, 69, renumbered § 404(c), Pub. L. 104–66, title II, § 2021(e)(2), Dec. 21, 1995, 109 Stat. 727; Pub. L. 102–580, title III, § 364, Oct. 31, 1992, 106 Stat. 4862; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 112(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–224; Pub. L. 110–288, § 2, July 29, 2008, 122 Stat. 2650; Pub. L. 113–79, title XII, § 12313, Feb. 7, 2014, 128 Stat. 992; Pub. L. 115–436, § 3(a), Jan. 14, 2019, 132 Stat. 5558.)

AMENDMENTS

2019—Subsec. (s). Pub. L. 115–436 added subsec. (s).

2014—Subsec. (*l*)(3). Pub. L. 113–79 added par. (3).

2008—Subsec. (r). Pub. L. 110–288 added subsec. (r).

2000—Subsec. (q). Pub. L. 106–554 added subsec. (q).

1992—Subsec. (p)(1), (6). Pub. L. 102–580 substituted ''October 1, 1994'' for ''October 1, 1992'' in par. (1) and ''October 1, 1993'' for ''October 1, 1992'' in par. (6).

1987—Subsec. (a)(1). Pub. L. 100–4, § 404(c), inserted cl. (A) and (B) designations.

Subsec. (c)(1). Pub. L. 100–4, § 403(b)(2), substituted ''as to those discharges'' for ''as to those navigable waters''.

Subsec. (c)(4). Pub. L. 100–4, § 403(b)(1), added par. (4).

Subsec. (*l*). Pub. L. 100–4, § 401, inserted ''Limitation on permit requirement'' as subsec. heading designated existing provisions as par. (1) and inserted par. heading, added par. (2), and aligned pars. (1) and (2).

Subsecs. (m) to (p). Pub. L. 100–4, §§ 402, 403(a), 404(a), 405, added subsecs. (m) to (p).

1977—Subsec. (a)(5). Pub. L. 95–217, § 50, substituted ''section 1314(i)(2)'' for ''section 1314(h)(2)''.

Subsec. (b). Pub. L. 95–217, § 50, substituted in provisions preceding par. (1) ''subsection (i)(2) of section 1314'' for ''subsection (h)(2) of section 1314''.

Subsec. (b)(8). Pub. L. 95–217, § 54(c)(1), inserted reference to identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.

Subsec. (c)(1), (2). Pub. L. 95–217, § 50, substituted ''section 1314(i)(2)'' for ''section 1314(h)(2)''.

Subsec. (d)(2). Pub. L. 95–217, § 65(b), inserted provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.

Subsec. (d)(4). Pub. L. 95–217, § 65(a), added par. (4).

Subsec. (e). Pub. L. 95–217, § 50, substituted ''subsection (i)(2) of section 1314'' for ''subsection (h)(2) of section 1314''.

Subsec. (h). Pub. L. 95–217, § 66, substituted ''where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit,'' for ''where no State program is approved,''.

Subsec. (*l*). Pub. L. 95–217, § 33(c), added subsec. (*l*).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to compliance with national pollutant discharge elimination system permits with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

PERMIT REQUIREMENTS FOR DISCHARGES FROM CERTAIN VESSELS

Pub. L. 110–299, §§ 1, 2, July 31, 2008, 122 Stat. 2995, as amended by Pub. L. 111–215, § 1, July 30, 2010, 124 Stat. 2347; Pub. L. 112–213, title VII, § 703, Dec. 20, 2012, 126 Stat. 1580; Pub. L. 113–281, title VI, § 602, Dec. 18, 2014, 128 Stat. 3061; Pub. L. 115–100, § 1, Jan. 3, 2018, 131 Stat. 2245, which exempted from permit requirements, for the period from July 31, 2008, through Jan. 19, 2018, discharges incidental to the normal operation of vessels, subject to certain exceptions, was repealed by Pub. L. 115–282, title IX, § 903(a)(2)(A)(ii), Dec. 4, 2018, 132 Stat. 4354.

STORMWATER PERMIT REQUIREMENTS

Pub. L. 102–240, title I, § 1068, Dec. 18, 1991, 105 Stat. 2007, provided that:

''(a) GENERAL RULE.—Notwithstanding the requirements of sections 402(p)(2)(B), (C), and (D) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(B), (C), (D)], permit application deadlines for stormwater discharges associated with industrial activities from facilities that are owned or operated by a municipality shall be established by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') pursuant to the requirements of this section.

''(b) PERMIT APPLICATIONS.—

''(1) INDIVIDUAL APPLICATIONS.—The Administrator shall require individual permit applications for discharges described in subsection (a) on or before October 1, 1992; except that any municipality that has participated in a timely part I group application for an industrial activity discharging stormwater that is denied such participation in a group application or for which a group application is denied shall not be required to submit an individual application until the 180th day following the date on which the denial is made.

''(2) GROUP APPLICATIONS.—With respect to group applications for permits for discharges described in subsection (a), the Administrator shall require—

''(A) part I applications on or before September 30, 1991, except that any municipality with a population of less than 250,000 shall not be required to submit a part I application before May 18, 1992; and

''(B) part II applications on or before October 1, 1992, except that any municipality with a population of less than 250,000 shall not be required to submit a part II application before May 17, 1993.

''(c) MUNICIPALITIES WITH LESS THAN 100,000 POPULATION.—The Administrator shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any stormwater discharge associated with an industrial activity other than an airport, powerplant, or uncontrolled sanitary landfill owned or operated by such municipality before October 1, 1992, unless such permit is required by section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

''(d) UNCONTROLLED SANITARY LANDFILL DEFINED.—For the purposes of this section, the term 'uncontrolled sanitary landfill' means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act [42 U.S.C. 6941 et seq.].

''(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect any application or permit requirement, including any deadline, to apply for or obtain a permit for stormwater discharges subject to section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

''(f) REGULATIONS.—The Administrator shall issue final regulations with respect to general permits for stormwater discharges associated with industrial activity on or before February 1, 1992.''

PHOSPHATE FERTILIZER EFFLUENT LIMITATION

Pub. L. 100–4, title III, § 306(c), Feb. 4, 1987, 101 Stat. 36, provided that:

''(1) ISSUANCE OF PERMIT.—As soon as possible after the date of the enactment of this Act [Feb. 4, 1987], but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)] with respect to facilities—

''(A) which were under construction on or before April 8, 1974, and

''(B) for which the Administrator is proposing to revise the applicability of the effluent limitation established under section 301(b) of such Act [33 U.S.C. 1311(b)] for phosphate subcategory of the fertilizer manufacturing point source category to exclude such facilities.

''(2) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section [amending section 1311 of this title and enacting this note] shall be construed—

''(A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters,

''(B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)], and

''(C) to affect the authority of any State to deny or condition certification under section 401 of such Act [33 U.S.C. 1341] with respect to the issuance of permits under section 402(a)(1)(B) of such Act.''

LOG TRANSFER FACILITIES

Pub. L. 100–4, title IV, § 407, Feb. 4, 1987, 101 Stat. 74, provided that:

''(a) AGREEMENT.—The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344], where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement 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.

''(b) APPLICATIONS AND PERMITS BEFORE OCTOBER 22, 1985.—Where both of sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344] apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act [33 U.S.C. 1311, 1312, 1316, 1317, 1318, and 1343], a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such 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 such Act.

''(c) LOG TRANSFER FACILITY DEFINED.—For the purposes 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.''

ALLOWABLE DELAY IN MODIFYING EXISTING APPROVED STATE PERMIT PROGRAMS TO CONFORM TO 1977 AMENDMENT

Pub. L. 95–217, § 54(c)(2), Dec. 27, 1977, 91 Stat. 1591, provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub. L. 95–217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

§ 1343. Ocean discharge criteria

(a) Issuance of permits

No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

(b) Waiver

The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.

(c) Guidelines for determining degradation of waters

(1) The Administrator shall, within one hundred and eighty days after October 18, 1972 (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

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

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

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

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

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

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

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

(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 1342 of this title.

(June 30, 1948, ch. 758, title IV, § 403, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 883.)

DISCHARGES FROM POINT SOURCES IN UNITED STATES VIRGIN ISLANDS ATTRIBUTABLE TO MANUFACTURE OF RUM; EXEMPTION; CONDITIONS

Discharges from point sources in the United States Virgin Islands in existence on Aug. 5, 1983, attributable to the manufacture of rum not to be subject to the requirements of this section under certain conditions, see section 214(g) of Pub. L. 98–67, set out as a note under section 1311 of this title.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

§ 1344. Permits for dredged or fill material

(a) Discharge into navigable waters at specified disposal sites

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

(b) Specification for disposal sites

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

through the application additionally of the economic impact of the site on navigation and anchorage.

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

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

(d) "Secretary" defined

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

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

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

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

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

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

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

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

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

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

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

(F) resulting from any activity with respect to which a State has an approved program under section 1288(b)(4) of this title which meets the requirements of subparagraphs (B) and (C) of such section,

is not prohibited by or otherwise subject to regulation under this section or section 1311(a) or 1342 of this title (except for effluent standards or prohibitions under section 1317 of this title).

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

(g) State administration

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

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

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

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

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

(A) To issue permits which—

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

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

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

(I) violation of any condition of the permit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and en-

force the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Withdrawal of approval

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

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

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

(k) Waiver

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

(*l*) Categories of discharges not subject to requirements

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

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

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

(n) Enforcement authority not limited

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

(*o*) Public availability of permits and permit applications

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

(p) Compliance

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

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

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

(r) Federal projects specifically authorized by Congress

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

(s) Violation of permits

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

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

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

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

(t) Navigable waters within State jurisdiction

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

(June 30, 1948, ch. 758, title IV, § 404, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 884; amended Pub. L. 95–217, § 67(a), (b), Dec. 27, 1977, 91 Stat. 1600; Pub. L. 100–4, title III, § 313(d), Feb. 4, 1987, 101 Stat. 45.)

[1] So in original. Probably should be ''action''.

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (r), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1987—Subsec. (s). Pub. L. 100–4 redesignated par. (5) as (4), substituted ''$25,000 per day for each violation'' for ''$10,000 per day of such violation'', inserted provision specifying factors to consider in determining the penalty amount, and struck out former par. (4) which read as follows:

''(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 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 1362(5) of this title, any responsible corporate officer.''

1977—Subsec. (a). Pub. L. 95–217, § 67(a)(1), substituted ''The Secretary'' for ''The Secretary of the Army, acting through the Chief of Engineers,'' and inserted provision that, not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary publish the notice required by this subsection.

Subsecs. (b), (c). Pub. L. 95–217, § 67(a)(2), substituted ''the Secretary'' for ''the Secretary of the Army''.

Subsecs. (d) to (t). Pub. L. 95–217, § 67(b), added subsecs. (d) to (t).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Enforcement functions of Administrator or other official of the Environmental Protection Agency and of Secretary or other official in Department of the Interior relating to review of the Corps of Engineers' dredged and fill material permits and such functions of Secretary of the Army, Chief of Engineers, or other official in Corps of Engineers of the United States Army relating to compliance with dredged and fill material permits issued under this section with respect to preconstruction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), (b), (e), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

MITIGATION AND MITIGATION BANKING REGULATIONS

Pub. L. 108–136, div. A, title III, § 314(b), Nov. 24, 2003, 117 Stat. 1431, provided that:

''(1) To ensure opportunities for Federal agency participation in mitigation banking, the Secretary of the Army, acting through the Chief of Engineers, shall issue regulations establishing performance standards and criteria for the use, consistent with section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344), of on-site, off-site, and in-lieu fee mitigation and mitigation banking as compensation for lost wetlands functions in permits issued by the Secretary of the Army under such section. To the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for regional variations in wetland conditions, functions and values, and apply equivalent standards and criteria to each type of compensatory mitigation.

''(2) Final regulations shall be issued not later than two years after the date of the enactment of this Act [Nov. 24, 2003].''

REGULATORY PROGRAM

Pub. L. 106–377, § 1(a)(2) [title I], Oct. 27, 2000, 114 Stat. 1441, 1441A–63, provided in part that: ''For expenses necessary for administration of laws pertaining to regulation of navigable waters and wetlands, $125,000,000, to remain available until expended: *Provided*, That the Secretary of the Army, acting through the Chief of Engineers, is directed to use funds appropriated herein to: (1) by March 1, 2001, supplement the report, Cost Analysis For the 1999 Proposal to Issue and Modify Nationwide Permits, to reflect the Nationwide Permits actually issued on March 9, 2000, including changes in the acreage limits, preconstruction notification requirements and general conditions between the rule proposed on July 21, 1999, and the rule promulgated and published in the Federal Register; (2) after consideration of the cost analysis for the 1999 proposal to issue and modify nationwide permits and the supplement prepared pursuant to this Act [H.R. 5483, as enacted by section 1(a)(2) of Pub. L. 106–377, see Tables for classification] and by September 30, 2001, prepare, submit to Congress and publish in the Federal Register a Permit Processing Management Plan by which the Corps of Engineers will handle the additional work associated with all projected increases in the number of individual permit applications and preconstruction notifications related to the new and replacement permits and general conditions. The Permit Processing Management Plan shall include specific objective goals and criteria by which the Corps of Engineers' progress towards reducing any permit backlog can be measured; (3) beginning on December 31, 2001, and on a biannual basis thereafter, report to Congress and publish in the Federal Register, an analysis of the performance of its program as measured against the criteria set out in the Permit Processing Management Plan; (4) implement a 1-year pilot program to publish quarterly on the U.S. Army Corps of Engineer's Regulatory Program website all Regulatory Analysis and Management Systems (RAMS) data for the South Pacific Division and North Atlantic Division beginning within 30 days of the enactment of this Act [Oct. 27, 2000]; and (5) publish in Division Office websites all findings, rulings, and decisions rendered under the administrative appeals process for the Corps of Engineers Regulatory Program as established in Public Law 106–60 [113 Stat. 486]: *Provided further*, That, through the period ending on September 30, 2003, the Corps of Engineers shall allow any appellant to keep a verbatim record of the proceedings of the appeals conference under the aforementioned administrative appeals process: *Provided further*, That within 30 days of the enactment of this Act, the Secretary of the Army,

acting through the Chief of Engineers, shall require all U.S. Army Corps of Engineers Divisions and Districts to record the date on which a section 404 individual permit application or nationwide permit notification is filed with the Corps of Engineers: *Provided further*, That the Corps of Engineers, when reporting permit processing times, shall track both the date a permit application is first received and the date the application is considered complete, as well as the reason that the application is not considered complete upon first submission.''

AUTHORITY TO DELEGATE TO STATE OF WASHINGTON FUNCTIONS OF THE SECRETARY RELATING TO LAKE CHELAN, WASHINGTON

Pub. L. 95–217, § 76, Dec. 27, 1977, 91 Stat. 1610, provided that: ''The Secretary of the Army, acting through the Chief of Engineers, is authorized to delegate to the State of Washington upon its request all or any part of those functions vested in such Secretary by section 404 of the Federal Water Pollution Control Act [this section] and by sections 9, 10, and 13 of the Act of March 3, 1899 [sections 401, 403, and 407 of this title], relating to Lake Chelan, Washington, if the Secretary determines (1) that such State has the authority, responsibility, and capability to carry out such functions, and (2) that such delegation is in the public interest. Such delegation shall be subject to such terms and conditions as the Secretary deems necessary, including, but not limited to, suspension and revocation for cause of such delegation.''

DREDGED MATERIAL DISPOSAL

Pub. L. 114–322, title I, § 1189, Dec. 16, 2016, 130 Stat. 1681, provided that: ''Disposal of dredged material shall not be considered environmentally acceptable for the purposes of identifying the Federal standard (as defined in section 335.7 of title 33, Code of Federal Regulations (or successor regulations)) if the disposal violates applicable State water quality standards approved by the Administrator of the Environmental Protection Agency under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313).''

CONTIGUOUS ZONE OF UNITED STATES

For extension of contiguous zone of United States, see Proc. No. 7219, set out as a note under section 1331 of Title 43, Public Lands.

§ 1345. Disposal or use of sewage sludge

(a) Permit

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

(b) Issuance of permit; regulations

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

(c) State permit program

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

(d) Regulations

(1) Regulations

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

(A) identify uses for sludge, including disposal;

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

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

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

(2) Identification and regulation of toxic pollutants

(A) On basis of available information

(i) Proposed regulations

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

(ii) Final regulations

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

(B) Others

(i) Proposed regulations

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

(ii) Final regulations

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

(C) Review

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

(D) Minimum standards; compliance date

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

(3) Alternative standards

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

(4) Conditions on permits

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

(5) Limitation on statutory construction

Nothing in this section is intended to waive more stringent requirements established by this chapter or any other law.

(e) Manner of sludge disposal

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

(f) Implementation of regulations

(1) Through section 1342 permits

Any permit issued under section 1342 of this title to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations established pursuant to subsection (d) of this section, unless such requirements have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.], the Marine Protection, Research, and Sanctuaries Act of 1972 [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.], or the Clean Air Act [42 U.S.C. 7401 et seq.], or under State permit programs approved by the Administrator, where the Administrator determines that such programs assure compliance with any applicable requirements of this section. Not later than December 15, 1986, the Administrator shall promulgate procedures for approval of State programs pursuant to this paragraph.

(2) Through other permits

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

(g) Studies and projects

(1) Grant program; information gathering

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

(2) Authorization of appropriations

For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects au-

thorized in this section, there is authorized to be appropriated for fiscal years beginning after September 30, 1986, not to exceed $5,000,000.

(June 30, 1948, ch. 758, title IV, § 405, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 884; amended Pub. L. 95–217, §§ 54(d), 68, Dec. 27, 1977, 91 Stat. 1591, 1606; Pub. L. 100–4, title IV, § 406(a)–(c), (f), Feb. 4, 1987, 101 Stat. 71, 72, 74.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The Safe Drinking Water Act, referred to in subsec. (f)(1), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended. Part C of the Act is classified generally to part C (§ 300h et seq.) of subchapter XII of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Marine Protection, Research, and Sanctuaries Act of 1972, referred to in subsec. (f)(1), is Pub. L. 92–532, Oct. 23, 1972, 86 Stat. 1052, as amended, which is classified generally to chapters 32 (§ 1431 et seq.) and 32A (§ 1447 et seq.) of Title 16, Conservation, and chapters 27 (§ 1401 et seq.) and 41 (§ 2801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of this title and Tables.

The Clean Air Act, referred to in subsec. (f)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

1987—Subsec. (d). Pub. L. 100–4, § 406(a), designated existing provision as par. (1), inserted heading, redesignated former pars. (1) to (3) as subpars. (A) to (C), and added pars. (2) to (5).

Pub. L. 100–4, § 406(f), inserted heading ''Regulations'' and aligned par. (1) with par. (3) and subpars. (A) to (C) of par. (1) with subpar. (C) of par. (2).

Subsec. (e). Pub. L. 100–4, § 406(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''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 dispose 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.''

Subsecs. (f), (g). Pub. L. 100–4, § 406(c), added subsecs. (f) and (g).

1977—Subsec. (a). Pub. L. 95–217, § 68(a), substituted ''under section 1342 of this title'' for ''under this section''.

Subsec. (b). Pub. L. 95–217, §§ 54(d)(1), 68(b), (c), substituted ''sewage sludge subject to subsection (a) of this section and section 1342 of this title'' for ''sewage sludge subject to this section'' and struck out '', as the Administrator determines necessary to carry out the objective of this chapter'' after ''permit issued under section 1342 of this title''.

Subsec. (c). Pub. L. 95–217, §§ 54(d)(2), 68(d), substituted ''disposal of sewage sludge subject to subsection (a) of this section within its jurisdiction may do so in accordance with section 1342 of this title'' for ''disposal of sewage sludge within its jurisdiction may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter''.

Subsecs. (d), (e). Pub. L. 95–217, § 54(d)(3), added subsecs. (d) and (e).

REMOVAL CREDITS

Pub. L. 100–4, title IV, § 406(e), Feb. 4, 1987, 101 Stat. 73, provided that: ''The part of the decision of Natural Resources Defense Council, Inc. v. U.S. Environmental Protection Agency, No. 84–3530 (3d. Cir. 1986), which addresses section 405(d) of the Federal Water Pollution Control Act [33 U.S.C. 1345(d)] is stayed until August 31, 1987, with respect to—

''(1) those publicly owned treatment works the owner or operator of which received authority to revise pretreatment requirements under section 307(b)(1) of such Act [33 U.S.C. 1317(b)(1)] before the date of the enactment of this section [Feb. 4, 1987], and

''(2) those publicly owned treatment works the owner or operator of which has submitted an application for authority to revise pretreatment requirements under such section 307(b)(1) which application is pending on such date of enactment and is approved before August 31, 1987.

The Administrator shall not authorize any other removal credits under such Act [33 U.S.C. 1251 et seq.] until the Administrator issues the regulations required by paragraph (2)(A)(ii) of section 405(d) of such Act, as amended by subsection (a) of this section.''

§ 1346. Coastal recreation water quality monitoring and notification

(a) Monitoring and notification

(1) In general

Not later than 18 months after October 10, 2000, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), and after providing public notice and an opportunity for comment, the Administrator shall publish performance criteria for—

(A) monitoring and assessment (including specifying available methods for monitoring) of coastal recreation waters adjacent to beaches or similar points of access that are used by the public for attainment of applicable water quality standards for pathogens and pathogen indicators; and

(B) the prompt notification of the public, local governments, and the Administrator of any exceeding of or likelihood of exceeding applicable water quality standards for coastal recreation waters described in subparagraph (A).

(2) Level of protection

The performance criteria referred to in paragraph (1) shall provide that the activities described in subparagraphs (A) and (B) of that paragraph shall be carried out as necessary for the protection of public health and safety.

(b) Program development and implementation grants

(1) In general

The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or similar points of access that are used by the public.

(2) Limitations

(A) In general

The Administrator may award a grant to a State or a local government to implement a monitoring and notification program if—

(i) the program is consistent with the performance criteria published by the Administrator under subsection (a);

(ii) the State or local government prioritizes the use of grant funds for particular coastal recreation waters based on the use of the water and the risk to human health presented by pathogens or pathogen indicators;

(iii) the State or local government makes available to the Administrator the factors used to prioritize the use of funds under clause (ii);

(iv) the State or local government provides a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent consistency with the performance criteria under subsection (a); and

(v) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

(B) Grants to local governments

The Administrator may make a grant to a local government under this subsection for implementation of a monitoring and notification program only if, after the 1-year period beginning on the date of publication of performance criteria under subsection (a)(1), the Administrator determines that the State is not implementing a program that meets the requirements of this subsection, regardless of whether the State has received a grant under this subsection.

(3) Other requirements

(A) Report

A State recipient of a grant under this subsection shall submit to the Administrator, in such format and at such intervals as the Administrator determines to be appropriate, a report that describes—

(i) data collected as part of the program for monitoring and notification as described in subsection (c); and

(ii) actions taken to notify the public when water quality standards are exceeded.

(B) Delegation

A State recipient of a grant under this subsection shall identify each local government to which the State has delegated or intends to delegate responsibility for implementing a monitoring and notification program consistent with the performance criteria published under subsection (a) (including any coastal recreation waters for which the authority to implement a monitoring and notification program would be subject to the delegation).

(4) Federal share

(A) In general

The Administrator, through grants awarded under this section, may pay up to 100 percent of the costs of developing and implementing a program for monitoring and notification under this subsection.

(B) Non-Federal share

The non-Federal share of the costs of developing and implementing a monitoring and notification program may be—

(i) in an amount not to exceed 50 percent, as determined by the Administrator in consultation with State, tribal, and local government representatives; and

(ii) provided in cash or in kind.

(c) Content of State and local government programs

As a condition of receipt of a grant under subsection (b), a State or local government program for monitoring and notification under this section shall identify—

(1) lists of coastal recreation waters in the State, including coastal recreation waters adjacent to beaches or similar points of access that are used by the public;

(2) in the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on—

(A) the periods of recreational use of the waters;

(B) the nature and extent of use during certain periods;

(C) the proximity of the waters to known point sources and nonpoint sources of pollution; and

(D) any effect of storm events on the waters;

(4)(A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

(B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) measures for prompt communication of the occurrence, nature, location, pollutants involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A) the Administrator, in such form as the Administrator determines to be appropriate; and

(B) a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) measures for the posting of signs at beaches or similar points of access, or functionally equivalent communication measures

that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

(d) Federal agency programs

Not later than 3 years after October 10, 2000, each Federal agency that has jurisdiction over coastal recreation waters adjacent to beaches or similar points of access that are used by the public shall develop and implement, through a process that provides for public notice and an opportunity for comment, a monitoring and notification program for the coastal recreation waters that—

(1) protects the public health and safety;

(2) is consistent with the performance criteria published under subsection (a);

(3) includes a completed report on the information specified in subsection (b)(3)(A), to be submitted to the Administrator; and

(4) addresses the matters specified in subsection (c).

(e) Database

The Administrator shall establish, maintain, and make available to the public by electronic and other means a national coastal recreation water pollution occurrence database that provides—

(1) the data reported to the Administrator under subsections (b)(3)(A)(i) and (d)(3); and

(2) other information concerning pathogens and pathogen indicators in coastal recreation waters that—

(A) is made available to the Administrator by a State or local government, from a coastal water quality monitoring program of the State or local government; and

(B) the Administrator determines should be included.

(f) Technical assistance for monitoring floatable material

The Administrator shall provide technical assistance to States and local governments for the development of assessment and monitoring procedures for floatable material to protect public health and safety in coastal recreation waters.

(g) List of waters

(1) In general

Beginning not later than 18 months after the date of publication of performance criteria under subsection (a), based on information made available to the Administrator, the Administrator shall identify, and maintain a list of, discrete coastal recreation waters adjacent to beaches or similar points of access that are used by the public that—

(A) specifies any waters described in this paragraph that are subject to a monitoring and notification program consistent with the performance criteria established under subsection (a); and

(B) specifies any waters described in this paragraph for which there is no monitoring and notification program (including waters for which fiscal constraints will prevent the State or the Administrator from performing monitoring and notification consistent with the performance criteria established under subsection (a)).

(2) Availability

The Administrator shall make the list described in paragraph (1) available to the public through—

(A) publication in the Federal Register; and

(B) electronic media.

(3) Updates

The Administrator shall update the list described in paragraph (1) periodically as new information becomes available.

(h) EPA implementation

In the case of a State that has no program for monitoring and notification that is consistent with the performance criteria published under subsection (a) after the last day of the 3-year period beginning on the date on which the Administrator lists waters in the State under subsection (g)(1)(B), the Administrator shall conduct a monitoring and notification program for the listed waters based on a priority ranking established by the Administrator using funds appropriated for grants under subsection (i)—

(1) to conduct monitoring and notification; and

(2) for related salaries, expenses, and travel.

(i) Authorization of appropriations

There is authorized to be appropriated for making grants under subsection (b), including implementation of monitoring and notification programs by the Administrator under subsection (h), $30,000,000 for each of fiscal years 2001 through 2005.

(June 30, 1948, ch. 758, title IV, § 406, as added Pub. L. 106–284, § 4, Oct. 10, 2000, 114 Stat. 872.)

SUBCHAPTER V—GENERAL PROVISIONS

§ 1361. Administration

(a) Authority of Administrator to prescribe regulations

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees

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

(c) Recordkeeping

Each recipient of financial assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion

of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate effective audit.

(d) Audit

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter. For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this chapter, the Administrator is authorized to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.

(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs

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

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

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

(f) Detail of Environmental Protection Agency personnel to State water pollution control agencies

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

(June 30, 1948, ch. 758, title V, § 501, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 885; amended Pub. L. 100–4, title V, § 501, Feb. 4, 1987, 101 Stat. 75.)

AMENDMENTS

1987—Subsec. (d). Pub. L. 100–4 inserted provision at end authorizing Administrator to enter into noncompetitive procurement contracts with independent State audit organizations, consistent with chapter 75 of title 31, but only to extent and in such amounts as provided in advance in appropriations Acts.

APPLICABILITY OF SPILL PREVENTION, CONTROL, AND COUNTERMEASURE RULE

Pub. L. 113–121, title I, § 1049, June 10, 2014, 128 Stat. 1257, as amended by Pub. L. 114–322, title IV, § 5011, Dec. 16, 2016, 130 Stat. 1902, provided that:

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

''(2) FARM.—The term 'farm' has the meaning given the term in section 112.2 of title 40, Code of Federal Regulations (or successor regulations).

''(3) GALLON.—The term 'gallon' means a United States gallon.

''(4) OIL.—The term 'oil' has the meaning given the term in section 112.2 of title 40, Code of Federal Regulations (or successor regulations).

''(5) OIL DISCHARGE.—The term 'oil discharge' has the meaning given the term 'discharge' in section 112.2 of title 40, Code of Federal Regulations (or successor regulations).

''(6) REPORTABLE OIL DISCHARGE HISTORY.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term 'reportable oil discharge history' means a single oil discharge, as described in section 112.1(b) of title 40, Code of Federal Regulations (including successor regulations), that exceeds 1,000 gallons or 2 oil discharges, as described in section 112.1(b) of title 40, Code of Federal Regulations (including successor regulations), that each exceed 42 gallons within any 12-month period—

''(i) in the 3 years prior to the certification date of the Spill Prevention, Control, and Countermeasure plan (as described in section 112.3 of title 40, Code of Federal Regulations (including successor regulations); or

''(ii) since becoming subject to part 112 of title 40, Code of Federal Regulations, if the facility has been in operation for less than 3 years.

''(B) EXCLUSIONS.—The term 'reportable oil discharge history' does not include an oil discharge, as described in section 112.1(b) of title 40, Code of Federal Regulations (including successor regulations), that is the result of a natural disaster, an act of war, or terrorism.

''(7) SPILL PREVENTION, CONTROL, AND COUNTERMEASURE RULE.—The term 'Spill Prevention, Control, and Countermeasure rule' means the regulation, including amendments, promulgated by the Administrator under part 112 of title 40, Code of Federal Regulations (or successor regulations).

''(b) CERTIFICATION.—In implementing the Spill Prevention, Control, and Countermeasure rule with respect to any farm, the Administrator shall—

''(1) require certification by a professional engineer for a farm with—

''(A) an individual tank with an aboveground storage capacity greater than 10,000 gallons;

''(B) an aggregate aboveground storage capacity greater than or equal to 20,000 gallons; or

''(C) a reportable oil discharge history; or

''(2) allow certification by the owner or operator of the farm (via self-certification) for a farm with—

''(A) an aggregate aboveground storage capacity less than 20,000 gallons and greater than the lesser of—

''(i) 6,000 gallons; and

''(ii) the adjustment quantity established under subsection (d)(2); and

''(B) no reportable oil discharge history; and

''(3) not require compliance with the rule by any farm—

''(A) with an aggregate aboveground storage capacity greater than 2,500 gallons and less than the lesser of—

''(i) 6,000 gallons; and

''(ii) the adjustment quantity established under subsection (d)(2); and

''(B) no reportable oil discharge history; and

''(4) not require compliance with the rule by any farm with an aggregate aboveground storage capacity of less than 2,500 gallons.

''(c) REGULATION OF ABOVEGROUND STORAGE AT FARMS.—

''(1) CALCULATION OF AGGREGATE ABOVEGROUND STORAGE CAPACITY.—For purposes of subsection (b), the aggregate aboveground storage capacity of a farm excludes—

''(A) all containers on separate parcels that have a capacity that is 1,000 gallons or less; and

''(B) all containers holding animal feed ingredients approved for use in livestock feed by the Commissioner of Food and Drugs.

''(2) CERTAIN FARM CONTAINERS.—Part 112 of title 40, Code of Federal Regulations (or successor regulations), shall not apply to the following containers located at a farm:

''(A) Containers on a separate parcel that have—

''(i) an individual capacity of not greater than 1,000 gallons; and

''(ii) an aggregate capacity of not greater than 2,500 gallons.

''(B) A container holding animal feed ingredients approved for use in livestock feed by the Food and Drug Administration.

''(d) STUDY.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [June 10, 2014], the Administrator, in consultation with the Secretary of Agriculture, shall conduct a study to determine the appropriate exemption under paragraphs (2) and (3) of subsection (b), which shall be not more than 6,000 gallons and not less than 2,500 gallons, based on a significant risk of discharge to water.

''(2) ADJUSTMENT.—Not later than 18 months after the date on which the study described in paragraph (1) is complete, the Administrator, in consultation with the Secretary of Agriculture, shall promulgate a rule to adjust the exemption levels described in paragraphs (2) and (3) of subsection (b) in accordance with the study.''

ENVIRONMENTAL COURT FEASIBILITY STUDY

Pub. L. 92–500, § 9, Oct. 18, 1972, 86 Stat. 899, authorized the President, acting through the Attorney General, to study the feasibility of establishing a separate court or court system with jurisdiction over environmental matters and required him to report the results of his study, together with his recommendations, to Congress not later than one year after Oct. 18, 1972.

TRANSFER OF PUBLIC HEALTH SERVICE OFFICERS

Pub. L. 89–234, § 2(b)–(k), Oct. 2, 1965, 79 Stat. 904, 905, authorized the transfer of certain commissioned officers of the Public Health Service to classified positions in the Federal Water Pollution Control Administration, now the Environmental Protection Agency, where such transfer was requested within six months after the establishment of the Administration and made certain administrative provisions relating to pension and retirement rights of the transferees, sick leave benefits, group life insurance, and certain other miscellaneous provisions.

§ 1362. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) COASTAL RECREATION WATERS.—

(A) IN GENERAL.—The term ''coastal recreation waters'' means—

(i) the Great Lakes; and

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

(B) EXCLUSIONS.—The term ''coastal recreation waters'' does not include—

(i) inland waters; or

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

(22) FLOATABLE MATERIAL.—

(A) IN GENERAL.—The term ''floatable material'' means any foreign matter that may float or remain suspended in the water column.

(B) INCLUSIONS.—The term ''floatable material'' includes—

(i) plastic;

(ii) aluminum cans;

(iii) wood products;

(iv) bottles; and

(v) paper products.

(23) PATHOGEN INDICATOR.—The term ''pathogen indicator'' means a substance that indicates the potential for human infectious disease.

(24) OIL AND GAS EXPLORATION AND PRODUCTION.—The term ''oil and gas exploration, production, processing, or treatment operations or transmission facilities'' means all field activities or operations associated with exploration, production, processing, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activities.

(25) RECREATIONAL VESSEL.—

(A) IN GENERAL.—The term ''recreational vessel'' means any vessel that is—

(i) manufactured or used primarily for pleasure; or

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

(B) EXCLUSION.—The term ''recreational vessel'' does not include a vessel that is subject to Coast Guard inspection and that—

(i) is engaged in commercial use; or

(ii) carries paying passengers.

(26) TREATMENT WORKS.—The term ''treatment works'' has the meaning given the term in section 1292 of this title.

(27) GREEN INFRASTRUCTURE.—The term ''green infrastructure'' means the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.

(June 30, 1948, ch. 758, title V, § 502, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 886; amended Pub. L. 95–217, § 33(b), Dec. 27, 1977, 91 Stat. 1577; Pub. L. 100–4, title V, §§ 502(a), 503, Feb. 4, 1987, 101 Stat. 75; Pub. L. 100–688, title III, § 3202(a), Nov. 18, 1988, 102 Stat. 4154; Pub. L. 104–106, div. A, title III, § 325(c)(3), Feb. 10, 1996, 110 Stat. 259;

Pub. L. 106–284, § 5, Oct. 10, 2000, 114 Stat. 875; Pub. L. 109–58, title III, § 323, Aug. 8, 2005, 119 Stat. 694; Pub. L. 110–288, § 3, July 29, 2008, 122 Stat. 2650; Pub. L. 113–121, title V, § 5012(b), June 10, 2014, 128 Stat. 1328; Pub. L. 115–436, § 5(a), Jan. 14, 2019, 132 Stat. 5561.)

AMENDMENTS

2019—Par. (27). Pub. L. 115–436 added par. (27).
2014—Par. (26). Pub. L. 113–121 added par. (26).
2008—Par. (25). Pub. L. 110–288 added par. (25).
2005—Par. (24). Pub. L. 109–58 added par. (24).
2000—Pars. (21) to (23). Pub. L. 106–284 added pars. (21) to (23).
1996—Par. (6)(A). Pub. L. 104–106 substituted '' 'sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces' '' for '' 'sewage from vessels' ''.
1988—Par. (20). Pub. L. 100–688 added par. (20).
1987—Par. (3). Pub. L. 100–4, § 502(a), inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Samoa,''.
Par. (14). Pub. L. 100–4, § 503, inserted ''agricultural stormwater discharges and'' after ''does not include''.
1977—Par. (14). Pub. L. 95–217 inserted provision that ''point source'' does not include return flows from irrigated agriculture.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–121 effective Oct. 1, 2014, see section 5012(c) of Pub. L. 113–121, set out as a note under section 1292 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

DEFINITION OF ''POINT SOURCE''

Pub. L. 100–4, title V, § 507, Feb. 4, 1987, 101 Stat. 78, provided that: ''For purposes of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the term 'point source' includes a landfill leachate collection system.''

§ 1363. Water Pollution Control Advisory Board

(a) Establishment; composition; terms of office

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

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the members first taking office after June 30, 1956, shall expire as follows: three at the end of one year after such date, three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and (iii) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

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

(b) Functions

The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter.

(c) Clerical and technical assistance

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

(June 30, 1948, ch. 758, title V, § 503, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 887.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to in subsec. (a)(2)(B), probably means the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

CONTINUATION OF TERM OF OFFICE

Pub. L. 87–88, § 6(c), July 20, 1961, 75 Stat. 207, provided that members of the Water Pollution Control Advisory Board holding office immediately preceding July 20, 1961 were to remain in office as members of the Board as established by section 6(a) of Pub. L. 87–88 until the expiration of the terms of office for which they were originally appointed.

TERMS OF OFFICE OF MEMBERS OF WATER POLLUTION CONTROL ADVISORY BOARD

Act July 9, 1956, ch. 518, § 3, 70 Stat. 507, provided that the terms of office of members of the Water Pollution Control Advisory Board, holding office on July 9, 1956, were to terminate at the close of business on that date.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate ac-

tion prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1364. Emergency powers

(a) Emergency powers

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

(b) Repealed. Pub. L. 96–510, title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809

(June 30, 1948, ch. 758, title V, § 504, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 888; amended Pub. L. 95–217, § 69, Dec. 27, 1977, 91 Stat. 1607; Pub. L. 96–510, title III, § 304(a), Dec. 11, 1980, 94 Stat. 2809.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–510 struck out subsec. (b) which related to emergency assistance, establishment of an emergency fund, and preparation of a contingency plan for such emergencies.

1977—Pub. L. 95–217 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–510 effective Dec. 11, 1980, see section 9652 of Title 42, The Public Health and Welfare.

§ 1365. Citizen suits

(a) Authorization; jurisdiction

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

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

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

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

(b) Notice

No action may be commenced—

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

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

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

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

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

(c) Venue; intervention by Administrator; United States interests protected

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

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

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

(d) Litigation costs

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

(e) Statutory or common law rights not restricted

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

(f) Effluent standard or limitation

For purposes of this section, the term ''effluent standard or limitation under this chapter'' means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title; (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) a standard of performance or requirement under section 1322(p) of this title; (6) a certification under section 1341 of this title; (7) a permit or condition of a permit issued under section 1342 of this title that is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (8) a regulation under section 1345(d) of this title.

(g) "Citizen" defined

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

(h) Civil action by State Governors

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

(June 30, 1948, ch. 758, title V, § 505, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 888; amended Pub. L. 100–4, title III, § 314(c), title IV, § 406(d)(2), title V, §§ 504, 505(c), Feb. 4, 1987, 101 Stat. 49, 73, 75, 76; Pub. L. 115–282, title IX, § 903(c)(3), Dec. 4, 2018, 132 Stat. 4356.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2018—Subsec. (f). Pub. L. 115–282 substituted ''(5) a standard of performance or requirement under section 1322(p) of this title; (6) a certification under section 1341 of this title; (7) a permit or condition of a permit issued under section 1342 of this title that is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (8) a regulation under section 1345(d) of this title.'' for ''(5) certification under section 1341 of this title; (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); or (7) a regulation under section 1345(d) of this title,.''

1987—Subsec. (a). Pub. L. 100–4, § 314(c), inserted ''and section 1319(g)(6) of this title'' after ''subsection (b) of this section'' in introductory text.

Subsec. (c)(3). Pub. L. 100–4, § 504, added par. (3).

Subsec. (d). Pub. L. 100–4, § 505(c), inserted ''prevailing or substantially prevailing'' before ''party''.

Subsec. (f). Pub. L. 100–4, § 406(d)(2), added cl. (7).

§ 1366. Appearance

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

(June 30, 1948, ch. 758, title V, § 506, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 889.)

§ 1367. Employee protection

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited

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

(b) Application for review; investigation; hearing; review

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

(c) Costs and expenses

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's

fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Deliberate violations by employee acting without direction from his employer or his agent

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 1311 or 1312 of this title, standards of performance under section 1316 of this title, effluent standard, prohibition or pretreatment standard under section 1317 of this title, or any other prohibition or limitation established under this chapter.

(e) Investigations of employment reductions

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

(June 30, 1948, ch. 758, title V, § 507, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 890.)

§ 1368. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 1319(c) of this title, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) Notification of agencies

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

(c) Omitted

(d) Exemptions

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

(e) Annual report to Congress

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

(f) Contractor certification or contract clause in acquisition of commercial items

(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the acquisition of commercial items in order to implement a prohibition or requirement of this section or a prohibition or requirement issued in the implementation of this section.

(2) In paragraph (1), the term ''commercial item'' has the meaning given such term in section 103 of title 41.

(June 30, 1948, ch. 758, title V, § 508, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 891; amended Pub. L. 103–355, title VIII, § 8301(a), Oct. 13, 1994, 108 Stat. 3396; Pub. L. 115–232, div. A, title VIII, § 836(g)(5), Aug. 13, 2018, 132 Stat. 1873.)

AMENDMENT OF SUBSECTION (f)

Pub. L. 115–232, div. A, title VIII, § 836(g)(5), (h), Aug. 13, 2018, 132 Stat. 1873, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, subsection (f) of this section is amended as follows:

(1) in paragraph (1), by striking ''commercial items'' and inserting ''commercial products or commercial services''; and

(2) in paragraph (2), by striking ''the term'' and all that follows and inserting ''the terms 'commercial product' and 'commercial service' have the meanings given those terms in sections 103 and 103a, respectively, of title 41.''.

See 2018 Amendment notes below.

CODIFICATION

Subsec. (c) of this section authorized the President to cause to be issued, not more than 180 days after October 18, 1972, an order (1) requiring each Federal agency authorized to enter into contracts or to extend Federal assistance by way of grant, loan, or contract, to effectuate the purpose and policy of this chapter, and (2) setting forth procedures, sanctions and penalties as the President determines necessary to carry out such requirement.

In subsec. (f)(2), ''section 103 of title 41'' substituted for ''section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))'' on authority of Pub. L. 111–350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

2018—Subsec. (f)(1). Pub. L. 115–232, § 836(g)(5)(A), substituted ''commercial products or commercial services'' for ''commercial items''.

Subsec. (f)(2). Pub. L. 115–232, § 836(g)(5)(B), substituted ''the terms 'commercial product' and 'commercial service' have the meanings given those terms in sections 103 and 103a, respectively, of title 41.'' for ''the term 'commercial item' has the meaning given such term in section 103 of title 41.''

1994—Subsec. (f). Pub. L. 103–355 added subsec. (f).

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

ADMINISTRATION OF CHAPTER WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

For provisions concerning the administration of this chapter with respect to Federal contracts, grants, or loans, see Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out as a note under section 7606 of Title 42, The Public Health and Welfare.

§ 1369. Administrative procedure and judicial review

(a) Subpenas

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

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

(b) Review of Administrator's actions; selection of court; fees

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

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

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

(4) DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interested person may file a petition for review of a final agency action under section 1322(p) of this title of the Administrator or the Secretary of the department in which the Coast Guard is operating in accordance with the requirements of this subsection.

(B) VENUE EXCEPTION.—Subject to section 1322(p)(7)(C)(v) of this title, a petition for review of a final agency action under section 1322(p) of this title of the Administrator or the Secretary of the department in which the Coast Guard is operating may be filed only in

the United States Court of Appeals for the District of Columbia Circuit.

(c) Additional evidence

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

(June 30, 1948, ch. 758, title V, § 509, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 891; amended Pub. L. 93–207, § 1(6), Dec. 28, 1973, 87 Stat. 906; Pub. L. 100–4, title III, § 308(b), title IV, § 406(d)(3), title V, § 505(a), (b), Feb. 4, 1987, 101 Stat. 39, 73, 75; Pub. L. 100–236, § 2, Jan. 8, 1988, 101 Stat. 1732; Pub. L. 115–282, title IX, § 903(c)(4), Dec. 4, 2018, 132 Stat. 4356.)

AMENDMENTS

2018—Subsec. (b)(4). Pub. L. 115–282 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100–236 redesignated par. (4) as (3) and struck out former par. (3) relating to venue, which provided for selection procedure in subpar. (A), administrative provisions in subpar. (B), and transfers in subpar. (C).

1987—Subsec. (b)(1). Pub. L. 100–4, §§ 308(b), 406(d)(3), 505(a), substituted ''transacts business which is directly affected by such action'' for ''transacts such business'', ''120'' for ''ninety'', and ''120th'' for ''ninetieth'', substituted ''1316, or 1345 of this title'' for ''or 1316 of this title'' in cl. (E), and added cl. (G).

Subsec. (b)(3), (4). Pub. L. 100–4, § 505(b), added pars. (3) and (4).

1973—Subsec. (b)(1)(C). Pub. L. 93–207 substituted ''pretreatment'' for ''treatment''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–236 effective 180 days after Jan. 8, 1988, see section 3 of Pub. L. 100–236, set out as a note under section 2112 of Title 28, Judiciary and Judicial Procedure.

§ 1370. State authority

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.

(June 30, 1948, ch. 758, title V, § 510, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 893.)

§ 1371. Authority under other laws and regulations

(a) Impairment of authority or functions of officials and agencies; treaty provisions

This chapter shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this chapter; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899, (30 Stat. 1112); except that any permit issued under section 1344 of this title shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 403 of this title, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into navigable waters

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

(c) Action of the Administrator deemed major Federal action; construction of the National Environmental Policy Act of 1969

(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 1281 of this title, and the issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. 4321 et seq.]; and

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

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any

license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

(d) Consideration of international water pollution control agreements

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

(June 30, 1948, ch. 758, title V, § 511, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 893; amended Pub. L. 93–243, § 3, Jan. 2, 1974, 87 Stat. 1069.)

REFERENCES IN TEXT

Act of March 3, 1899, referred to in subsec. (a), is act Mar. 3, 1899, ch. 425, 30 Stat. 1121, as amended, which enacted sections 401, 403, 404, 406, 407, 408, 409, 411 to 416, 418, 502, 549, and 687 of this title and amended section 686 of this title. For complete classification of this Act to the Code, see Tables.

The Rivers and Harbors Act of 1910, referred to in subsec. (b), probably means act June 23, 1910, ch. 359, 36 Stat. 593.

The Supervisory Harbors Act of 1888, referred to in subsec. (b), probably means act June 29, 1888, ch. 496, 25 Stat. 209, as amended, which is classified generally to subchapter III (§ 441 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–243 added subsec. (d).

§ 1372. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection,[1] the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

(June 30, 1948, ch. 758, title V, § 513, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 894.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, ''sections 3141–3144, 3146, and 3147 of title 40'' substituted for ''the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a–5)'' and ''section 3145 of title 40'' substituted for ''section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

APPLICABILITY OF LABOR STANDARDS TO CONSTRUCTION OF TREATMENT WORKS

Pub. L. 112–74, div. E, title II, Dec. 23, 2011, 125 Stat. 1020, provided in part that: ''For fiscal year 2012 and each fiscal year thereafter, the requirements of section 513 of the Federal Water Pollution Control Act (33 U.S.C. 1372) shall apply to the construction of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund as authorized by title VI of that Act (33 U.S.C. 1381 et seq.), or with assistance made available under section 205(m) of that Act (33 U.S.C. 1285(m)), or both.''

§ 1373. Public health agency coordination

The permitting agency under section 1342 of this title shall assist the applicant for a permit under such section in coordinating the requirements of this chapter with those of the appropriate public health agencies.

(June 30, 1948, ch. 758, title V, § 514, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 894.)

§ 1374. Effluent Standards and Water Quality Information Advisory Committee

(a) Establishment; membership; term

(1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after October 18, 1972.

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

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

(b) Action on proposed regulations

(1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 1314(b) of this title, any proposed standard of performance for new sources required by section 1316 of this title, or any proposed toxic effluent standard required by section 1317 of this title, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific

[1] So in original. Probably should be ''section,''.

and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

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

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

(c) Secretary; legal counsel; compensation

(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of title 5.

(d) Quorum; special panel

Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

(e) Rules

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

(June 30, 1948, ch. 758, title V, § 515, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 894.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1375. Reports to Congress; detailed estimates and comprehensive study on costs; State estimates

(a) Implementation of chapter objectives; status and progress of programs

Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this chapter, on measures taken toward implementing the objective of this chapter, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 1252 of this title, areawide plans under section 1288 of this title, basin plans under section 1289 of this title, and plans under section 1313(e) of this title; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs,including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under this chapter during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this chapter; (7) a summary of the results of the survey required to be taken under section 1290 of this title; (8) his activities including recommendations under sections 1259 through 1261 of this title; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

(b) Detailed estimates and comprehensive study on costs; State estimates, survey form

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

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA–1, O.M.B. No. 158–R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

(c) Status of combined sewer overflows in municipal treatment works operations

The Administrator shall submit to the Congress by October 1, 1978, a report on the status of combined sewer overflows in municipal treatment works operations. The report shall include (1) the status of any projects funded under this chapter to address combined sewer overflows (2) a listing by State of combined sewer overflow needs identified in the 1977 State priority listings, (3) an estimate for each applicable municipality of the number of years necessary, assuming an annual authorization and appropriation for the construction grants program of $5,000,000,000, to correct combined sewer overflow problems, (4) an analysis using representative municipalities faced with major combined sewer overflow needs, of the annual discharges of pollutants from overflows in comparison to treated effluent discharges, (5) an analysis of the technological alternatives available to municipalities to correct major combined sewer overflow problems, and (6) any recommendations of the Administrator for legislation to address the problem of combined sewer overflows, including whether a separate authorization and grant program should be established by the Congress to address combined sewer overflows.

(d) Legislative recommendations on program requiring coordination between water supply and wastewater control plans as condition for construction grants; public hearing

The Administrator, in cooperation with the States, including water pollution control agencies, and other water pollution control planning agencies, and water supply and water resources agencies of the States and the United States shall submit to Congress, within two years of December 27, 1977, a report with recommendations for legislation on a program to require coordination between water supply and wastewater control plans as a condition to grants for construction of treatment works under this chapter. No such report shall be submitted except after opportunity for public hearings on such proposed report.

(e) State revolving fund report

(1) In general

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

(2) Contents

The report under this subsection shall also include the following:

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

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

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

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

(E) an assessment of the effect on user charges of the assistance provided by such revolving funds compared to the assistance provided with funds appropriated pursuant to section 1287 of this title; and

(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such revolving funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 1281 of this title.

(June 30, 1948, ch. 758, title V, §516, as added Pub. L. 92–500, §2, Oct. 18, 1972, 86 Stat. 895; amended Pub. L. 93–243, §4, Jan. 2, 1974, 87 Stat. 1069; Pub. L. 95–217, §§70–72, Dec. 27, 1977, 91 Stat. 1608, 1609; Pub. L. 100–4, title II, §212(c), Feb. 4, 1987, 101 Stat. 27; Pub. L. 104–66, title II, §2021(d), Dec. 21, 1995, 109 Stat. 727; Pub. L. 105–362, title V, §501(d)(1), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 107–303, title III, §302(b)(1), Nov. 27, 2002, 116 Stat. 2361.)

AMENDMENTS

2002—Subsecs. (a) to (e). Pub. L. 107–303 repealed Pub. L. 105–362, §501(d)(1). See 1998 Amendment notes below.

1998—Subsec. (a). Pub. L. 105–362, §501(d)(1)(A), which directed the striking out of subsec. (a), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

Subsec. (b). Pub. L. 105–362, §501(d), which directed the striking out of par. (1) designation, redesignation of subpars. (A) to (D) as pars. (1) to (4), respectively, and striking out of par. (2), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

Subsecs. (c) to (e). Pub. L. 105–362, §501(d)(1)(A), which directed the striking out of subsecs. (c) to (e), was repealed by Pub. L. 107–303. See Effective Date of 2002 Amendment note below.

1995—Subsecs. (d), (e), (g). Pub. L. 104–66 redesignated subsecs. (e) and (g) as (d) and (e), respectively, and struck out former subsec. (d) which related to status reports on the use of municipal secondary effluent and sludge for agricultural and other purposes that utilize the nutrient value of treated wastewater effluent.

1987—Subsec. (g). Pub. L. 100–4 added subsec. (g).

1977—Subsecs. (c) to (e). Pub. L. 95–217 added subsecs. (c) to (e).

1974—Subsec. (b). Pub. L. 93–243 designated existing paragraph as par. (1) and cls. (1) to (4) as (A) to (D), and added par. (2).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–303 effective Nov. 10, 1998, and Federal Water Pollution Act (33 U.S.C. 1251 et seq.) to be applied and administered on and after Nov. 27, 2002, as if amendments made by section 501(a)–(d) of Pub. L. 105–362 had not been enacted, see section 302(b) of Pub. L. 107–303, set out as a note under section 1254 of this title.

STUDIES AND REPORTS

Pub. L. 100–4, title III, § 308(g), Feb. 4, 1987, 101 Stat. 40, directed Administrator to conduct a water quality improvement study and report results of such study to specified Congressional committees not later than 2 years after Feb. 4, 1987.

Pub. L. 100–4, title III, § 314(b), Feb. 4, 1987, 101 Stat. 49, directed Secretary of the Army and Administrator to each prepare a report on enforcement mechanisms and to submit the reports to Congress not later than Dec. 1, 1988.

Pub. L. 100–4, title IV, § 404(c), Feb. 4, 1987, 101 Stat. 69, directed Administrator to study extent to which States have adopted water quality standards in accordance with section 1313a of this title and extent to which modifications of permits issued under section 1342(a)(1)(B) of this title for the purpose of reflecting revisions of water quality standards be encouraged and to submit a report on such study to Congress not later than 2 years after Feb. 4, 1987, prior to repeal by Pub. L. 104–66, title II, § 2021(e)(1), Dec. 21, 1995, 109 Stat. 727.

Pub. L. 100–4, title V, § 516, Feb. 4, 1987, 101 Stat. 86, directed Administrator to conduct a study of de minimis discharges and report results of such study to specified Congressional committees not later than 1 year after Feb. 4, 1987.

Pub. L. 100–4, title V, § 517, Feb. 4, 1987, 101 Stat. 86, directed Administrator to conduct a study of effectiveness of innovative and alternative wastewater processes and techniques and report results of such study to specified Congressional committees not later than 1 year after Feb. 4, 1987.

Pub. L. 100–4, title V, § 518, Feb. 4, 1987, 101 Stat. 86, directed Administrator to conduct a study of testing procedures established under section 1314(h) of this title for analysis of pollutants and report results of such study to specified Congressional committees not later than 1 year after Feb. 4, 1987.

Pub. L. 100–4, title V, § 519, Feb. 4, 1987, 101 Stat. 87, directed Administrator to conduct a study of pretreatment of toxic pollutants and report results of such study to specified Congressional committees not later than 4 years after Feb. 4, 1987.

Pub. L. 100–4, title V, § 520, Feb. 4, 1987, 101 Stat. 87, directed Administrator, in conjunction with State and local agencies, to conduct studies of water pollution problems in aquifers and report result of such studies to Congress not later than 2 years after Feb. 4, 1987.

Pub. L. 100–4, title V, § 522, Feb. 4, 1987, 101 Stat. 88, directed Administrator to conduct a study on sulfide corrosion in collection and treatment systems and report results of such study to specified Congressional committees not later than 1 year after Feb. 4, 1987.

Pub. L. 100–4, title V, § 523, Feb. 4, 1987, 101 Stat. 89, directed Administrator to conduct a study of rainfall induced infiltration into sewer systems and report results of such study to Congress not later than 1 year after Feb. 4, 1987.

Pub. L. 100–4, title V, § 524, Feb. 4, 1987, 101 Stat. 89, directed Administrator to conduct a study of dam water quality and report results of such study to Congress not later than Dec. 31, 1987.

Pub. L. 100–4, title V, § 525, Feb. 4, 1987, 101 Stat. 89, directed Administrator to conduct a study of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, and to report to Congress findings and recommendations.

DETAILED ESTIMATES, COMPREHENSIVE STUDY, AND COMPREHENSIVE ANALYSIS; REPORT TO CONGRESS NOT LATER THAN DECEMBER 31, 1982

Pub. L. 97–117, § 25, Dec. 29, 1981, 95 Stat. 1633, provided that the Administrator of the Environmental Protection Agency submit to the Congress, not later than December 31, 1982, a report containing the detailed estimates, comprehensive study, and comprehensive analysis required by section 1375(b) of this title, including an estimate of the total cost and the amount of Federal funds necessary for the construction of needed publicly owned treatment facilities, such report to reflect the changes made in the Federal water pollution control program by Pub. L. 97–117 [see Short Title of 1981 Amendment note set out under section 1251 of this title]. The Administrator was to give emphasis to the effects of the amendment made by section 2(a) of Pub. L. 97–117 [amending section 1281(g)(1) of this title] in addressing water quality needs adequately and appropriately.

STUDY AND REPORT TO CONGRESS BY SECRETARY OF THE INTERIOR OF FINANCING WATER POLLUTION PREVENTION, CONTROL, AND ABATEMENT PROGRAMS

Pub. L. 91–224, title I, § 109, Apr. 3, 1970, 34 Stat. 113, directed the Secretary of the Interior to conduct a full and complete investigation and study of the feasibility of all methods of financing the cost of preventing, controlling, and abating water pollution, other than methods authorized by existing law, with results of such investigation and study to be reported to Congress no later than Dec. 31, 1970, together with the recommendations of the Secretary for financing the programs for preventing, controlling, and abating water pollution for the fiscal years beginning after fiscal year 1971, including any necessary legislation.

TERMINATION OF ADVISORY BOARDS

Advisory boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1375a. Report on coastal recreation waters

(a) In general

Not later than 4 years after October 10, 2000, and every 4 years thereafter, the Administrator of the Environmental Protection Agency shall submit to Congress a report that includes—

(1) recommendations concerning the need for additional water quality criteria for pathogens and pathogen indicators and other actions that should be taken to improve the quality of coastal recreation waters;

(2) an evaluation of Federal, State, and local efforts to implement this Act, including the amendments made by this Act; and

(3) recommendations on improvements to methodologies and techniques for monitoring of coastal recreation waters.

(b) Coordination

The Administrator of the Environmental Protection Agency may coordinate the report under this section with other reporting requirements under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(Pub. L. 106–284, § 7, Oct. 10, 2000, 114 Stat. 876.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 106–284, Oct. 10, 2000, 114 Stat. 870, known as the Beaches Environmental Assessment and Coastal Health Act of 2000. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1251 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of this title and Tables.

CODIFICATION

Section was enacted as part of the Beaches Environmental Assessment and Coastal Health Act of 2000, and not as part of the Federal Water Pollution Control Act which comprises this chapter.

§ 1376. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter, other than sections 1254, 1255, 1256(a), 1257, 1258, 1262, 1263, 1264,[1] 1265, 1286, 1287, 1288(f) and (h), 1289, 1314, 1321(c), (d), (i), (*l*), and (k),[1] 1324, 1325, and 1327 of this title, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, $161,000,000 for the fiscal year ending September 30, 1982, such sums as may be necessary for fiscal years 1983 through 1985, and $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990.

(June 30, 1948, ch. 758, title V, § 517, as added Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 896; amended Pub. L. 95–217, § 4(g), Dec. 27, 1977, 91 Stat. 1567; Pub. L. 96–483, § 1(g), Oct. 21, 1980, 94 Stat. 2360; Pub. L. 100–4, title I, § 101(h), Feb. 4, 1987, 101 Stat. 9.)

REFERENCES IN TEXT

Section 1264 of this title, referred to in text, was omitted from the Code.

Section 1321(k) of this title, referred to in text, was repealed by Pub. L. 101–380, title II, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507.

AMENDMENTS

1987—Pub. L. 100–4 struck out ''and'' after ''1981,'' and inserted '', such sums as may be necessary for fiscal years 1983 through 1985, and $135,000,000 per fiscal year for each of the fiscal years 1986 through 1990'' after ''1982''.

1980—Pub. L. 96–483 inserted authorization of $150,000,000 for fiscal year ending Sept. 30, 1981 and $161,000,000 for fiscal year ending Sept. 30, 1982.

1977—Pub. L. 95–217 substituted ''$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, and $150,000,000 for the fiscal year ending September 30, 1980'' for ''and $350,000,000 for the fiscal year ending June 30, 1975''.

AUTHORIZATION APPROVAL FOR FUNDS APPROPRIATED BEFORE DECEMBER 27, 1977, FOR EXPENDITURES THROUGH FISCAL YEAR ENDING SEPTEMBER 30, 1977

Pub. L. 95–217, § 3, Dec. 27, 1977, 91 Stat. 1566, provided that funds appropriated before Dec. 27, 1977 for expenditure during the fiscal year ending June 30, 1976, the transition quarter ending September 30, 1976, and the fiscal year ending September 30, 1977, under authority of this chapter were authorized for those purposes for which appropriated.

§ 1377. Indian tribes

(a) Policy

Nothing in this section shall be construed to affect the application of section 1251(g) of this title, and all of the provisions of this section shall be carried out in accordance with the provisions of such section 1251(g) of this title. Indian tribes shall be treated as States for purposes of such section 1251(g) of this title.

(b) Assessment of sewage treatment needs; report

The Administrator, in cooperation with the Director of the Indian Health Service, shall assess the need for sewage treatment works to serve Indian tribes, the degree to which such needs will be met through funds allotted to States under section 1285 of this title and priority lists under section 1296 of this title, and any obstacles which prevent such needs from being met. Not later than one year after February 4, 1987, the Administrator shall submit a report to Congress on the assessment under this subsection, along with recommendations specifying (1) how the Administrator intends to provide assistance to Indian tribes to develop waste treatment management plans and to construct treatment works under this chapter, and (2) methods by which the participation in and administration of programs under this chapter by Indian tribes can be maximized.

(c) Reservation of funds

(1) Fiscal years 1987–2014

The Administrator shall reserve each of fiscal years 1987 through 2014, before allotments to the States under section 1285(e) of this title, one-half of one percent of the sums appropriated under section 1287 of this title.

(2) Fiscal year 2015 and thereafter

For fiscal year 2015 and each fiscal year thereafter, the Administrator shall reserve, before allotments to the States under section 1384(a) of this title, not less than 0.5 percent and not more than 2.0 percent of the funds made available to carry out subchapter VI.

(3) Use of funds

Funds reserved under this subsection shall be available only for grants for projects and activities eligible for assistance under section 1383(c) of this title to serve—

[1] See References in Text note below.

(A) Indian tribes (as defined in subsection (h));

(B) former Indian reservations in Oklahoma (as determined by the Secretary of the Interior); and

(C) Native villages (as defined in section 1602 of title 43).

(d) Cooperative agreements

In order to ensure the consistent implementation of the requirements of this chapter, an Indian tribe and the State or States in which the lands of such tribe are located may enter into a cooperative agreement, subject to the review and approval of the Administrator, to jointly plan and administer the requirements of this chapter.

(e) Treatment as States

The Administrator is authorized to treat an Indian tribe as a State for purposes of subchapter II of this chapter and sections 1254, 1256, 1313, 1315, 1318, 1319, 1324, 1329, 1341, 1342, 1344, and 1346 of this title to the degree necessary to carry out the objectives of this section, but only if—

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

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

(3) the Indian tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and of all applicable regulations.

Such treatment as a State may include the direct provision of funds reserved under subsection (c) to the governing bodies of Indian tribes, and the determination of priorities by Indian tribes, where not determined by the Administrator in cooperation with the Director of the Indian Health Service. The Administrator, in cooperation with the Director of the Indian Health Service, is authorized to make grants under subchapter II of this chapter in an amount not to exceed 100 percent of the cost of a project. Not later than 18 months after February 4, 1987, the Administrator shall, in consultation with Indian tribes, promulgate final regulations which specify how Indian tribes shall be treated as States for purposes of this chapter. The Administrator shall, in promulgating such regulations, consult affected States sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian tribes located on common bodies of water. Such mechanism shall provide for explicit consideration of relevant factors including, but not limited to, the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the waters subject to such standards. Such mechanism should provide for the avoidance of such unreasonable consequences in a manner consistent with the objective of this chapter.

(f) Grants for nonpoint source programs

The Administrator shall make grants to an Indian tribe under section 1329 of this title as though such tribe was a State. Not more than one-third of one percent of the amount appropriated for any fiscal year under section 1329 of this title may be used to make grants under this subsection. In addition to the requirements of section 1329 of this title, an Indian tribe shall be required to meet the requirements of paragraphs (1), (2), and (3) of subsection (d)[1] of this section in order to receive such a grant.

(g) Alaska Native organizations

No provision of this chapter shall be construed to—

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

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

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

(h) Definitions

For purposes of this section, the term—

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

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

(June 30, 1948, ch. 758, title V, § 518, as added Pub. L. 100–4, title V, § 506, Feb. 4, 1987, 101 Stat. 76; amended Pub. L. 100–581, title II, § 207, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 106–284, § 6, Oct. 10, 2000, 114 Stat. 876; Pub. L. 113–121, title V, § 5013, June 10, 2014, 128 Stat. 1328.)

REFERENCES IN TEXT

Act of June 18, 1934 (48 Stat. 987), referred to in subsec. (g)(1), is act June 18, 1934, ch. 576, 48 Stat. 984, popularly known as the Indian Reorganization Act, which is classified generally to chapter 45 (§ 5101 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 5101 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 518 of act June 30, 1948, was renumbered section 519 and is set out as a note under section 1251 of this title.

[1] So in original. Probably should be subsection ''(e)''.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–121, §5013(1), (3), designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

Subsec. (c)(1). Pub. L. 113–121, §5013(2), substituted ''each of fiscal years 1987 through 2014,'' for ''each fiscal year beginning after September 30, 1986,'' and struck out at end ''Sums reserved under this subsection shall be available only for grants for the development of waste treatment management plans and for the construction of sewage treatment works to serve Indian tribes, as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92–203.''

2000—Subsec. (e). Pub. L. 106–284 substituted ''1344, and 1346 of this title'' for ''and 1344 of this title'' in introductory provisions.

1988—Subsec. (c). Pub. L. 100–581 inserted '', as defined in subsection (h) and former Indian reservations in Oklahoma (as determined by the Secretary of the Interior) and Alaska Native Villages as defined in Public Law 92–203'' before period at end.

GRANTS FOR CONSTRUCTION OF WATER FACILITIES AND FOR WATER QUALITY PROTECTION

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 530, provided in part: ''That, notwithstanding this or any other appropriations Act, heretofore and hereafter, after consultation with the House and Senate Committees on Appropriations and for the purpose of making technical corrections, the Administrator is authorized to award grants under this heading [State and Tribal Assistance Grants] to entities and for purposes other than those listed in the joint explanatory statements of the managers accompanying the Agency's appropriations Acts for the construction of drinking water, wastewater and stormwater infrastructure and for water quality protection.''

GRANTS TO INDIAN TRIBES

Provisions stating that for fiscal year 2006 and notwithstanding section 1377(f) of this title, the Administrator was authorized to use the amounts appropriated for any fiscal year under section 1329 of this title to make grants to Indian tribes pursuant to sections 1329(h) and 1377(e) of this title, were contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 530, and were repeated in provisions of subsequent appropriations acts which are not set out in the Code. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3330.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 406.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 512.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 685.

Pub. L. 106–377, §1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–43.

Pub. L. 106–74, title III, Oct. 20, 1999, 113 Stat. 1083.

§ 1377a. Green infrastructure promotion

(a) In general

The Administrator shall promote the use of green infrastructure in, and coordinate the integration of green infrastructure into, permitting and enforcement under this chapter, planning efforts, research, technical assistance, and funding guidance of the Environmental Protection Agency.

(b) Coordination of efforts

The Administrator shall ensure that the Office of Water coordinates efforts to increase the use of green infrastructure with—

(1) other Federal departments and agencies;

(2) State, tribal, and local governments; and

(3) the private sector.

(c) Regional green infrastructure promotion

The Administrator shall direct each regional office of the Environmental Protection Agency, as appropriate based on local factors, and consistent with the requirements of this chapter, to promote and integrate the use of green infrastructure within the region, including through—

(1) outreach and training regarding green infrastructure implementation for State, tribal, and local governments, tribal communities, and the private sector; and

(2) the incorporation of green infrastructure into permitting and other regulatory programs, codes, and ordinance development, including the requirements under consent decrees and settlement agreements in enforcement actions.

(d) Green infrastructure information-sharing

The Administrator shall promote green infrastructure information-sharing, including through an internet website, to share information with, and provide technical assistance to, State, tribal, and local governments, tribal communities, the private sector, and the public, regarding green infrastructure approaches for—

(1) reducing water pollution;

(2) protecting water resources;

(3) complying with regulatory requirements; and

(4) achieving other environmental, public health, and community goals.

(June 30, 1948, ch. 758, title V, §519, as added Pub. L. 115–436, §5(b)(2), Jan. 14, 2019, 132 Stat. 5561.)

PRIOR PROVISIONS

A prior section 519 of act June 30, 1948, was renumbered section 520 and is set out as a note under section 1251 of this title.

SUBCHAPTER VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

§ 1381. Grants to States for establishment of revolving funds

(a) General authority

Subject to the provisions of this subchapter, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund to accomplish the objectives, goals, and policies of this chapter by providing assistance for projects and activities identified in section 1383(c) of this title.

(b) Schedule of grant payments

The Administrator and each State shall jointly establish a schedule of payments under which the Administrator will pay to the State the amount of each grant to be made to the State under this subchapter. Such schedule shall be based on the State's intended use plan under section 1386(c) of this title, except that—

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

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

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

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

(June 30, 1948, ch. 758, title VI, § 601, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 22; amended Pub. L. 113–121, title V, § 5001, June 10, 2014, 128 Stat. 1322.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–121 substituted ''to accomplish the objectives, goals, and policies of this chapter by providing assistance for projects and activities identified in section 1383(c) of this title.'' for ''for providing assistance (1) for construction of treatment works (as defined in section 1292 of this title) which are publicly owned, (2) for implementing a management program under section 1329 of this title, and (3) for developing and implementing a conservation and management plan under section 1330 of this title.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–121, title V, § 5006, June 10, 2014, 128 Stat. 1327, provided that: ''This subtitle [subtitle A (§§ 5001–5006) of title V of Pub. L. 113–121, enacting section 1388 of this title and amending this section and sections 1382 and 1383 of this title], including any amendments made by the subtitle, shall take effect on October 1, 2014.''

§ 1382. Capitalization grant agreements

(a) General rule

To receive a capitalization grant with funds made available under this subchapter and section 1285(m) of 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) Specific requirements

The Administrator shall enter into an agreement under this section with a State only after the State has established to the satisfaction of the Administrator that—

(1) the State will accept grant payments with funds to be made available under this subchapter and section 1285(m) of this title in accordance with a payment schedule established jointly by the Administrator under section 1381(b) of this title and will deposit all such payments in the water pollution control revolving fund established by the State in accordance with this subchapter;

(2) the State will deposit in the fund from State moneys an amount equal to at least 20 percent of the total amount of all capitalization grants which will be made to the State with funds to be made available under this subchapter and section 1285(m) of this title on or before the date on which each quarterly grant payment will be made to the State under this subchapter;

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

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

(5) all funds in the fund as a result of capitalization grants under this subchapter and section 1285(m) of this title will first be used to assure maintenance of progress, as determined by the Governor of the State, toward compliance with enforceable deadlines, goals, and requirements of this chapter, including the municipal compliance deadline;

(6) treatment works eligible under this chapter which will be constructed in whole or in part with assistance made available by a State water pollution control revolving fund authorized under this subchapter, or section 1285(m) of this title, or both, will meet the requirements of, or otherwise be treated (as determined by the Governor of the State) under sections 1371(c)(1) and 1372 of this title in the same manner as treatment works constructed with assistance under subchapter II of this chapter;

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

(8) in carrying out the requirements of section 1386 of this title, the State will use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(9) the State will require as a condition of making a loan or providing other assistance, as described in section 1383(d) of this title, from the fund that the recipient of such assistance will maintain project accounts in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets;

(10) the State will make annual reports to the Administrator on the actual use of funds in accordance with section 1386(d) of this title;

(11) the State will establish, maintain, invest, and credit the fund with repayments, such that the fund balance will be available in perpetuity for activities under this chapter;

(12) any fees charged by the State to recipients of assistance that are considered program income will be used for the purpose of financing the cost of administering the fund or financing projects or activities eligible for assistance from the fund;

(13) beginning in fiscal year 2016, the State will require as a condition of providing assistance to a municipality or intermunicipal, interstate, or State agency that the recipient of such assistance certify, in a manner determined by the Governor of the State, that the recipient—

(A) has studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this subchapter; and

(B) has selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account—

(i) the cost of constructing the project or activity;

(ii) the cost of operating and maintaining the project or activity over the life of the project or activity; and

(iii) the cost of replacing the project or activity; and

(14) a contract to be carried out using funds directly made available by a capitalization grant under this subchapter for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or architectural related services shall be negotiated in the same manner as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent State qualifications-based requirement (as determined by the Governor of the State).

(June 30, 1948, ch. 758, title VI, § 602, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 22; amended Pub. L. 113–121, title V, § 5002, June 10, 2014, 128 Stat. 1322.)

AMENDMENTS

2014—Subsec. (b)(6). Pub. L. 113–121, § 5002(1), substituted ''eligible under this chapter'' for ''eligible under section 1383(c)(1) of this title'', ''with assistance made available by a State water pollution control revolving fund authorized under this subchapter, or section 1285(m) of this title, or both,'' for ''before fiscal year 1995 with funds directly made available by capitalization grants under this subchapter and section 1285(m) of this title'', and ''sections 1371(c)(1)'' for ''sections 1281(b), 1281(g)(1), 1281(g)(2), 1281(g)(3), 1281(g)(5), 1281(g)(6), 1281(n)(1), 1281(*o*), 1284(a)(1), 1284(a)(2), 1284(b)(1), 1284(d)(2), 1291, 1298, 1371(c)(1),''.

Subsec. (b)(9). Pub. L. 113–121, § 5002(2), substituted ''standards, including standards relating to the reporting of infrastructure assets;'' for ''standards; and''.

Subsec. (b)(11) to (14). Pub. L. 113–121, § 5002(3), (4), added pars. (11) to (14).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–121 effective Oct. 1, 2014, see section 5006 of Pub. L. 113–121, set out as a note under section 1381 of this title.

§ 1383. Water pollution control revolving loan funds

(a) Requirements for obligation of grant funds

Before a State may receive a capitalization grant with funds made available under this subchapter and section 1285(m) of this title, the State shall first establish a water pollution control revolving fund which complies with the requirements of this section.

(b) Administration

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

(c) Projects and activities eligible for assistance

The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance—

(1) to any municipality or intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 1292 of this title);

(2) for the implementation of a management program established under section 1329 of this title;

(3) for development and implementation of a conservation and management plan under section 1330 of this title;

(4) for the construction, repair, or replacement of decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage;

(5) for measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water;

(6) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse;

(7) for the development and implementation of watershed projects meeting the criteria set forth in section 1274 of this title;

(8) to any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works;

(9) for reusing or recycling wastewater, stormwater, or subsurface drainage water;

(10) for measures to increase the security of publicly owned treatment works;

(11) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to owners and operators of small and medium publicly owned treatment works—

(A) to plan, develop, and obtain financing for eligible projects under this subsection, including planning, design, and associated preconstruction activities; and

(B) to assist such treatment works in achieving compliance with this chapter; and

(12) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance to an eligible individual (as defined in subsection (j))—

(A) for the repair or replacement of existing individual household decentralized wastewater treatment systems; or

(B) in a case in which an eligible individual resides in a household that could be cost-effectively connected to an available publicly owned treatment works, for the connection of the applicable household to such treatment works.

(d) Types of assistance

Except as otherwise limited by State law, a water pollution control revolving fund of a State under this section may be used only—

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

(A) such loans are made at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with the proceeds of the loan;

(B) annual principal and interest payments will commence not later than 1 year after completion of any project and all loans will be fully amortized upon the expiration of the term of the loan;

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

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

(E) for a treatment works proposed for repair, replacement, or expansion, and eligible for assistance under subsection (c)(1), the recipient of a loan shall—

(i) develop and implement a fiscal sustainability plan that includes—

(I) an inventory of critical assets that are a part of the treatment works;

(II) an evaluation of the condition and performance of inventoried assets or asset groupings;

(III) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts as part of the plan; and

(IV) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities; or

(ii) certify that the recipient has developed and implemented a plan that meets the requirements under clause (i);

(2) to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies within the State at or below market rates, where such debt obligations were incurred after March 7, 1985;

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

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

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

(6) to earn interest on fund accounts; and

(7) for the reasonable costs of administering the fund and conducting activities under this subchapter, except that such amounts shall not exceed 4 percent of all grant awards to such fund under this subchapter, $400,000 per year, or ⅕ percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the State for such purpose regardless of the source.

(e) Limitation to prevent double benefits

If a State makes, from its water pollution revolving fund, a loan which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 1281(g) of this title for construction of such treatment works and an allowance under section 1281(*l*)(1) of this title for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

(f) Consistency with planning requirements

A State may provide financial assistance from its water pollution control revolving fund only with respect to a project which is consistent with plans, if any, developed under sections 1285(j), 1288, 1313(e), 1329, and 1330 of this title.

(g) Priority list requirement

The State may provide financial assistance from its water pollution control revolving fund only with respect to a project for construction of a treatment works described in subsection (c)(1) if such project is on the State's priority list under section 1296 of this title. Such assistance may be provided regardless of the rank of such project on such list.

(h) Eligibility of non-Federal share of construction grant projects

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

(i) Additional subsidization

(1) In general

In any case in which a State provides assistance to an eligible recipient under subsection (d), the State may provide additional subsidization, including forgiveness of principal and negative interest loans—

(A) in assistance to a municipality or intermunicipal, interstate, or State agency to benefit a municipality that—

(i) meets the affordability criteria of the State established under paragraph (2); or

(ii) does not meet the affordability criteria of the State if the recipient—

(I) seeks additional subsidization to benefit individual ratepayers in the residential user rate class;

(II) demonstrates to the State that such ratepayers will experience a significant hardship from the increase in rates necessary to finance the project or activity for which assistance is sought; and

(III) ensures, as part of an assistance agreement between the State and the recipient, that the additional subsidization provided under this paragraph is directed through a user charge rate system (or other appropriate method) to such ratepayers; or

(B) to implement a process, material, technique, or technology—

(i) to address water-efficiency goals;

(ii) to address energy-efficiency goals;

(iii) to mitigate stormwater runoff; or

(iv) to encourage sustainable project planning, design, and construction.

(2) Affordability criteria

(A) Establishment

(i) In general

Not later than September 30, 2015, and after providing notice and an opportunity for public comment, a State shall establish affordability criteria to assist in identify-

ing municipalities that would experience a significant hardship raising the revenue necessary to finance a project or activity eligible for assistance under subsection (c)(1) if additional subsidization is not provided.

(ii) Contents

The criteria under clause (i) shall be based on income and unemployment data, population trends, and other data determined relevant by the State, including whether the project or activity is to be carried out in an economically distressed area, as described in section 3161 of title 42.

(B) Existing criteria

If a State has previously established, after providing notice and an opportunity for public comment, affordability criteria that meet the requirements of subparagraph (A)—

(i) the State may use the criteria for the purposes of this subsection; and

(ii) those criteria shall be treated as affordability criteria established under this paragraph.

(C) Information to assist States

The Administrator may publish information to assist States in establishing affordability criteria under subparagraph (A).

(3) Limitations

(A) In general

A State may provide additional subsidization in a fiscal year under this subsection only if the total amount appropriated for making capitalization grants to all States under this subchapter for the fiscal year exceeds $1,000,000,000.

(B) Additional limitation

(i) General rule

Subject to clause (ii), a State may use not more than 30 percent of the total amount received by the State in capitalization grants under this subchapter for a fiscal year for providing additional subsidization under this subsection.

(ii) Exception

If, in a fiscal year, the amount appropriated for making capitalization grants to all States under this subchapter exceeds $1,000,000,000 by a percentage that is less than 30 percent, clause (i) shall be applied by substituting that percentage for 30 percent.

(C) Applicability

The authority of a State to provide additional subsidization under this subsection shall apply to amounts received by the State in capitalization grants under this subchapter for fiscal years beginning after September 30, 2014.

(D) Consideration

If the State provides additional subsidization to a municipality or intermunicipal, interstate, or State agency under this subsection that meets the criteria under paragraph (1)(A), the State shall take the criteria set forth in section 1382(b)(5) of this title into consideration.

(j) Definition of eligible individual

In subsection (c)(12), the term ''eligible individual'' means a member of a household, the members of which have a combined income (for the most recent 12-month period for which information is available) equal to not more than 50 percent of the median nonmetropolitan household income for the State in which the household is located, according to the most recent decennial census.

(June 30, 1948, ch. 758, title VI, § 603, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 23; amended Pub. L. 113–121, title V, § 5003, June 10, 2014, 128 Stat. 1323; Pub. L. 114–322, title IV, § 5012, Dec. 16, 2016, 130 Stat. 1902; Pub. L. 115–270, title IV, § 4107(a), Oct. 23, 2018, 132 Stat. 3876.)

AMENDMENTS

2018—Subsec. (c)(12). Pub. L. 115–270, § 4107(a)(1), added par. (12).

Subsec. (j). Pub. L. 115–270, § 4107(a)(2), added subsec. (j).

2016—Subsec. (i)(1). Pub. L. 114–322, § 5012(1), substituted ''to an eligible recipient'' for ''to a municipality or intermunicipal, interstate, or State agency'' in introductory provisions.

Subsec. (i)(1)(A). Pub. L. 114–322, § 5012(2), inserted ''in assistance to a municipality or intermunicipal, interstate, or State agency'' before ''to benefit'' in introductory provisions.

2014—Subsec. (c). Pub. L. 113–121, § 5003(1), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: ''The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 1292 of this title), (2) for the implementation of a management program established under section 1329 of this title, and (3) for development and implementation of a conservation and management plan under section 1330 of this title. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.''

Subsec. (d)(1)(A). Pub. L. 113–121, § 5003(2)(A)(i), substituted ''the lesser of 30 years and the projected useful life (as determined by the State) of the project to be financed with the proceeds of the loan'' for ''20 years''.

Subsec. (d)(1)(B). Pub. L. 113–121, § 5003(2)(A)(ii), substituted ''upon the expiration of the term of the loan'' for ''not later than 20 years after project completion''.

Subsec. (d)(1)(E). Pub. L. 113–121, § 5003(2)(A)(iii)–(v), added subpar. (E).

Subsec. (d)(7). Pub. L. 113–121, § 5003(2)(B), inserted '', $400,000 per year, or ⅕ percent per year of the current valuation of the fund, whichever amount is greatest, plus the amount of any fees collected by the State for such purpose regardless of the source'' before period at end.

Subsec. (i). Pub. L. 113–121, § 5003(3), added subsec. (i).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–121 effective Oct. 1, 2014, see section 5006 of Pub. L. 113–121, set out as a note under section 1381 of this title.

§ 1384. Allotment of funds

(a) Formula

Sums authorized to be appropriated to carry out this section for each of fiscal years 1989 and

1990 shall be allotted by the Administrator in accordance with section 1285(c) of this title.

(b) Reservation of funds for planning

Each State shall reserve each fiscal year 1 percent of the sums allotted to such State under this section for such fiscal year, or $100,000, whichever amount is greater, to carry out planning under sections 1285(j) and 1313(e) of this title.

(c) Allotment period

(1) Period of availability for grant award

Sums allotted to a State under this section for a fiscal year shall be available for obligation by the State during the fiscal year for which sums are authorized and during the following fiscal year.

(2) Reallotment of unobligated funds

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

(June 30, 1948, ch. 758, title VI, § 604, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 25.)

USE OF CAPITALIZATION GRANT FUNDS FOR CONSTRUCTION GRANTS

Pub. L. 101–144, title III, Nov. 9, 1989, 103 Stat. 858, as amended by Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 238, provided: ''That, notwithstanding any other provision of law, sums heretofore, herein or hereafter appropriated under this heading [''ENVIRONMENTAL PROTECTION AGENCY'' and ''CONSTRUCTION GRANTS''] allotted for title VI [33 U.S.C. 1381 et seq.] capitalization grants to American Samoa, Commonwealth of the Northern Mariana Islands, Guam, the Republic of Palau (or its successor entity), Virgin Islands and the District of Columbia, may be used for title II [33 U.S.C. 1281 et seq.] construction grants at the request of the chief executive of each of the above named entities, and sums appropriated in fiscal year 1989 shall remain available for obligation until September 30, 1992.''

§ 1385. Corrective action

(a) Notification of noncompliance

If the Administrator determines that a State has not complied with its agreement with the Administrator under section 1382 of this title or any other requirement of this subchapter, the Administrator shall notify the State of such noncompliance and the necessary corrective action.

(b) Withholding of payments

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

(c) Reallotment of withheld payments

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

(June 30, 1948, ch. 758, title VI, § 605, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 25.)

§ 1386. Audits, reports, and fiscal controls; intended use plan

(a) Fiscal control and auditing procedures

Each State electing to establish a water pollution control revolving fund under this subchapter 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) Annual Federal audits

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

(c) Intended use plan

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

(1) a list of those projects for construction of publicly owned treatment works on the State's priority list developed pursuant to section 1296 of this title and a list of activities eligible for assistance under sections 1329 and 1330 of this title;

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

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

(4) assurances and specific proposals for meeting the requirements of paragraphs (3), (4), (5), and (6) of section 1382(b) of this title; and

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

(d) Annual report

Beginning the first fiscal year after the receipt of payments under this subchapter, the

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

(e) Annual Federal oversight review

The Administrator shall conduct an annual oversight review of each State plan prepared under subsection (c), each State report prepared under subsection (d), and other such materials as are considered necessary and appropriate in carrying out the purposes of this subchapter. 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 such records as the Administrator reasonably requires to review and determine compliance with this subchapter.

(f) Applicability of subchapter II provisions

Except to the extent provided in this subchapter, the provisions of subchapter II shall not apply to grants under this subchapter.

(June 30, 1948, ch. 758, title VI, § 606, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 25; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

§ 1387. Authorization of appropriations

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

(1) $1,200,000,000 per fiscal year for each of fiscal years 1989 and 1990;
(2) $2,400,000,000 for fiscal year 1991;
(3) $1,800,000,000 for fiscal year 1992;
(4) $1,200,000,000 for fiscal year 1993; and
(5) $600,000,000 for fiscal year 1994.

(June 30, 1948, ch. 758, title VI, § 607, as added Pub. L. 100–4, title II, § 212(a), Feb. 4, 1987, 101 Stat. 26.)

§ 1388. Requirements

(a) In general

Funds made available from a State water pollution control revolving fund established under this subchapter may not be used for a project for the construction, alteration, maintenance, or repair of treatment works unless all of the iron and steel products used in the project are produced in the United States.

(b) Definition of iron and steel products

In this section, the term ''iron and steel products'' means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, construction materials.

(c) Application

Subsection (a) shall not apply in any case or category of cases in which the Administrator finds that—

(1) applying subsection (a) would be inconsistent with the public interest;
(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(d) Waiver

If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public, on an informal basis, a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet site of the Environmental Protection Agency.

(e) International agreements

This section shall be applied in a manner consistent with United States obligations under international agreements.

(f) Management and oversight

The Administrator may retain up to 0.25 percent of the funds appropriated for this subchapter for management and oversight of the requirements of this section.

(g) Effective date

This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency's capacity to approve such plans and specifications prior to a project requesting bids, prior to June 10, 2014.

(June 30, 1948, ch. 758, title VI, § 608, as added Pub. L. 113–121, title V, § 5004, June 10, 2014, 128 Stat. 1326.)

EFFECTIVE DATE

Section effective Oct. 1, 2014, see section 5006 of Pub. L. 113–121, set out as an Effective Date of 2014 Amendment note under section 1381 of this title.

CHAPTER 27—OCEAN DUMPING

Public Law 91-611
91st Congress, H. R. 19877
December 31, 1970

An Act

Authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes.

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

TITLE I—RIVERS AND HARBORS

River and Harbor Act of 1970.

SEC. 101. The following works of improvement of rivers and harbors and other waterways for navigation, flood control, and other purposes are hereby adopted and authorized to be prosecuted by the Secretary of the Army, acting through the Chief of Engineers, in accordance with the plans and subject to the conditions recommended by the Chief of Engineers in the respective reports hereinafter designated. The provisions of section 1 of the River and Harbor Act approved March 2, 1945 (Public Law Numbered 14, Seventy-ninth Congress), shall govern with respect to projects authorized in this title; and the procedures therein set forth with respect to plans, proposals, or reports for works of improvement for navigation or flood control and for irrigation and purposes incidental thereto, shall apply as if herein set forth in full.

59 Stat. 10.

NAVIGATION

Pleasant Bay, Massachusetts: House Document Numbered 91–430, at an estimated cost of $10,221,000;

Baltimore Harbor and Channels, Maryland and Virginia: Chief of Engineers report dated September 21, 1970, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of such project, and except that construction shall not be initiated until approved by the Secretary of the Army and the President;

Atlantic Intracoastal Waterway Bridges, Virginia and North Carolina: Chief of Engineers report dated November 24, 1970, at an estimated cost of $11,220,000, except that construction shall not be initiated until approved by the Secretary of the Army and the President;

Manteo (Shallowbag) Bay, North Carolina: House Document Numbered 91–303, at an estimated cost of $10,769,000;

Pamlico River and Morehead City Harbor, North Carolina: Report of the Chief of Engineers dated November 23, 1970, at an estimated cost of $2,642,000, except that construction shall not be initiated until approved by the Secretary of the Army and the President;

Port Sutton, Tampa Harbor, Florida: House Document Numbered 91–150 maintenance;

Tampa Harbor, Florida: House Document Numbered 91–401, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of such project; after the date of enactment of this Act the Secretary of the Army, acting through the Chief of Engineers, shall maintain the Port Sutton Terminal Channel and the East Bay Channel and Turning Basin;

Freeport Harbor, Texas: Chief of Engineers report dated November 23, 1970, at an estimated cost of $13,710,000, except that construction shall not be initiated until approved by the Secretary of the Army and the President;

Coos Bay, Oregon: House Document Numbered 91–151, at an estimated cost of $9,100,000;

Nawiliwili Harbor, Kauai, Hawaii: Chief of Engineers report dated November 24, 1970, at an estimated cost of $1,952,000, except that construction shall not be initiated until approved by the Secretary of the Army and the President.

Lido Key, Florida: House Document Numbered 91–320, at an estimated cost of $240,000; the Secretary of the Army, acting through the Chief of Engineers, is authorized to reimburse or credit local interests for work performed by them subsequent to July 1, 1968, and in accordance with the recommended plan of improvement.

Navigation channel, study.

SEC. 102. The Secretary of the Army is hereby authorized and directed to cause an immediate study to be made under the direction of the Chief of Engineers of a navigation channel, having a depth of seventeen feet at mean low water, and a width of one hundred feet, extending a distance of approximately two and one-half miles from deep water in Saint Georges Creek, Maryland, to the Harry Lundeberg School of Seamanship at Piney Point, Maryland, and terminating in a turning basin at that location. Such project because of its immediate and long-range value to the United States Merchant Marine and to national defense, is hereby authorized, at an estimated cost of $475,000, as determined to be feasible and justified by the Chief of Engineers and Secretary of the Army with the approval of the President, unless within the first period of ninety calendar days of continuous session of the Congress after the date on which the report is submitted to it, such report is disapproved by the Congress. The requirements for cooperation shall include provisions that local interests shall furnish all lands, easements, and rights-of-way for construction and future maintenance of the project; hold and save the United States free from damages, and bear the cost of all spoil disposal areas.

Appropriation.

Report to Congress.

SEC. 103. The costs of operation and maintenance of the general navigation features of small boat harbor projects authorized between January 1, 1970, and December 31, 1970, under the authority of this Act, section 201 of the Flood Control Act of 1965, or section 107 of the River and Harbor Act of 1960, shall be borne by the United States.

79 Stat. 1073.
42 USC 1962d-5.

SEC. 104. The proviso in section 6 of the Act of July 3, 1930, as amended (48 Stat. 948; 33 U.S.C. 569a), is amended to read as follows: "*Provided*, That individuals so engaged may be paid at rates not to exceed the daily equivalent of the rate for GS–18 for each day of their services."

74 Stat. 486.
33 USC 577.
64 Stat. 168.
Ante, p. 198-1.

Board on Coastal Engineering, compensation.
77 Stat. 305.

SEC. 105. The civilian members of the Board on Coastal Engineering Research authorized by the Act of November 7, 1963 (33 U.S.C. 426–2) may be paid at rates not to exceed the daily equivalent of the rate for GS–18 for each day of attendance at Board meetings, not to exceed thirty days per year, in addition to the traveling and other necessary expenses connected with their duties on the Board in accordance with the provisions of 5 U.S.C. 5703 (b), (d), and 5707.

80 Stat. 498.
83 Stat. 190.

Surveys.

SEC. 106. The Secretary of the Army is hereby authorized and directed to cause surveys to be made at the following locations and subject to all applicable provisions of section 110 of the River and Harbor Act of 1950:

64 Stat. 168.

Shooters Island, New York, possible removal and utilization for fill and widening of Arthur Kill.

Elk River, Maryland.

Stillpond Creek, Kent County, Maryland.

Patapsco River, Brooklyn, Maryland.

Kanawha and James Rivers, with a view to determining the advisability of providing a waterway connecting the Kanawha River, West Virginia, and James River, Virginia, by canals and appurtenant facilities.

Ventura Marina to Ventura Keys, Ventura County, California.

Harbors and rivers in American Samoa and the territory of Guam, in the interests of navigation, flood control, and related water resource purposes.

Kaneohe Bay, Oahu, Hawaii, with a view of recommending improvements in the interests of pollution abatement, navigation, recreation, and overall bay development.

Wailua, Kauai, Hawaii (beach erosion).

West Hawaii, Kona area, Hawaii, Hawaii (beach erosion).

Maunalua Bay, Oahu, Hawaii (beach erosion).

Hanauma Bay, Oahu, Hawaii (beach erosion).

Kaaawa area, Oahu, Hawaii (beach erosion).

Hauula area, Oahu, Hawaii (beach erosion).

Mokuleia area, Oahu, Hawaii (beach erosion).

Keehi Lagoon area, Oahu, Hawaii (beach erosion).

Sandy Beach Park, Oahu, Hawaii (beach erosion).

Ewa Beach, Oahu, Hawaii (beach erosion).

Maile-Waianae coast area, Oahu, Hawaii (beach erosion).

Great Lakes and Saint Lawrence Seaway, survey.

SEC. 107. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to conduct a survey of the Great Lakes and Saint Lawrence Seaway to determine the feasibility of means of extending the navigation season in accordance with the recommendations of the Chief of Engineers in his report entitled "Great Lakes and Saint Lawrence Seaway—Navigation Season Extension."

Navigation season, extension.

(b) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Departments of Transportation, Interior, and Commerce, including specifically the Coast Guard, the Saint Lawrence Seaway Development Corporation, and the Maritime Administration; the Environmental Protection Agency; other interested Federal agencies, and non-Federal public and private interests, is authorized and directed to undertake a program to demonstrate the practicability of extending the navigation season on the Great Lakes and Saint Lawrence Seaway. Such program shall include, but not be limited to, ship voyages extending beyond the normal navigation season; observation and surveillance of ice conditions and ice forces; environmental and ecological investigations; collection of technical data related to improved vessel design; ice control facilities, and aids to navigation; physical model studies; and coordination of the collection and dissemination of information to shippers on weather and ice conditions. The Secretary of the Army, acting through the Chief of Engineers, shall submit a report describing the results of the program to the Congress not later than July 30, 1974. There is authorized to be appropriated to the Secretary of the Army not to exceed $6,500,000 to carry out this subsection.

Report to Congress.

Appropriation.

Shippers and vessels, insurance rates, study.

(c) The Secretary of Commerce, acting through the Maritime Administration, in consultation with other interested Federal agencies, representatives of the merchant marine, insurance companies, industry, and other interested organizations, shall conduct a study of ways and means to provide reasonable insurance rates for shippers and vessels engaged in waterborne commerce on the Great Lakes and the Saint Lawrence Seaway beyond the present navigation season, and shall submit a report, together with any legislative recommendations, to Congress by June 30, 1971.

Report to Congress.

Cuyahoga River Basin, Ohio, study.

SEC. 108. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to investigate, study, and undertake measures in the interests of water quality, environmental quality, recreation, fish and wildlife, and flood control, for the Cuyahoga River Basin, Ohio. Such measures shall include, but not be limited to, clearing, snagging, and removal of debris from the river's bed and banks; dredging and structural works to improve streamflow and water quality; and bank stabilization by vegetation and other means. In carrying out such studies and investigations the Secretary of the Army, acting through the Chief of Engineers, shall cooperate with interested Federal and State agencies.

Cooperation with Federal and State agencies.

(b) Prior to initiation of measures authorized by this section, such non-Federal public interests as the Secretary of the Army, acting through the Chief of Engineers, may require shall agree to such conditions of cooperation as the Secretary of the Army, acting through the Chief of Engineers, determines appropriate, except that such conditions shall be similar to those required for similar project purposes in other Federal water resources projects.

Surveys.
74 Stat. 487.
Appropriation.

SEC. 109. (f) Section 110 of the River and Harbor Act of 1958 (72 Stat. 297) is amended to read as follows:

"(f) There is hereby authorized to be appropriated the sum of $2,000,000 to carry out the provisions of this section and, upon completion of transfer to the State of Illinois of all right, title, and interest of the United States in and to the canal, an additional sum of $6,528,000 to be expended for the repair, modification, and maintenance of bridges, title transfer, modification or rehabilitation of hydraulic structures, fencing, clearing auxiliary ditches, and for the repair and modification of other canal property appurtenances, notwithstanding subsection (b) of this section."

Trinity River and tributaries, Texas.

SEC. 110. The project for the Trinity River and tributaries, Texas, authorized in section 301 of the River and Harbor Act of 1965 (79 Stat. 1073) is hereby modified to provide that not to exceed $75,000 of the costs incurred in 1968 and 1969 by the Trinity River Authority of Texas for aerial photography and mosaic preparation furnished to and accepted by the Secretary of the Army, acting through the Chief of Engineers, shall be credited as a part of the local contribution required of such authority for such project.

Real property, compensation.

SEC. 111. In all cases where real property shall be taken by the United States for the public use in connection with any improvement of rivers, harbors, canals, or waterways of the United States, and in all condemnation proceedings by the United States to acquire lands or easements for such improvements, the compensation to be paid for real property taken by the United States above the normal high water mark of navigable waters of the United States shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In cases of partial takings of real property, no depreciation in the value of any remaining real property shall be recognized and no compensation shall be paid for any damages to such remaining real property which result from loss of or reduction of access from such remaining real property to such navigable waters because of the taking of real property or the purposes for which such real property is taken. The compensation defined herein shall apply to all acquisitions of real property after the date of enactment of this Act, and to the determination of just compensation in any condemnation suit pending on the date of enactment hereof.

Restriction.

79 Stat. 1095.

SEC. 112. (a) Subsection (a) of section 107 of the River and Harbor Act of 1960 (33 U.S.C. 577) is amended by striking out "$10,000,000" and inserting in lieu thereof "$25,000,000". Subsection (b) of such section 107 is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000".

(b) Section 3 of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property", approved August 13, 1946, as amended (33 U.S.C. 426g), is amended (1) by striking out "$10,000,000" and inserting in lieu thereof "$25,000,000", and (2) by striking out "$500,000" and inserting in lieu thereof "$1,000,000".

(c) The amendments made by this section shall not apply to any project under contract for construction on the date of enactment of this Act.

SEC. 113. The New York Harbor Collection and Removal of Drift project is hereby modified substantially in accordance with the plans on file in the Office, Chief of Engineers, subject to the approval of such plans and recommendations for requirements of local cooperation by the Secretary of the Army and the President. Any disposal of materials in carrying out this project shall be in accordance with Federal and State laws and regulations with respect to the control of air and water pollution.

SEC. 114. The project for Santa Barbara Harbor, California, authorized by the River and Harbor Act approved March 2, 1945, is hereby modified to provide that the dredging and maintenance of such project shall be the responsibility of the United States. 59 Stat. 10. 33 USC 544b, 603a.

SEC. 115. The multiple-purpose plan for improvement of the Arkansas River and tributaries, authorized by the River and Harbor Act of July 24, 1946, as amended and modified, is hereby further modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to construct a bridge and necessary approach facilities across Spaniard Creek, Muskogee County, Oklahoma, as a replacement for the former bridge which was removed in connection with the construction of Lock and Dam Numbered 16. Appropriate non-Federal interests as determined by the Secretary of the Army, acting through the Chief of Engineers, shall own, operate, and maintain the bridge and approach facilities after completion of construction. Spaniard Creek, Okla. Bridge construction. 60 Stat. 634.

SEC. 116. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to undertake measures to clear the channel of the North Branch of the Chicago River, Illinois, of fallen trees, roots, and other debris and objects which contribute to flooding, unsightliness, and pollution of the river. Chicago River, Ill., channel clearance.

(b) Prior to initiation of measures authorized by this section, such non-Federal interests as the Secretary of the Army, acting through the Chief of Engineers, may require shall agree to such conditions of cooperation as the Secretary of the Army, acting through the Chief of Engineers, determines appropriate, except that such conditions shall be similar to those required for similar project purposes in other Federal water resources projects.

(c) There is authorized to be appropriated to the Secretary of the Army not to exceed $200,000 for the Federal share of the project. Appropriation.

SEC. 117. The project for Port Orford, Oregon, authorized by the River and Harbor Act of 1965 in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 62, Eighty-eighth Congress, is hereby modified to provide for maintenance of a suitable channel to the existing port facilities, not exceeding the sixteen-foot natural depth available at the time of project authorization, subject to the conditions that local interests agree to (1) provide without cost to the United States all necessary lands, easements, and rights-of-way; and (2) hold and save the United States free from damages due to the work. No such dredging shall be performed within fifty feet of the docks. Port Orford, Oregon, project. 79 Stat. 1089.

SEC. 118. The project for the Ouachita and Black Rivers, Arkansas and Louisiana, authorized by the River and Harbor Act of 1960, is hereby modified to provide for the acquisition of lands for establishment of national wildlife refuges, under the provisions of Public Law 85-624 and section 6(c) of Public Law 89-72, at an estimated additional Federal cost of $13,500,000, substantially in accordance with the report of the Chief of Engineers dated November 25, 1970, subject to approval by the Secretary of the Army and the President. 74 Stat. 480. 33 USC 426, 577, 578. 79 Stat. 216. 16 USC 460l-17.

SEC. 119. The Chief of Engineers, for the purpose of determining Federal and non-Federal cost sharing, relating to proposed construction of small-boat navigation projects, shall consider charter fishing craft as commercial vessels. Charter fishing craft.

Ante, p. 97.

SEC. 120. Paragraph (1) of subsection (p) of section 11 of the Federal Water Pollution Control Act, as amended, is amended by inserting after the word "size", in the first sentence thereof, a new clause as follows: "but not including any barge that is not self-propelled and that does not carry oil as cargo or fuel,"

Anchorage, Alaska, investigation.

SEC. 121. The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Secretary of Housing and Urban Development shall investigate the L-K Street slide area in Anchorage, Alaska, with a view of determining the practicability and the feasibility of corrective measures that would permit federal mortgage insurance under the National Housing Act for homes and multifamily structures in the area and shall report thereon to the Congress.

48 Stat. 1246. 12 USC 1701 and note.

Report to Congress.

Adverse environmental effects, report to Congress.

SEC. 122. Not later than July 1, 1972, the Secretary of the Army, acting through the Chief of Engineers, after consultation with appropriate Federal and State officials, shall submit to Congress, and not later than ninety days after submission, promulgate guidelines designed to assure that possible adverse economic, social and environmental effects relating to any proposed project have been fully considered in developing such project, and that the final decisions on the project are made in the best over all public interest, taking into consideration the need for flood control, navigation and associated purposes, and the cost of eliminating or minimizing such adverse affects and the following:

(1) Air, noise, and water pollution;

(2) destruction or disruption of man-made and natural resources, esthetic values, community cohesion and the availability of public facilities and services;

(3) adverse employment effects and tax and property value losses;

(4) injurious displacement of people, businesses, and farms; and

(5) disruption of desirable community and regional growth.

Such guidelines shall apply to all projects authorized in this Act and proposed projects after the issuance of such guidelines.

Contained spoil disposal, facilities.

SEC. 123. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct, operate, and maintain, subject to the provisions of subsection (c), contained spoil disposal facilities of sufficient capacity for a period not to exceed ten years, to meet the requirements of this section. Before establishing each such facility, the Secretary of the Army shall obtain the concurrence of appropriate local governments and shall consider the views and recommendations of the Administrator of the Environmental Protection Agency and shall comply with requirements of section 21 of the Federal Water Pollution Control Act, and of the National Environmental Policy Act of 1969. Section 9 of the River and Harbor Act of 1899 shall not apply to any facility authorized by this section.

Ante, p. 107. 83 Stat. 852. 42 USC 4321 and note.

(b) The Secretary of the Army, acting through the Chief of Engineers, shall establish the contained spoil disposal facilities authorized in subsection (a) at the earliest practicable date, taking into consideration the views and recommendations of the Administrator of the Environmental Protection Agency as to those areas which, in the Administrator's judgment, are most urgently in need of such facilities and pursuant to the requirements of the National Environmental Policy Act of 1969 and the Federal Water Pollution Control Act.

(c) Prior to construction of any such facility, the appropriate State or States, interstate agency, municipality, or other appropriate political subdivision of the State shall agree in writing to (1) furnish all lands, easements, and rights-of-way necessary for the construction, operation, and maintenance of the facility; (2) contribute to the United States 25 per centum of the construction costs, such amount

to be payable either in cash prior to construction, in installments during construction, or in installments, with interest at a rate to be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which construction is initiated, on the basis of the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations, which are neither due or callable for redemption for fifteen years from date of issue; (3) hold and save the United States free from damages due to construction, operation, and maintenance of the facility; and (4) except as provided in subsection (f), maintain the facility after completion of its use for disposal purposes in a manner satisfactory to the Secretary of the Army.

(d) The requirement for appropriate non-Federal interest or interests to furnish an agreement to contribute 25 per centum of the construction costs as set forth in subsection (c) shall be waived by the Secretary of the Army upon a finding by the Administrator of the Environmental Protection Agency that for the area to which such construction applies, the State or States involved, interstate agency, municipality, and other appropriate political subdivision of the State and industrial concerns are participating in and in compliance with an approved plan for the general geographical area of the dredging activity for construction, modification, expansion, or rehabilitation of waste treatment facilities and the Administrator has found that applicable water quality standards are not being violated.

(e) Notwithstanding any other provision of law, all costs of disposal of dredged spoil from the project for the Great Lakes connecting channels, Michigan, shall be borne by the United States.

(f) The participating non-Federal interest or interests shall retain title to all lands, easements, and rights-of-way furnished by it pursuant to subsection (c). A spoil disposal facility owned by a non-Federal interest or interests may be conveyed to another party only after completion of the facility's use for disposal purposes and after the transferee agrees in writing to use or maintain the facility in a manner which the Secretary of the Army determines to be satisfactory.

(g) Any spoil disposal facilities constructed under the provisions of this section shall be made available to Federal licensees or permittees upon payment of an appropriate charge for such use. Twenty-five per centum of such charge shall be remitted to the participating non-Federal interest or interests except for those excused from contributing to the construction costs under subsections (d) and (e).

(h) This section, other than subsection (i), shall be applicable only to the Great Lakes and their connecting channels. Applicability.

(i) The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized to extend to all navigable waters, connecting channels, tributary streams, other waters of the United States and waters contiguous to the United States, a comprehensive program of research, study, and experimentation relating to dredged spoil. This program shall be carried out in cooperation with other Federal and State agencies, and shall include, but not be limited to, investigations on the characteristics of dredged spoil, and alternative methods of its disposal. To the extent that such study shall include the effects of such dredge spoil on water quality, the facilities and personnel of the Environmental Protection Agency shall be utilized. Navigable waters, etc., extension, study.

SEC. 124. Title I of this Act may be cited as the "River and Harbor Act of 1970". Citation of title.

TITLE II—FLOOD CONTROL

SEC. 201. Sections 201 and 202 and the last three sentences in section 203 of the Flood Control Act of 1968 shall apply to all projects authorized in this title. The following works of improvement for the benefit of navigation and the control of destructive floodwaters and 82 Stat. 739. 33 USC 701c note, 701-1 note.

other purposes are hereby adopted and authorized to be prosecuted by the Secretary of the Army, acting through the Chief of Engineers, in accordance with the plans and subject to the conditions recommended to be the Chief of Engineers in the respective reports hereinafter designated.

ARKANSAS RIVER BASIN

The project for flood protection and other purposes on the Deep Fork River in the vicinity of Arcadia, Oklahoma, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–299, at an estimated cost of $24,900,000.

ARKANSAS-RED RIVER BASIN

The project for water quality control in the Arkansas-Red River Basin, Texas, Oklahoma, and Kansas, designated as Part I, authorized by the Flood Control Act of 1966, is hereby modified to include Part II of such project, substantially in accordance with the recommendations of the Chief of Engineers in his report dated May 6, 1970, except that the amount authorized for Part I shall be utilized for initiation and partial accomplishment of Parts I and II. Construction shall not be initiated until approved by the Secretary of the Army and the President.

80 Stat. 1409, 1418.
33 USC 701c note, 701-1 note, 709a, 642.

LOWER MISSISSIPPI RIVER BASIN

The project for flood control and improvement of the lower Mississippi River, adopted by the Act of May 15, 1928 (45 Stat. 534), as amended and modified, is hereby further modified and expanded to include the project for flood protection within the areas of eastern Rapides and south-central Avoyelles Parishes, Louisiana, that are drained by the Bayou des Glaises diversion channel, and Lake Long, and their tributaries, substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 91–113, at an estimated cost of $15,333,000.

33 USC 702a-702m.

MISSOURI RIVER BASIN

The project for flood protection and other purposes in the Blue River Basin, vicinity of Kansas City, Missouri and Kansas, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–332, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of the project. Construction of the Tomahawk Creek Reservoir shall not be initiated until the Secretary of the Army has been assured by the Chief of Engineers that the most feasible combination of improvements having the most favorable impact upon the environment and future development of the Tomahawk Creek Watershed has been assured.

Oahe Dam and Reservoir.

The project for Oahe Dam and Reservoir, Missouri River, North Dakota, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in Senate Document Numbered 91–23, at an estimated cost of $732,000.

RED RIVER OF THE NORTH

The project for flood protection and other purposes on Wild Rice River, Minnesota, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 366, Ninetieth Congress, at an estimated cost of $8,359,000.

The project for flood protection and other purposes on the Sheyenne River, North Dakota, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–330, at an estimated cost of $20,000,000.

SOURIS RIVER BASIN

The project for Burlington Dam and Reservoir on the Souris River, North Dakota, for flood protection and other purposes, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–321, at an estimated cost of $29,240,000.

SANTA BARBARA COUNTY COASTAL STREAMS

The project for flood protection on Atascadero Creek and its tributaries of Goleta, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–392, at an estimated cost of $13,830,000.

SABINE RIVER BASIN

The project for flood protection and other purposes in the Sabine River Basin, Texas and Louisiana, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–429, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of the project.

UPPER MISSISSIPPI RIVER BASIN

The project for flood protection on the Mississippi River at Davenport, Iowa, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated December 4, 1970, at an estimated cost of $12,263,000. Construction shall not be initiated until approved by the Secretary of the Army and by the President.

OHIO RIVER BASIN

The project for flood protection on Mill Creek, Ohio, is hereby authorized, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–413, at an estimated cost of $32,642,000.

GREAT LAKES BASIN

Michigan.

The project for flood protection along Red Run Drain and Lower Clinton River, Michigan, is hereby authorized, substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–431, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of the project.

Ellicott Creek, N. Y.

The project for the Sandridge Dam and Reservoir, Ellicott Creek, New York, for flood protection and other purposes is hereby authorized, substantially in accordance with the recommendations of the Chief of Engineers in his report dated November 25, 1970, at an estimated cost of $19,070,000. Construction shall not be initiated until approved by the Secretary of the Army and the President. Prior to the commencement of this project, including, but not limited to, acquisition of real property, the Secretary of the Army, acting through the Chief of Engineers, shall investigate all possible alternative methods, including, but not limited to, possible relocation of elements

Study, report to Congress.

of the project, installation of channels, provision of levees and floodwalls, decreasing of size of project facilities, rerouting of streams, raising or lowering pools, and deepening channels and movement on the stream, or any combination of the foregoing that can accomplish the purposes of this project and shall report his findings and determinations to the Congress.

COMMONWEALTH OF PUERTO RICO

The project for flood protection and other purposes for Portugues Dam and Reservoir, Puerto Rico, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–422, at an estimated cost of $11,110,000.

The project for flood protection and other purposes for Cerrillos Dam and Reservoir, Puerto Rico, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–422, at an estimated cost of $16,351,000.

The project for flood protection and other purposes for channel improvement at Ponce, Puerto Rico, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 91–422, at an estimated cost of $14,295,000.

SACRAMENTO RIVER BASIN

The project for flood protection and other purposes on Cottonwood Creek, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated December 14, 1970, except that not to exceed $40,000,000 is authorized for initiation and partial accomplishment of the project. Construction shall not be initiated until approved by the Secretary of the Army and the President.

SAN JOAQUIN RIVER BASIN

The project for Merced County Streams, California, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated November 25, 1970, at an estimated cost of $37,260,000. Construction shall not be initiated until approved by the Secretary of the Army and the President.

KANEOHE-KAILUA AREA, OAHU, HAWAII

The project for flood protection in the Kaneohe-Kailua area on the east coast of the island of Oahu, Hawaii, is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in his report dated November 23, 1970, at an estimated cost of $7,249,000. Construction shall not be initiated until approved by the Secretary of the Army and the President.

Ohio River Basin, project modification.

SEC. 202. (a) The plan for flood protection in the Big Sandy River Basin, Kentucky, West Virginia, and Virginia, included in the comprehensive plan for flood control in the Ohio River Basin, authorized by the Flood Control Act, approved June 22, 1936 (49 Stat. 1570), as amended and modified, is hereby further modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to relocate Levisa Fork of the Big Sandy River at Pikeville, Kentucky, and to construct related drainage facilities, in connection with the city of Pikeville's model city program. Such channel relocation shall be accomplished by excavation of an open cut to connect the points of the horseshoe bend in Levisa Fork at Pikeville, and the open cut shall be designed and constructed to such dimensions and grades as will permit

relocation of the river with the Chesapeake and Ohio Railway on the left descending bank and the United States Highway Numbered 23 on the right descending bank of such open cut. Spoil material from the open cut shall be utilized for filled areas included in the model city plan.

Participating agencies, agreement.

(b) The work authorized by this section shall not be commenced until an agreement satisfactory to the Secretary of the Army, acting through the Chief of Engineers, has been entered into with the Department of Housing and Urban Development, the State Highway Department of Kentucky, the Federal Highway Administration, the Appalachian Regional Commission, the Chesapeake and Ohio Railway Company, the city of Pikeville, and other participating agencies, relative to the financial responsibility of each participant in the model city project; and appropriate non-Federal interests have furnished the cooperation required by section 3 of the Flood Control Act, approved June 22, 1936 (49 Stat. 1570), as amended. Financial participation of the Department of the Army shall be based upon an equitable distribution of costs among the participants.

50 Stat. 877.
33 USC 701c.

SEC. 203. The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate and participate with concerned Federal, State, and local agencies in preparing the general plan for the development of the water resources of the western United States authorized by the Colorado River Basin Project Act (82 Stat. 885).

43 USC 1501 note.

SEC. 204. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with the Commonwealth of Puerto Rico, political subdivisions thereof, and appropriate agencies and instrumentalities thereof, in the preparation of plans for the development, utilization, and conservation of water and related land resources of drainage basins and coastal areas in the Commonwealth of Puerto Rico, and to submit to Congress reports and recommendations with respect to appropriate participation by the Department of the Army in carrying out such plans. Such plans that may be recommended to the Congress shall be harmonious components of overall development plans being formulated by the Commonwealth and shall be fully coordinated with all interested Federal agencies.

Puerto Rico.

Reports to Congress.

(b) The Secretary of the Army, acting through the Chief of Engineers, shall consider plans to meet the needs of the Commonwealth for protection against floods, wise use of flood plain lands, improvement of navigation facilities, regional water supply and waste management systems, outdoor recreational facilities, the enhancement and control of water quality, enhancement and conservation of fish and wildlife, beach erosion control, and other measures for environmental enhancement.

SEC. 205. Notwithstanding the first proviso in section 201 of the Acts entitled "An Act authorizing the construction, repair, and preservation of certain public works on rivers and harbors for navigation, flood control, and for other purposes" approved June 30, 1948 (62 Stat. 1171), and May 17, 1950 (64 Stat. 63), the authorization in section 203 of the Act of June 30, 1948, and section 204 of the Act of May 17, 1950, of the project for local protection at East Grand Forks, Minnesota, shall expire on April 17, 1975, unless local interests shall before such date furnish assurances satisfactory to the Secretary of the Army that the required local cooperation in such project will be furnished.

East Grand Forks, Minn.

33 USC 701c note.
64 Stat. 170.

SEC. 206. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to elevate, relocate, or make such other changes as may be necessary to insure that the road located in the Wolf Creek Park area, running in an east-west direction and crossing Wolf Creek, Harris Branch, and Strain Branch in the Navarro Mills Reservoir, Texas, will at all times be above elevation four hundred and forty-three feet above mean sea level.

Wolf Creek Park area, Tex.

SEC. 207. Paragraph (2) under the heading "Lower Mississippi River Basin" in section 203 of the Flood Control Act of 1966 (Public Law 89-789) is amended by striking out "Baton Rouge, Louisiana," and inserting in lieu thereof "Cairo, Illinois,".

80 Stat. 1420.

SEC. 208. Subsection (b) of the first section of the Act entitled "An Act authorizing Federal participation in the cost of protecting the shores of publicly owned property.", approved August 13, 1946 (33 U.S.C. 426e(b)), is amended by inserting "(1)" after "except that", by striking out "and, further, that" and inserting "(2)" in lieu thereof, and by inserting before the period at the end thereof a comma and the following: "and (3) Federal participation in the cost of a project providing hurricane protection may be, in the discretion of the Secretary of the Army, acting through the Chief of Engineers, not more than 70 per centum of the total cost exclusive of land costs."

70 Stat. 702; 76 Stat. 1178.

SEC. 209. It is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well-being of the people of the United States, and the national economic development are the objectives to be included in federally financed water resource projects, and in the evaluation of benefits and cost attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives.

Obion Creek, Ky.

SEC. 210. The project for the western Kentucky tributaries (Obion Creek), Kentucky, authorized as part of the comprehensive plan for the lower Mississippi Basin in the Flood Control Act of 1965, is hereby modified to provide that the Secretary of the Army, acting through the Chief of Engineers, shall, after the date of enactment of this Act, relocate at Federal expense all transmission lines (both gas and electric) in western Kentucky required to be relocated by this project or, at his discretion, reimburse or credit local interests for such relocations made by them.

79 Stat. 1076.

SEC. 211. (a) Section 3013 of title 10, United States Code, is amended by striking out "four Assistant Secretaries" and inserting in lieu thereof the following: "five Assistant Secretaries", and by adding at the end thereof the following: "One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources including flood control, navigation, shore protection, and related purposes."

81 Stat. 523.

(b) Paragraph (15) of section 5315 of title 5, United States Code, is amended by striking out "(4)" and inserting in lieu thereof "(5)".

82 Stat. 1312.

Guadalupe River, Tex.

SEC. 212. The Secretary of the Army, acting through the Chief of Engineers, is authorized, in the interests of flood control and related purposes, to remove logjams in the lower Guadalupe River, Texas. Prior to the undertaking of the work authorized by this section, appropriate non-Federal interests shall agree to furnish without cost to the United States lands, easements, and rights-of-way necessary for the work, to hold and save the United States free from damages due to the work and to perform all such work thereafter.

Niobrara, Nebr.

SEC. 213. The Secretary of the Army, acting through the Chief of Engineers, is authorized to resolve the seepage and drainage problem in the vicinity of the town of Niobrara, Nebraska, that may be related to operation of Gavins Point Dam and Lewis and Clark Lake project, Nebraska and South Dakota, subject to a determination by the Chief of Engineers with the approval of the Secretary of the Army, of the most feasible solution thereto. There is authorized to be appropriated to the Secretary not to exceed $7,800,000, to carry out this section.

Appropriation.

Coal River Basin, W. Va.

SEC. 214. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to perform dredging operations in the Coal River Basin, West Virginia, for the purpose of improving the channel capacities in the interest of flood control. Such operations shall be performed on an interim basis pending completion of the Kanawha River Basin comprehensive study being undertaken by Federal and State agencies and implementation of the pertinent study recommendations by the Secretary of the Army. Appropriate non-Federal public interests as determined by the Secretary of the Army, acting through the Chief of Engineers, shall, prior to initiation of dredging operations, agree to furnish the necessary lands, disposal areas, easements, and rights-of-way, and hold and save the United States free from damages due to the dredging operations.

Klamath River, Calif.

80 Stat. 1421.

SEC. 215. The project for flood protection on the Klamath River at and in the vicinity of Klamath, California, authorized by the Flood Control Act of 1966 (80 Stat. 1205), is hereby modified to require the Secretary of the Army, acting through the Chief of Engineers, to provide, as an essential part of the project, bank protection works extending approximately two miles downstream from the project to protect the north bank of the river from erosion due to Klamath River flows. Non-Federal interests shall furnish lands and interests therein necessary for the works, hold and save the United States free from damages due to the works, and operate and maintain the works after completion.

Project review; report to Congress.

SEC. 216. The Secretary of the Army, acting through the Chief of Engineers, is authorized to review the operation of projects the construction of which has been completed and which were constructed by the Corps of Engineers in the interest of navigation, flood control, water supply, and related purposes, when found advisable due the significantly changed physical or economic conditions, and to report thereon to Congress with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest.

Surveys.

SEC. 217. The Secretary of the Army is hereby authorized and directed to cause surveys for flood control and allied purposes, including channel and major drainage improvements, and floods aggravated by or due to wind or tidal effects, to be made under the direction of the Chief of Engineers, in drainage areas of the United States and its territorial possessions, which include the localities specifically named in this section. After the regular or formal reports made on any survey authorized by this section are submitted to Congress, no supplemental or additional report or estimate shall be made unless authorized by law except that the Secretary of the Army may cause a review of any examination or survey to be made and a report thereon submitted to Congress, if such review is required by the national defense or by changed physical or economic conditions.

Great Swamp, New River Basin, South Carolina.

Streams flowing through West Brazoria County Drainage District Numbered 11 in Brazoria County, Texas.

Vermilion River, Ohio.

Huron River, Ohio.

Black River, Lorain County, Ohio.

Black Creek, Clay County, Florida.

Grand Lake, St. Marys, Ohio.

Coody Creek, Muskogee, Oklahoma.

Kapaa Stream, Kauai, Hawaii.

Waikomo Stream, Kauai, Hawaii.

Hanalei River, Kauai, Hawaii.

Waikane Stream, Oahu, Hawaii.

Moanalua Stream, Oahu, Hawaii.

Waihee Stream, Oahu, Hawaii.
Waikele Stream, Oahu, Hawaii.
Kamananui Stream, Oahu, Hawaii.
Kahana Stream, Oahu, Hawaii.
Waolani Stream, Oahu, Hawaii.
Kaaawa Stream, Oahu, Hawaii.
Makaha Stream, Oahu, Hawaii.
Olowalu Stream, Maui, Hawaii.
Palai, Four Mile Creek, Hawaii, Hawaii.
Kona, Hawaii, Hawaii.

Claremont Dam and Reservoir, N.H., authorization termination.

SEC. 218. The Claremont Dam and Reservoir, New Hampshire, authorized by the Flood Control Act approved June 28, 1938 as a part of the comprehensive plan for flood control and other purposes for the Connecticut River Basin, is not authorized after the date of enactment of this Act.

52 Stat. 1216. Ohio River Newburgh, Ind.

SEC. 219. The Secretary of the Army, acting through the Chief of Engineers, is hereby authorized to provide bank revetment works along the Ohio River at Newburgh, Indiana, to protect public and private property and facilities threatened by erosion.

Upper Mississippi River Basin.

SEC. 220. In addition to previous authorizations, there is hereby authorized to be appropriated the sum of $1,400,000 for the prosecution of the Comprehensive Plan for the Upper Mississippi River Basin, approved in the Act of June 28, 1938, as amended and supplemented by subsequent acts of Congress.

Written agreement requirement.

SEC. 221. (a) After the date of enactment of this Act, the construction of any water resources project by the Secretary of the Army, acting through the Chief of Engineers, or by a non-Federal interest where such interest will be reimbursed for such construction under the provisions of section 215 of the Flood Control Act of 1968 or under any other provision of law, shall not be commenced until each non-Federal interest has entered into a written agreement with the Secretary of the Army to furnish its required cooperation for the project.

82 Stat. 747. 42 USC 1962d-5a.

Non-Federal interest.

(b) A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.

(c) Every agreement entered into pursuant to this section shall be enforcible in the appropriate district court of the United States.

(d) After commencement of construction of a project, the Chief of Engineers may undertake performance of those items of cooperation necessary to the functioning of the project for its purposes, if he has first notified the non-Federal interest of its failure to perform the terms of its agreement and has given such interest a reasonable time after such notification to so perform.

Inventory, report to Congress.

(e) The Secretary of the Army, acting through the Chief of Engineers, shall maintain a continuing inventory of agreements and the status of their performance, and shall report thereon annually to the Congress.

(f) This section shall not apply to any project the construction of which was commenced before January 1, 1972.

Bridge, American River, Calif.

SEC. 222. The Secretary of the Interior in financing the relocation of the existing Placer County Road from Auburn to Foresthill, California, as part of the construction of the Auburn Dam and Reservoir on the Auburn-Folsom South Unit of the Central Valley Project, California, may provide for the cost of construction of a two-lane river level bridge across the North Fork of the American River with a substructure and deck truss capable of supporting a four-lane bridge.

64 Stat. 178.

SEC. 223. Section 204 of the Flood Control Act of 1950 is amended by adding at the end of the authorizations set forth under the center heading "COLUMBIA RIVER BASIN" the following new paragraph:

"The Secretary of the Army, acting through the Chief of Engineers, is authorized to pay to those railroad employees suffering long-term economic injury through reduction of income as the result of the relocation of rail transportation facilities due to the construction of Libby Dam, Montana, such sums as he determines equitable to compensate such employees for such injury. There is authorized to be appropriated to carry out this paragraph, not to exceed $900,000." Railroad employee compensation.

SEC. 224. That the plan for flood protection in the Big Sandy River Basin, Kentucky, West Virginia, and Virginia included in the comprehensive plan for flood control in the Ohio River Basin, authorized by the Flood Control Act, approved June 22, 1936 (49 Stat. 1570), as amended and modified is hereby further modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to provide the towns of Williamson and Matewan, West Virginia, with comprehensive flood protection by a combination of local flood protection works and residential flood proofing and to initiate advanced engineering design and construction thereof as described by the Chief of Engineers in Report on Tug Fork, July 1970, at a total cost not to exceed $10,000,000, except that no funds shall be appropriated to carry out this section until such modification is approved by the Appalachian Regional Commission and the President. Ohio River Basin, project modification.

SEC. 225. Subsection (b) of section 206 of the Flood Control Act of 1960, as amended (33 U.S.C. 709a), is further amended by striking out "$7,000,000" and inserting in lieu thereof "$11,000,000." 80 Stat. 1422.

SEC. 226. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to review and study the operation of the Fort Randall multiple-purpose project, South Dakota, with a view to determining the advisability of modifying the project facilities or the regulation of the impounded waters, or both, and report thereon to the Congress. Study, report to Congress.

SEC. 227. The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed to review and study the operation of the Summersville Lake multiple-purpose project, Gauley River, West Virginia, with a view to determining the advisability of modifying the project facilities or the regulation of the impounded waters, or both, and report thereon to the Congress. Study, report to Congress.

SEC. 228. The comprehensive plan for flood control and other purposes in the Missouri River Basin, as authorized by the Act of June 28, 1938 (52 Stat. 1215), and as modified and expanded by subsequent Acts, is further modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to construct a bridge across the Missouri River at an appropriate location midway between Bismarck, North Dakota, and Mobridge, South Dakota, in accordance with such plans as determined to be satisfactory by the Secretary of the Army so as to provide adequate crossing facilities over such river for highway traffic in the area. Prior to construction the Secretary of the Army, acting through the Chief of Engineers, shall enter into an agreement with appropriate non-Federal interests as determined by him, which shall provide that after construction such non-Federal interests shall own, operate toll free, and maintain such bridge and approach facilities. Missouri River Basin, project modification.

SEC. 229. The comprehensive plan for flood control and other purposes in the Missouri River Basin, as authorized by the Act of June 28, 1938 (52 Stat. 1215), and as modified and expanded by subsequent Acts, is further modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to construct a bridge over the Little Missouri River at the Garrison Reservoir in the vicinity of Eagle Bay in Dunn County, North Dakota, in accordance with such plans as are determined to be satisfactory by the Secretary of the Army in

order to provide adequate crossing facilities over such river for highway traffic in the area. Prior to construction the Secretary of the Army, acting through the Chief of Engineers, shall enter into an agreement with appropriate non-Federal interests as determined by him, which shall provide that after construction such non-Federal interests shall own, operate toll free, and maintain such bridges and approach facilities.

Missouri River Basin, project modification. 68 Stat. 1261.

SEC. 230. The project for the Perry Dam and Reservoir, Delaware River, Kansas, authorized as a unit of the comprehensive plan for flood control and other purposes, Missouri River Basin, by the Flood Control Act approved September 3, 1954, is hereby modified to authorize the Secretary of the Army, acting through the Chief of Engineers, to pave, with a bituminous surface, approximately five miles of Road "B", a segment of the relocation of FAS 328 from United States Route 24 to Kansas Route 92, Jefferson County, Kansas.

Feasibility study, report to Congress.

SEC. 231. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized to cooperate with the Commonwealth of Kentucky, political subdivisions thereof, appropriate agencies and instrumentalities thereof, the Forest Service, Department of Agriculture, and the Bureau of Outdoor Recreation, Department of the Interior, with a view to determining the feasibility and desirability of establishing a national recreation area generally encompassing in whole or in part the Kentucky River navigation project and reservoir projects in the upper Kentucky and Licking River Basins and adjacent and intervening areas, and to submit to the Congress reports and recommendations with respect to appropriate participation by the Department of the Army in carrying out such recommendations.

(b) Such studies shall review the reports of the Chief of Engineers contained in House Document 423, Eighty-seventh Congress, and the investigation authorized by the Flood Control Act of 1936, Public Law 783, Seventy-fourth Congress, and other appropriate reports, and shall consider plans to meet the needs of the Commonwealth for improvement of navigation facilities, outdoor recreational facilities, enhancement and conservation of fish and wildlife, and other measures for environmental enhancement.

(c) Such plans which may be recommended to the Congress shall be harmonious components of overall development plans being formulated by the Commonwealth and shall be fully coordinated with all interested Federal agencies.

Libby Dam, Kootenai River, Mont., project modification.

SEC. 232. The project for Libby Dam, Kootenai River, Montana, authorized by the Flood Control Act approved May 17, 1950 (64 Stat. 170), is hereby modified to provide that the Secretary of the Army, acting through the Chief of Engineers is authorized and directed, as part of the relocation of municipal facilities of Rexford, Montana, to design and construct a central sewage collection and sewage treatment facility.

Strip mining; report to congressional committees.

SEC. 233. The Chief of Engineers, under the direction of the Secretary of the Army, is hereby authorized and directed to review and study the effects of strip mining operations upon navigable rivers and their tributaries, including water resource projects under his jurisdiction, and report on such studies to the Committees on Public Works of the Senate and the House of Representatives, within one year from the date of enactment of this Act, with recommendations as to measures necessary to mitigate any adverse conditions due to strip mining practices.

76 Stat. 1195. 16 USC 460d.

SEC. 234. Section 207 of the Flood Control Act of 1962 (Public Law 87-874), is amended by changing the period after the word "necessary", to a comma, and inserting the following: "including but not limited to prohibitions of dumping and unauthorized disposal in any manner of refuse, garbage, rubbish, trash, debris, or litter of any kind at such

water resource development projects, either into the waters of such projects or onto any land federally owned and administered by the Chief of Engineers. Any violation of such rules and regulations shall be punished by a fine of not more than $500 or imprisonment for not more than six months, or both. Any persons charged with the violation of such rules and regulations may be tried and sentenced in accordance with the provisions of section 3401 of title 18 of the United States Code. All persons designated by the Chief of Engineers for that purpose shall have the authority to issue a citation for violation of the regulations adopted by the Secretary of the Army, requiring the appearance of any person charged with violation to appear before the United States magistrate, within whose jurisdiction the water resource development project is located, for trial; and upon sworn information of any competent person any United States magistrate in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said regulations; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating said regulations."

Enforcement.

82 Stat. 1115.

SEC. 235. (a) The Secretary of the Army, acting through the Chief of Engineers, is authorized and directed, as part of the comprehensive study of the water and related resources of the Susquehanna River Basin, to investigate and study, in cooperation with the Administrator of the Environmental Protection Agency and other interested departments, agencies, and instrumentalities of the Federal Government and of the governments of States and their political subdivisions, the availability, quality, and use of waters within the basin with a view toward assisting in the preparation of a comprehensive plan for the development, conservation, and use of such waters. The Environmental Protection Agency shall have the responsibility in carrying out this section for those aspects of the development, conservation, and use of such waters which are essentially within its jurisdiction.

Susquehanna River Basin, study.

(b) In connection with such investigations and studies the Secretary of the Army, acting through the Chief of Engineers, and in cooperation with the Environmental Protection Agency and all other interested Federal agencies, shall make such studies and develop such plans as deemed necessary for the construction, operation, and maintenance of facilities in selected regions of the basin, including augmentation of streamflows by releases of stored waters.

(c) Such facilities may include, but shall not be limited to, water conveyance systems; regional waste treatment, interceptor, and holding facilities; water treatment facilities; and facilities and methods for recharging ground water reservoirs.

(d) The Secretary of the Army, acting through the Chief of Engineers, shall submit to the Congress any and all parts of plans prepared pursuant to this section, which are approved by the Susquehanna River Basin Commission as in accordance with its comprehensive plan for the immediate and longrange development and use of the water resources of the basin, including all recommendations of the Environmental Protection Agency with respect to matters under its jurisdiction, and shall include recommendations for authorization and appropriate financial participation and cooperation by the States, political subdivisions thereof, and other local interests.

Report to Congress.

(e) In determining the need for storage for regulation of streamflow and water release, the Secretary of the Army, acting through the Chief of Engineers, shall not be limited by the provisions of section 3(b)(1) and (4) of the Federal Water Pollution Control Act, but may include recommendations, if appropriate, which are consistent with section 8 of the Federal Water Pollution Control Act and other like project purposes of water resources projects.

75 Stat. 204; 79 Stat. 903. 33 USC 466a. 70 Stat. 498. 33 USC 466b. 33 USC 466e.

SEC. 236. Title II of this Act may be cited as the "Flood Control Act of 1970".

Citation of title.

Approved December 31, 1970.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 91-1665 (Comm. on Public Works) and No. 91-1782 (Comm. of Conference).
SENATE REPORT No. 91-1422 accompanying S. 4572 (Comm. on Public Works).
CONGRESSIONAL RECORD, Vol. 116 (1970):
Dec. 7, considered and passed House.
Dec. 9, considered and passed Senate, amended.
Dec. 18, House agreed to conference report.
Dec. 19, Senate agreed to conference report.

ENVIRONMENTAL SAFETY
(415 ILCS 5/) Environmental Protection Act.

(415 ILCS 5/Tit. I heading)

TITLE I: GENERAL PROVISIONS

(415 ILCS 5/1) (from Ch. 111 1/2, par. 1001)

Sec. 1. This Act shall be known and may be cited as the "Environmental Protection Act".

(Source: P.A. 76-2429.)

(415 ILCS 5/2) (from Ch. 111 1/2, par. 1002)

Sec. 2. (a) The General Assembly finds:

(i) that environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act;

(ii) that because environmental damage does not respect political boundaries, it is necessary to establish a unified state-wide program for environmental protection and to cooperate fully with other States and with the United States in protecting the environment;

(iii) that air, water, and other resource pollution, public water supply, solid waste disposal, noise, and other environmental problems are closely interrelated and must be dealt with as a unified whole in order to safeguard the environment;

(iv) that it is the obligation of the State Government to manage its own activities so as to minimize environmental damage; to encourage and assist local governments to adopt and implement environmental-protection programs consistent with this Act; to promote the development of technology for environmental protection and conservation of natural resources; and in appropriate cases to afford financial assistance in preventing environmental damage;

(v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, private as well as governmental remedies must be provided;

(vi) that despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

(vii) that it is necessary to supplement and strengthen existing criminal sanctions regarding environmental damage, by enacting specific penalties for

injury to public health and welfare and the environment.

(b) It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.

(c) The terms and provisions of this Act shall be liberally construed so as to effectuate the purposes of this Act as set forth in subsection (b) of this Section, but to the extent that this Act prescribes criminal penalties, it shall be construed in accordance with the Criminal Code of 2012.

(Source: P.A. 97-1150, eff. 1-25-13.)

(415 ILCS 5/3) (from Ch. 111 1/2, par. 1003)

Sec. 3. Definitions.

(a) For the purposes of this Act, the words and terms defined in the Sections which follow this Section and precede Section 4 shall have the meaning therein given, unless the context otherwise clearly requires.

(b) This amendatory Act of the 92nd General Assembly renumbers the definition Sections formerly included in this Act as Sections 3.01 through 3.94. The new numbering scheme is intended to alphabetize the defined terms and to leave room for additional terms to be added in alphabetical order in the future. It does not reuse any of the original numbers.

In the bill for this amendatory Act, the renumbered Sections are shown in the manner commonly used to show renumbering in revisory bills. The Sections being renumbered are shown as existing (rather than new) text; only the changes being made to the existing text are shown with striking and underscoring. The original source lines have been retained.

(c) In a statute, rule, permit, or other document in existence on the effective date of this amendatory Act of the 92nd General Assembly, a reference to one of the definition Sections renumbered by this amendatory Act shall be deemed to refer to the corresponding Section as renumbered by this amendatory Act.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/prec. Sec. 3.01 heading)

OBSOLETE DEFINITIONS

(Sections 3.01 through 3.94 were renumbered by Public Act 92-574, eff. 6-26-2002.)

(415 ILCS 5/3.102)

Sec. 3.102. 100-year flood. "100-year flood" means a flood that has a 1% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly longer period.

(Source: P.A. 96-1395, eff. 7-29-10.)

(415 ILCS 5/3.103)

Sec. 3.103. 100-year floodplain. "100-year floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by a 100-year flood. For the purposes of this Act, including for the purposes of granting permit and license applications filed or pending prior to the effective date of this amendatory Act of the 96th General Assembly, an area shall be deemed by operation of law not to be within the 100-year floodplain if the area lies within an area protected by a federal levee and is located in a flood prevention district established in accordance with the Flood Prevention District

Act; provided, however, that an area that lies within a flood prevention district established in accordance with the Flood Prevention District Act shall be deemed by operation of law to be within the 100-year floodplain if, according to the currently adopted federal flood insurance rate map, the area is subject to inundation by a 100-year flood from bodies of water other than the Mississippi River.
(Source: P.A. 96-1395, eff. 7-29-10.)

(415 ILCS 5/3.105) (was 415 ILCS 5/3.01)
Sec. 3.105. Agency. "Agency" is the Environmental Protection Agency established by this Act.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.110) (was 415 ILCS 5/3.77)
Sec. 3.110. Agrichemical facility. "Agrichemical facility" means a site used for commercial purposes, where bulk pesticides are stored in a single container in excess of 300 gallons of liquid pesticide or 300 pounds of dry pesticide for more than 30 days per year or where more than 300 gallons of liquid pesticide or 300 pounds of dry pesticide are being mixed, repackaged or transferred from one container to another within a 30 day period or a site where bulk fertilizers are stored, mixed, repackaged or transferred from one container to another.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.115) (was 415 ILCS 5/3.02)
Sec. 3.115. Air pollution. "Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.120) (was 415 ILCS 5/3.03)
Sec. 3.120. Air pollution control equipment. "Air pollution control equipment" means any equipment or facility of a type intended to eliminate, prevent, reduce or control the emission of specified air contaminants to the atmosphere. Air pollution control equipment includes, but is not limited to, landfill gas recovery facilities.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.125) (was 415 ILCS 5/3.68)
Sec. 3.125. Biodeterioration; biodegradation.
(a) "Biodeterioration", when used in connection with recycling or composting, means the biologically mediated loss of utilitarian or physical characteristics of a plastic or hybrid material containing plastic as a major component.
(b) "Biodegradation", when used in connection with recycling, means the conversion of all constituents of a plastic or hybrid material containing plastic as a major component to carbon dioxide, inorganic salts, microbial cellular components and miscellaneous by-products characteristically formed from the breakdown of natural materials such as corn starch.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.130) (was 415 ILCS 5/3.04)
Sec. 3.130. Board. "Board" is the Pollution Control Board established by this Act.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.131)

Sec. 3.131. Clean energy. "Clean energy" means energy generation that is substantially free (90% or greater) of carbon dioxide emissions.

(Source: P.A. 102-662, eff. 9-15-21.)

(415 ILCS 5/3.135) (was 415 ILCS 5/3.94)

Sec. 3.135. Coal combustion by-product; CCB.

(a) "Coal combustion by-product" (CCB) means coal combustion waste when used beneficially in any of the following ways:

(1) The extraction or recovery of material compounds contained within CCB.

(2) The use of CCB as a raw ingredient or mineral filler in the manufacture of the following commercial products: cement; concrete and concrete mortars; cementious products including block, pipe and precast/prestressed components; asphalt or cementious roofing products; plastic products including pipes and fittings; paints and metal alloys; kiln fired products including bricks, blocks, and tiles; abrasive media; gypsum wallboard; asphaltic concrete, or asphalt based paving material.

(3) CCB used (A) in accordance with the Illinois Department of Transportation ("IDOT") standard specifications and subsection (a-5) of this Section or (B) under the approval of the Department of Transportation for IDOT projects.

(4) Bottom ash used as antiskid material, athletic tracks, or foot paths.

(5) Use in the stabilization or modification of soils providing the CCB meets the IDOT specifications for soil modifiers.

(6) CCB used as a functionally equivalent substitute for agricultural lime as a soil conditioner.

(6.5) CCB that is a synthetic gypsum that:

(A) has a calcium sulfate dihydrate content greater than 90%, by dry weight, and is generated by the lime or limestone forced oxidation process;

(B) is registered with the Illinois Department of Agriculture as a fertilizer or soil amendment and is used as a fertilizer or soil amendment;

(C) is a functionally equivalent substitute for mined gypsum (calcium sulfate dihydrate) used as a fertilizer or soil amendment;

(D) is used in accordance with, and applied at a rate consistent with, documented recommendations of a qualified agricultural professional or institution, including, but not limited to any of the following: certified crop adviser, agronomist, university researcher, federal Natural Resources Conservation Service Conservation Practice Standard regarding the amendment of soil properties with gypsum, or State-approved nutrient management plan; but in no case is applied at a rate greater than 5 dry tons per acre per year; and

(E) has not been mixed with any waste.

(7) Bottom ash used in non-IDOT pavement sub-base or base, pipe bedding, or foundation backfill.

(8) Structural fill, designed and constructed according to ASTM standard E2277-03 or Illinois Department of Transportation specifications, when used in an engineered application or combined with cement, sand, or water to produce a controlled strength fill material and covered with 12 inches of soil unless infiltration is prevented by the material itself or other cover material.

(9) Mine subsidence, mine fire control, mine sealing, and mine reclamation.

(a-5) Except to the extent that the uses are otherwise authorized by law without such restrictions, the uses specified in items (a)(3)(A) and (a)(7) through (9) shall be subject to the following conditions:

(A) CCB shall not have been mixed with hazardous waste prior to use.

(B) CCB shall not exceed Class I Groundwater Standards for metals when tested utilizing test method ASTM D3987-85. The sample or samples tested shall be representative of the CCB being considered for use.

(C) Unless otherwise exempted, users of CCB for the purposes described in items (a)(3)(A) and (a)(7) through (9) of this Section shall provide notification to the Agency for each project utilizing CCB documenting the quantity of CCB utilized and certification of compliance with conditions (A) and (B) of this subsection. Notification shall not be required for users of CCB for purposes described in items (a)(1), (a)(2), (a)(3)(B), (a)(4), (a)(5) and (a)(6) of this Section, or as required specifically under a beneficial use determination as provided under this Section, or pavement base, parking lot base, or building base projects utilizing less than 10,000 tons, flowable fill/grout projects utilizing less than 1,000 cubic yards or other applications utilizing less than 100 tons.

(D) Fly ash shall be managed in a manner that minimizes the generation of airborne particles and dust using techniques such as moisture conditioning, granulating, inground application, or other demonstrated method.

(E) CCB is not to be accumulated speculatively. CCB is not accumulated speculatively if during the calendar year, the CCB used is equal to 75% of the CCB by weight or volume accumulated at the beginning of the period.

(F) CCB shall include any prescribed mixture of fly ash, bottom ash, boiler slag, flue gas desulfurization scrubber sludge, fluidized bed combustion ash, and stoker boiler ash and shall be tested as intended for use.

(b) To encourage and promote the utilization of CCB in productive and beneficial applications, upon request by the applicant, the Agency shall make a written beneficial use determination that coal-combustion waste is CCB when used in a manner other than those uses specified in subsection (a) of this Section if the applicant demonstrates that use of the coal-combustion waste satisfies all of the following criteria: the use will not cause, threaten, or allow the discharge of any contaminant into the environment; the use will otherwise protect human health and safety and the environment; and the use constitutes a legitimate use of the coal-combustion waste as an ingredient or raw material that is an effective substitute for an analogous ingredient or raw material.

The Agency's beneficial use determinations may allow the uses set forth in items (a)(3)(A) and (a)(7) through (9) of this Section without the CCB being subject to the restrictions set forth in subdivisions (a-5)(B) and (a-5)(E) of this Section.

Within 90 days after the receipt of an application for a beneficial use determination under this subsection (b), the Agency shall, in writing, approve, disapprove, or approve with conditions the beneficial use. Any disapproval or approval with conditions shall include the Agency's reasons for the disapproval or conditions. Failure of the Agency to issue a decision within 90 days shall constitute disapproval of the beneficial use request. These beneficial use determinations are subject to review under Section 40 of this Act.

Any approval of a beneficial use under this subsection (b) shall become effective upon the date of the Agency's written decision and remain in effect for a period of 5 years. If an applicant desires to continue a beneficial use after the expiration of the 5-year period, the applicant must submit an application for renewal no later than 90 days prior to the expiration. The beneficial use approval shall be automatically extended unless denied by the Agency in writing with the Agency's reasons for disapproval, or unless the Agency has requested an extension for review, in which case the use will continue to be allowed until an Agency determination is made.

Coal-combustion waste for which a beneficial use is approved pursuant to this subsection (b) shall be considered CCB during the effective period of the approval, as long as it is used in accordance with the approval and any conditions.

Notwithstanding the other provisions of this subsection (b), written beneficial use determination applications for the use of CCB at sites governed by the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder, or by any law or rule or regulation adopted by the State of Illinois pursuant thereto, shall be reviewed and approved by the Office of Mines and Minerals within the Department of Natural Resources pursuant to 62 Ill. Adm. Code §§ 1700-1850. Further, appeals of those determinations shall be made pursuant to the Illinois Administrative Review Law.

The Board shall adopt rules establishing standards and procedures for the Agency's issuance of beneficial use determinations under this subsection (b). The Board rules may also, but are not required to, include standards and procedures for the revocation of the beneficial use determinations. Prior to the effective date of Board rules adopted under this subsection (b), the Agency is authorized to make beneficial use determinations in accordance with this subsection (b).

The Agency is authorized to prepare and distribute guidance documents relating to its administration of this Section. Guidance documents prepared under this subsection are not rules for the purposes of the Illinois Administrative Procedure Act.
(Source: P.A. 99-20, eff. 7-10-15.)

(415 ILCS 5/3.140) (was 415 ILCS 5/3.76)

Sec. 3.140. Coal combustion waste. "Coal combustion waste" means any CCR or any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:

(1) coal, or

(2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or

(3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of Section 21 would result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law.

(Source: P.A. 101-171, eff. 7-30-19.)

(415 ILCS 5/3.141)

Sec. 3.141. Notice of power plant demolition.

(a) If a demolition is conducted at a coal-fueled power plant, the owner of the coal-fueled power plant shall, at least 60 days before commencing the demolition or as otherwise required under State or federal law, notify the Agency and the public about the demolition and provide the Agency and the public with copies of any plans for the demolition. The notice shall comply with the following:

(1) The notice must be provided, where applicable, in both physical and online form in a newspaper of general circulation within 25 miles of where the coal-fueled power plant is located. The notice must also be posted in physical form in 3 prominent public places and, where applicable, posted on a relevant municipal website.

(2) The notice must include reference to any relevant permits issued to the coal-fueled power plant in relation to the demolition, with express instructions stating how to access a copy of the permits.

(3) The notice must include the following information:

(A) The date and time of any scheduled demolition activity.

(B) The portion of the coal-fueled power plant that is set for demolition.

(C) Any potential contaminants associated with the demolition.

(D) The business name of any company that will perform the demolition in whole or in part.

(E) Information on any applicable permits.

(F) Whether any unlined CCR surface impoundment or public water source is near the coal-fueled power plant.

(G) Details of the preventative measures implemented by the coal-fueled power plant to control, mitigate, or prevent any pollution from occurring.

(b) In this Section, "public" means the population of a town, village, or city in the State of Illinois that is within 25 miles of a coal-fueled power plant at which demolition is to be conducted.

(Source: P.A. 102-631, eff. 8-27-21.)

(415 ILCS 5/3.142)

Sec. 3.142. Coal combustion residual; CCR. "Coal combustion residual" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.

(Source: P.A. 101-171, eff. 7-30-19.)

(415 ILCS 5/3.143)

Sec. 3.143. CCR surface impoundment. "CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

(Source: P.A. 101-171, eff. 7-30-19.)

(415 ILCS 5/3.145) (was 415 ILCS 5/3.05)

Sec. 3.145. Community water supply. "Community water supply" means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.

"Non-community water supply" means a public water supply that is not a community water supply. The requirements of this Act shall not apply to non-community water supplies.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.150) (was 415 ILCS 5/3.69)

Sec. 3.150. Compost. "Compost" is defined as the humus-like product of the process of composting waste, which may be used as a soil conditioner.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.155) (was 415 ILCS 5/3.70)

Sec. 3.155. Composting. "Composting" means the biological treatment process by which microorganisms decompose the organic fraction of waste, producing compost.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.160) (was 415 ILCS 5/3.78 and 3.78a)

Sec. 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials.

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered clean construction or demolition debris and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) in subsection (b) of this Section.

(a-1) "General construction or demolition debris recovery facility" means a site or facility used to store or treat exclusively general construction or demolition debris, including, but not limited to, sorting, separating, or transferring, for recycling, reclamation, or reuse. For purposes of this definition, treatment includes altering the physical nature of the general construction or demolition debris, such as by size reduction, crushing, grinding, or homogenization, but does not include treatment designed to change the chemical nature of the general construction or demolition debris.

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

To the extent allowed by federal law, clean construction or demolition debris shall not be considered "waste" if it is (i) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, and, if used as fill material in a current or former quarry, mine, or other excavation, is used in accordance with the requirements of Section 22.51 of this Act and the rules adopted thereunder or (ii) separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i), or (iii) solely broken concrete without protruding metal bars used for erosion control, or (iv) generated from the construction or demolition of a building, road, or other structure and used to construct, on the site where the construction or demolition has taken place, a manmade functional structure not to exceed 20 feet above the highest point of elevation of the property immediately adjacent to the new manmade functional structure as that elevation existed prior to the creation of that new structure, provided that the structure shall be covered with sufficient soil materials to sustain vegetation or by a road or structure, and further provided that no such structure shall be constructed within a home rule municipality with a population over 500,000 without the consent of the municipality.

For purposes of this subsection (b), reclaimed or other asphalt pavement shall not be considered speculatively accumulated if: (i) it is not commingled with any other clean construction or demolition debris or any waste; (ii) it is returned to the economic mainstream in the form of raw materials or products within 4 years after its generation; (iii) at least 25% of the total amount present at a site during a calendar year is transported off of the site during the next calendar year; and (iv) if used as a fill material, it is used in accordance with item (i) of the second paragraph of this subsection (b).

(c) For purposes of this Section, the term "uncontaminated soil" means soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment.

(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose, and, no later than one year after receipt of the Agency's proposal, the Board shall adopt, rules specifying the maximum concentrations of contaminants that may be present in uncontaminated soil for purposes of this Section. For carcinogens, the maximum concentrations shall not allow exposure to exceed an excess upper-bound lifetime risk of 1 in 1,000,000; provided that if the most stringent remediation objective or applicable background concentration for a contaminant set forth in 35 Ill. Adm. Code 742 is greater than the concentration that would allow exposure at an excess upper-bound lifetime risk of 1 in 1,000,000, the Board may consider allowing that contaminant in concentrations up to its most stringent remediation objective or applicable background concentration set forth in 35 Ill. Adm. Code 742 in soil used as fill material in a current or former quarry, mine, or other excavation in accordance with Section 22.51 or 22.51a of this Act and rules adopted under those Sections. Any background concentration set forth in 35 Ill. Adm. Code 742 that is adopted as a maximum concentration must be based upon the

location of the quarry, mine, or other excavation where the soil is used as fill material.

(2) To the extent allowed under federal law and regulations, uncontaminated soil shall not be considered a waste.

(Source: P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/3.165) (was 415 ILCS 5/3.06)

Sec. 3.165. Contaminant. "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.170) (was 415 ILCS 5/3.63)

Sec. 3.170. Contamination; contaminate. "Contamination" or "contaminate", when used in connection with groundwater, means water pollution of such groundwater.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.175) (was 415 ILCS 5/3.80)

Sec. 3.175. Criterion. "Criterion" means the numerical concentration of one or more toxic substances calculated by the Agency as a basis for establishing a permit limitation or violation of a water quality standard pursuant to standards and procedures provided for in board regulations.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.180) (was 415 ILCS 5/3.07)

Sec. 3.180. Department. "Department", when a particular entity is not specified, means (i) in the case of a function to be performed on or after July 1, 1995 (the effective date of the Department of Natural Resources Act), either the Department of Natural Resources or the Department of Commerce and Economic Opportunity (formerly Department of Commerce and Community Affairs), whichever, in the specific context, is the successor to the Department of Energy and Natural Resources under the Department of Natural Resources Act; or (ii) in the case of a function performed before July 1, 1995, the former Illinois Department of Energy and Natural Resources.

(Source: P.A. 94-793, eff. 5-19-06.)

(415 ILCS 5/3.185) (was 415 ILCS 5/3.08)

Sec. 3.185. Disposal. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.190) (was 415 ILCS 5/3.09)

Sec. 3.190. Existing fuel combustion stationary emission source. "Existing fuel combustion stationary emission source" means any stationary furnace, boiler, oven, or similar equipment used for the primary purpose of producing heat or power, of a type capable of emitting specified air contaminants to the atmosphere, the construction or modification of which commenced prior to April 13, 1972.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.195) (was 415 ILCS 5/3.10)

Sec. 3.195. Fluid. "Fluid" means material or substance which flows or moves whether in a semi-solid, liquid, sludge, gas or

any other form or state.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.197)
Sec. 3.197. Food scrap. "Food scrap" means garbage that is (i) capable of being decomposed into compost by composting, (ii) separated by the generator from other waste, including, but not limited to, garbage that is not capable of being decomposed into compost by composting, and (iii) managed separately from other waste, including, but not limited to, garbage that is not capable of being decomposed into compost by composting. "Food scrap" includes, but is not limited to, packaging, utensils, and food containers composed of readily biodegradable material. For the purposes of this Section, packaging, utensils, and food containers are readily biodegradable if they meet the ASTM D6400 standard.
(Source: P.A. 96-418, eff. 1-1-10.)

(415 ILCS 5/3.200) (was 415 ILCS 5/3.11)
Sec. 3.200. Garbage. "Garbage" is waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.205) (was 415 ILCS 5/3.12)
Sec. 3.205. Generator. "Generator" means any person whose act or process produces waste.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.207)
Sec. 3.207. Greenhouse gases. "Greenhouse gases" or "GHG" means the air pollutant defined in 40 CFR 86.1818-12(a) as the aggregate group of 6 greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.
(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/3.210) (was 415 ILCS 5/3.64)
Sec. 3.210. Groundwater. "Groundwater" means underground water which occurs within the saturated zone and geologic materials where the fluid pressure in the pore space is equal to or greater than atmospheric pressure.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.215) (was 415 ILCS 5/3.14)
Sec. 3.215. Hazardous substance. "Hazardous substance" means: (A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, (B) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended, (C) any hazardous waste, (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (P.L. 92-500), as amended, (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act (P.L. 95-95), as amended, (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act (P.L. 94-469), as amended. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of

this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.220) (was 415 ILCS 5/3.15)

Sec. 3.220. Hazardous waste. "Hazardous waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed, and which has been identified, by characteristics or listing, as hazardous pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.225) (was 415 ILCS 5/3.16)

Sec. 3.225. Hazardous waste disposal site. "Hazardous waste disposal site" is a site at which hazardous waste is disposed.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.230) (was 415 ILCS 5/3.89)

Sec. 3.230. Household waste. "Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.235) (was 415 ILCS 5/3.17)

Sec. 3.235. Industrial process waste. "Industrial process waste" means any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service. Any such waste which would pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means is an industrial process waste. "Industrial Process Waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes (including but not limited to ash resulting from the incineration of potentially infectious medical waste), core sands, metallic dust sweepings, asbestos dust, and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.240) (was 415 ILCS 5/3.18)

Sec. 3.240. Intermittent control system. "Intermittent

control system" is a system which provides for the planned reduction of source emissions of sulfur dioxide during periods when meteorological conditions are such, or are anticipated to be such, that sulfur dioxide ambient air quality standards may be violated unless such reductions are made.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.245) (was 415 ILCS 5/3.72)
Sec. 3.245. Label. "Label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappings.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.250) (was 415 ILCS 5/3.73)
Sec. 3.250. Labeling. "Labeling" means the label and all other written, printed or graphic matters: (a) on the pesticide or device or any of its containers or wrappings, (b) accompanying the pesticide or device or referring to it in any other media used to disseminate information to the public, (c) to which reference is made to the pesticide or device except when references are made to current official publications of the U. S. Environmental Protection Agency, Departments of Agriculture, Health and Human Services or other Federal Government institutions, the state experiment station or colleges of agriculture or other similar state institution authorized to conduct research in the field of pesticides.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.255) (was 415 ILCS 5/3.79)
Sec. 3.255. Land form. "Land form" means a manmade above-grade mound, less than 50 feet in height, covered with sufficient soil materials to sustain vegetation.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.260) (was 415 ILCS 5/3.19)
Sec. 3.260. Landfill gas recovery facility. "Landfill gas recovery facility" means any facility which recovers and processes landfill gas from a sanitary landfill or waste disposal site.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.265) (was 415 ILCS 5/3.75)
Sec. 3.265. Landfill waste. "Landfill waste" is waste from a closed pollution control facility, closed dumping site, closed sanitary landfill, or a closed waste disposal site; provided however, "landfill waste" shall not include waste removed by or pursuant to the authority of the State or a unit of local government from the public way or household waste removed by or pursuant to the authority of the State or a unit of local government from any unauthorized open dumping site.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.270) (was 415 ILCS 5/3.20)
Sec. 3.270. Landscape waste. "Landscape waste" means all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.275) (was 415 ILCS 5/3.88)
Sec. 3.275. Lateral expansion. "Lateral expansion" means a horizontal expansion of the actual waste boundaries of an existing MSWLF unit occurring on or after October 9, 1993. For

purposes of this Section, a horizontal expansion is any area where solid waste is placed for the first time directly upon the bottom liner of the unit, excluding side slopes, on or after October 9, 1993.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.280) (was 415 ILCS 5/3.92)

Sec. 3.280. Lawncare wash water containment area. "Lawncare wash water containment area" means an area utilized for the capture of spills or washing or rinsing of pesticide residues from vehicles, application equipment, mixing equipment, floors, loading areas, or other items used for the storage, handling, preparation for use, transport, or application of pesticides to land areas covered with turf kept closely mown or land area covered with turf and trees or shrubs.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.282)

Sec. 3.282. Livestock waste. "Livestock waste" means "livestock waste" as defined in the Livestock Management Facilities Act.
(Source: P.A. 96-418, eff. 1-1-10.)

(415 ILCS 5/3.283)

Sec. 3.283. Mercury relay. "Mercury relay" means a product or device, containing mercury added during its manufacture, that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes, but is not limited to, mercury displacement relays, mercury wetted reed relays, and mercury contact relays.
(Source: P.A. 93-964, eff. 8-20-04.)

(415 ILCS 5/3.284)

Sec. 3.284. Mercury switch. "Mercury switch" means a product or device, containing mercury added during its manufacture, that opens or closes an electrical circuit or gas valve, or makes, breaks, or changes the connection in an electrical circuit, including, but not limited to, mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors.
(Source: P.A. 97-459, eff. 7-1-12.)

(415 ILCS 5/3.285) (was 415 ILCS 5/3.85, 3.86, and 3.87)

Sec. 3.285. Municipal Solid Waste Landfill Unit; MSWLF unit. "Municipal Solid Waste Landfill Unit" or "MSWLF unit" means a contiguous area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or any pile of noncontainerized accumulations of solid, nonflowing waste that is used for treatment or storage. A MSWLF unit may also receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A sanitary landfill is subject to regulation as a MSWLF unit if it receives household waste.

"New MSWLF unit" means any municipal solid waste landfill unit that receives household waste on or after October 9, 1993, for the first time.

"Existing MSWLF unit" means any municipal solid waste landfill unit that has received solid waste before October 9, 1993.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.290) (was 415 ILCS 5/3.21)
Sec. 3.290. Municipal waste. "Municipal waste" means garbage, general household and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.295) (was 415 ILCS 5/3.22)
Sec. 3.295. Municipality. "Municipality" means any city, village or incorporated town.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.298)
Sec. 3.298. Nonattainment new source review (NA NSR) permit. "Nonattainment New Source Review permit" or "NA NSR permit" means a permit or a portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 173 of the Clean Air Act and 40 CFR 51.165.
(Source: P.A. 99-463, eff. 1-1-16.)

(415 ILCS 5/3.300) (was 415 ILCS 5/3.23)
Sec. 3.300. Open burning. "Open burning" is the combustion of any matter in the open or in an open dump.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.305) (was 415 ILCS 5/3.24)
Sec. 3.305. Open dumping. "Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.310) (was 415 ILCS 5/3.25)
Sec. 3.310. Organized amateur or professional sporting activity. "Organized amateur or professional sporting activity" means an activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, (i) rifle and pistol ranges, licensed shooting preserves, and skeet, trap or shooting sports clubs in existence prior to January 1, 1994, (ii) public hunting areas operated by a governmental entity, (iii) organized motor sports, and (iv) sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities, or professional sports clubs offering exhibitions to the public.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.315) (was 415 ILCS 5/3.26)
Sec. 3.315. Person. "Person" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate,

political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.320) (was 415 ILCS 5/3.71)

Sec. 3.320. Pesticide. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest or any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.325) (was 415 ILCS 5/3.74)

Sec. 3.325. Pesticide release. "Pesticide release" or "release of a pesticide" means any release resulting in a concentration of pesticides in waters of the State which exceeds levels for which: (1) a Maximum Contaminant Level (MCL) has been promulgated by the U. S. Environmental Protection Agency or a Maximum Allowable Concentration (MAC) has been promulgated by the Board pursuant to the Safe Drinking Water Act (P.L. 93-523), as amended; or (2) a Health Advisory used on an interim basis has been issued by the U. S. Environmental Protection Agency; or (3) a standard has been adopted by the Board pursuant to the Illinois Groundwater Protection Act; or (4) in the absence of such advisories or standards, an action level has been developed by the Agency using guidance or procedures issued by the federal government for developing health based levels.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.330) (was 415 ILCS 5/3.32)

Sec. 3.330. Pollution control facility.

(a) "Pollution control facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act.

The following are not pollution control facilities:

(1) (blank);

(2) waste storage sites regulated under 40 CFR 761.42;

(3) sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person;

(4) sites or facilities at which the State is performing removal or remedial action pursuant to Section 22.2 or 55.3;

(5) abandoned quarries used solely for the disposal of concrete, earth materials, gravel, or aggregate debris resulting from road construction activities conducted by a unit of government or construction activities due to the construction and installation of underground pipes, lines, conduit or wires off of the premises of a public utility company which are conducted by a public utility;

(6) sites or facilities used by any person to specifically conduct a landscape composting operation;

(7) regional facilities as defined in the Central Midwest Interstate Low-Level Radioactive Waste Compact;

(8) the portion of a site or facility where coal combustion wastes are stored or disposed of in accordance with subdivision (r)(2) or (r)(3) of Section 21;

(9) the portion of a site or facility used for the collection, storage or processing of waste tires as defined in Title XIV;

(10) the portion of a site or facility used for treatment of petroleum contaminated materials by application onto or incorporation into the soil surface and any portion of that site or facility used for storage of petroleum contaminated materials before treatment. Only those categories of petroleum listed in Section 57.9(a)(3) are exempt under this subdivision (10);

(11) the portion of a site or facility where used oil is collected or stored prior to shipment to a recycling or energy recovery facility, provided that the used oil is generated by households or commercial establishments, and the site or facility is a recycling center or a business where oil or gasoline is sold at retail;

(11.5) processing sites or facilities that receive only on-specification used oil, as defined in 35 Ill. Adm. Code 739, originating from used oil collectors for processing that is managed under 35 Ill. Adm. Code 739 to produce products for sale to off-site petroleum facilities, if these processing sites or facilities are: (i) located within a home rule unit of local government with a population of at least 30,000 according to the 2000 federal census, that home rule unit of local government has been designated as an Urban Round II Empowerment Zone by the United States Department of Housing and Urban Development, and that home rule unit of local government has enacted an ordinance approving the location of the site or facility and provided funding for the site or facility; and (ii) in compliance with all applicable zoning requirements;

(12) the portion of a site or facility utilizing coal combustion waste for stabilization and treatment of only waste generated on that site or facility when used in connection with response actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the federal Resource Conservation and Recovery Act of 1976, or the Illinois Environmental Protection Act or as authorized by the Agency;

(13) the portion of a site or facility regulated under Section 22.38 of this Act;

(14) the portion of a site or facility, located within a unit of local government that has enacted local zoning requirements, used to accept, separate, and process uncontaminated broken concrete, with or without protruding metal bars, provided that the uncontaminated broken concrete and metal bars are not speculatively accumulated, are at the site or facility no longer than one year after their acceptance, and are returned to the economic mainstream in the form of raw materials or products;

(15) the portion of a site or facility located in a county with a population over 3,000,000 that has obtained local siting approval under Section 39.2 of this Act for a municipal waste incinerator on or before July 1, 2005 and that is used for a non-hazardous waste transfer station;

(16) a site or facility that temporarily holds in transit for 10 days or less, non-putrescible solid waste in original containers, no larger in capacity than 500 gallons, provided that such waste is further transferred to a recycling, disposal, treatment, or storage facility on a non-contiguous site and provided such site or facility

complies with the applicable 10-day transfer requirements of the federal Resource Conservation and Recovery Act of 1976 and United States Department of Transportation hazardous material requirements. For purposes of this Section only, "non-putrescible solid waste" means waste other than municipal garbage that does not rot or become putrid, including, but not limited to, paints, solvent, filters, and absorbents;

(17) the portion of a site or facility located in a county with a population greater than 3,000,000 that has obtained local siting approval, under Section 39.2 of this Act, for a municipal waste incinerator on or before July 1, 2005 and that is used for wood combustion facilities for energy recovery that accept and burn only wood material, as included in a fuel specification approved by the Agency;

(18) a transfer station used exclusively for landscape waste, including a transfer station where landscape waste is ground to reduce its volume, where the landscape waste is held no longer than 24 hours from the time it was received;

(19) the portion of a site or facility that (i) is used for the composting of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste, including, but not limited to, corrugated paper or cardboard, and (ii) meets all of the following requirements:

(A) There must not be more than a total of 30,000 cubic yards of livestock waste in raw form or in the process of being composted at the site or facility at any one time.

(B) All food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must, by the end of each operating day, be processed and placed into an enclosed vessel in which air flow and temperature are controlled, or all of the following additional requirements must be met:

(i) The portion of the site or facility used for the composting operation must include a setback of at least 200 feet from the nearest potable water supply well.

(ii) The portion of the site or facility used for the composting operation must be located outside the boundary of the 10-year floodplain or floodproofed.

(iii) Except in municipalities with more than 1,000,000 inhabitants, the portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the nearest residence, other than a residence located on the same property as the site or facility.

(iv) The portion of the site or facility used for the composting operation must be located at least one-eighth of a mile from the property line of all of the following areas:

(I) Facilities that primarily serve to house or treat people that are immunocompromised or immunosuppressed, such as cancer or AIDS patients; people with asthma, cystic fibrosis, or bioaerosol allergies; or children under the age of one year.

(II) Primary and secondary schools and adjacent areas that the schools use for recreation.

(III) Any facility for child care

licensed under Section 3 of the Child Care Act of 1969; preschools; and adjacent areas that the facilities or preschools use for recreation.

(v) By the end of each operating day, all food scrap, livestock waste, crop residue, uncontaminated wood waste, and paper waste must be (i) processed into windrows or other piles and (ii) covered in a manner that prevents scavenging by birds and animals and that prevents other nuisances.

(C) Food scrap, livestock waste, crop residue, uncontaminated wood waste, paper waste, and compost must not be placed within 5 feet of the water table.

(D) The site or facility must meet all of the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).

(E) The site or facility must not (i) restrict the flow of a 100-year flood, (ii) result in washout of food scrap, livestock waste, crop residue, uncontaminated wood waste, or paper waste from a 100-year flood, or (iii) reduce the temporary water storage capacity of the 100-year floodplain, unless measures are undertaken to provide alternative storage capacity, such as by providing lagoons, holding tanks, or drainage around structures at the facility.

(F) The site or facility must not be located in any area where it may pose a threat of harm or destruction to the features for which:

(i) an irreplaceable historic or archaeological site has been listed under the National Historic Preservation Act (16 U.S.C. 470 et seq.) or the Illinois Historic Preservation Act;

(ii) a natural landmark has been designated by the National Park Service or the Illinois State Historic Preservation Office; or

(iii) a natural area has been designated as a Dedicated Illinois Nature Preserve under the Illinois Natural Areas Preservation Act.

(G) The site or facility must not be located in an area where it may jeopardize the continued existence of any designated endangered species, result in the destruction or adverse modification of the critical habitat for such species, or cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife listed under the Endangered Species Act (16 U.S.C. 1531 et seq.) or the Illinois Endangered Species Protection Act;

(20) the portion of a site or facility that is located entirely within a home rule unit having a population of no less than 120,000 and no more than 135,000, according to the 2000 federal census, and that meets all of the following requirements:

(i) the portion of the site or facility is used exclusively to perform testing of a thermochemical conversion technology using only woody biomass, collected as landscape waste within the boundaries of the home rule unit, as the hydrocarbon feedstock for the production of synthetic gas in accordance with Section 39.9 of this Act;

(ii) the portion of the site or facility is in compliance with all applicable zoning requirements; and

(iii) a complete application for a demonstration permit at the portion of the site or facility has been submitted to the Agency in accordance with Section 39.9

of this Act within one year after July 27, 2010 (the effective date of Public Act 96-1314);

(21) the portion of a site or facility used to perform limited testing of a gasification conversion technology in accordance with Section 39.8 of this Act and for which a complete permit application has been submitted to the Agency prior to one year from April 9, 2010 (the effective date of Public Act 96-887);

(22) the portion of a site or facility that is used to incinerate only pharmaceuticals from residential sources that are collected and transported by law enforcement agencies under Section 17.9A of this Act;

(23) the portion of a site or facility:

(A) that is used exclusively for the transfer of commingled landscape waste and food scrap held at the site or facility for no longer than 24 hours after their receipt;

(B) that is located entirely within a home rule unit having a population of (i) not less than 100,000 and not more than 115,000 according to the 2010 federal census, (ii) not less than 5,000 and not more than 10,000 according to the 2010 federal census, or (iii) not less than 25,000 and not more than 30,000 according to the 2010 federal census or that is located in the unincorporated area of a county having a population of not less than 700,000 and not more than 705,000 according to the 2010 federal census;

(C) that is permitted, by the Agency, prior to January 1, 2002, for the transfer of landscape waste if located in a home rule unit or that is permitted prior to January 1, 2008 if located in an unincorporated area of a county; and

(D) for which a permit application is submitted to the Agency to modify an existing permit for the transfer of landscape waste to also include, on a demonstration basis not to exceed 24 months each time a permit is issued, the transfer of commingled landscape waste and food scrap or for which a permit application is submitted to the Agency within 6 months of August 11, 2017 (the effective date of Public Act 100-94);

(24) the portion of a municipal solid waste landfill unit:

(A) that is located in a county having a population of not less than 55,000 and not more than 60,000 according to the 2010 federal census;

(B) that is owned by that county;

(C) that is permitted, by the Agency, prior to July 10, 2015 (the effective date of Public Act 99-12); and

(D) for which a permit application is submitted to the Agency within 6 months after July 10, 2015 (the effective date of Public Act 99-12) for the disposal of non-hazardous special waste; and

(25) the portion of a site or facility used during a mass animal mortality event, as defined in the Animal Mortality Act, where such waste is collected, stored, processed, disposed, or incinerated under a mass animal mortality event plan issued by the Department of Agriculture.

(b) A new pollution control facility is:

(1) a pollution control facility initially permitted for development or construction after July 1, 1981; or

(2) the area of expansion beyond the boundary of a currently permitted pollution control facility; or

(3) a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.

(Source: P.A. 102-216, eff. 1-1-22; 102-310, eff. 8-6-21; 102-813, eff. 5-13-22.)

(415 ILCS 5/3.335) (was 415 ILCS 5/3.27)

Sec. 3.335. Pollution control waste. "Pollution control waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution control waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, landfill waste, scrubber sludges and chemical spill cleanings.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.340) (was 415 ILCS 5/3.65)

Sec. 3.340. Potable. "Potable" means generally fit for human consumption in accordance with accepted water supply principles and practices.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.345) (was 415 ILCS 5/3.59)

Sec. 3.345. Potential primary source. "Potential primary source" means any unit at a facility or site not currently subject to a removal or remedial action which:

(1) is utilized for the treatment, storage, or disposal of any hazardous or special waste not generated at the site; or

(2) is utilized for the disposal of municipal waste not generated at the site, other than landscape waste and construction and demolition debris; or

(3) is utilized for the landfilling, land treating, surface impounding or piling of any hazardous or special waste that is generated on the site or at other sites owned, controlled or operated by the same person; or

(4) stores or accumulates at any time more than 75,000 pounds above ground, or more than 7,500 pounds below ground, of any hazardous substances.

A new potential primary source is:

(i) a potential primary source which is not in existence or for which construction has not commenced at its location as of January 1, 1988; or

(ii) a potential primary source which expands laterally beyond the currently permitted boundary or, if the primary source is not permitted, the boundary in existence as of January 1, 1988; or

(iii) a potential primary source which is part of a facility that undergoes major reconstruction. Such reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a 2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.350) (was 415 ILCS 5/3.58)

Sec. 3.350. Potential route. "Potential route" means abandoned and improperly plugged wells of all kinds, drainage wells, all injection wells, including closed loop heat pump wells, and any excavation for the discovery, development or production of stone, sand or gravel. This term does not include closed loop heat pump wells using USP food grade propylene glycol.

A new potential route is:

(1) a potential route which is not in existence or for which construction has not commenced at its location as of January 1, 1988, or

(2) a potential route which expands laterally beyond the currently permitted boundary or, if the potential route is not permitted, the boundary in existence as of January 1, 1988.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.

(Source: P.A. 94-1048, eff. 1-1-07.)

(415 ILCS 5/3.355) (was 415 ILCS 5/3.60)

Sec. 3.355. Potential secondary source. "Potential secondary source" means any unit at a facility or a site not currently subject to a removal or remedial action, other than a potential primary source, which:

(1) is utilized for the landfilling, land treating, or surface impounding of waste that is generated on the site or at other sites owned, controlled or operated by the same person, other than livestock and landscape waste, and construction and demolition debris; or

(2) stores or accumulates at any time more than 25,000 but not more than 75,000 pounds above ground, or more than 2,500 but not more than 7,500 pounds below ground, of any hazardous substances; or

(3) stores or accumulates at any time more than 25,000 gallons above ground, or more than 500 gallons below ground, of petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance; or

(4) stores or accumulates pesticides, fertilizers, or road oils for purposes of commercial application or for distribution to retail sales outlets; or

(5) stores or accumulates at any time more than 50,000 pounds of any de-icing agent; or

(6) is utilized for handling livestock waste or for treating domestic wastewaters other than private sewage disposal systems as defined in the "Private Sewage Disposal Licensing Act".

A new potential secondary source is:

(i) a potential secondary source which is not in existence or for which construction has not commenced at its location as of July 1, 1988; or

(ii) a potential secondary source which expands laterally beyond the currently permitted boundary or, if the secondary source is not permitted, the boundary in existence as of July 1, 1988, other than an expansion for handling of livestock waste or for treating domestic wastewaters; or

(iii) a potential secondary source which is part of a

facility that undergoes major reconstruction. Such reconstruction shall be deemed to have taken place where the fixed capital cost of the new components constructed within a 2-year period exceed 50% of the fixed capital cost of a comparable entirely new facility.

Construction shall be deemed commenced when all necessary federal, State and local approvals have been obtained, and work at the site has been initiated and proceeds in a reasonably continuous manner to completion.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.360) (was 415 ILCS 5/3.84)
Sec. 3.360. Potentially infectious medical waste.

(a) "Potentially infectious medical waste" means the following types of waste generated in connection with the diagnosis, treatment (i.e., provision of medical services), or immunization of human beings or animals; research pertaining to the provision of medical services; or the production or testing of biologicals:

(1) Cultures and stocks. This waste shall include but not be limited to cultures and stocks of agents infectious to humans, and associated biologicals; cultures from medical or pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live or attenuated vaccines; or culture dishes and devices used to transfer, inoculate, or mix cultures.

(2) Human pathological wastes. This waste shall include tissue, organs, and body parts (except teeth and the contiguous structures of bone and gum); body fluids that are removed during surgery, autopsy, or other medical procedures; or specimens of body fluids and their containers.

(3) Human blood and blood products. This waste shall include discarded human blood, blood components (e.g., serum and plasma), or saturated material containing free flowing blood or blood components.

(4) Used sharps. This waste shall include but not be limited to discarded sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories; hypodermic, intravenous, or other medical needles; hypodermic or intravenous syringes; Pasteur pipettes; scalpel blades; or blood vials. This waste shall also include but not be limited to other types of broken or unbroken glass (including slides and cover slips) in contact with infectious agents.

(5) Animal waste. Animal waste means discarded materials, including carcasses, body parts, body fluids, blood, or bedding originating from animals inoculated during research, production of biologicals, or pharmaceutical testing with agents infectious to humans.

(6) Isolation waste. This waste shall include discarded materials contaminated with blood, excretions, exudates, and secretions from humans that are isolated to protect others from highly communicable diseases. "Highly communicable diseases" means those diseases identified by the Board in rules adopted under subsection (e) of Section 56.2 of this Act.

(7) Unused sharps. This waste shall include but not be limited to the following unused, discarded sharps: hypodermic, intravenous, or other needles; hypodermic or intravenous syringes; or scalpel blades.

(b) Potentially infectious medical waste does not include:
(1) waste generated as general household waste;
(2) waste (except for sharps) for which the infectious potential has been eliminated by treatment;
(3) sharps that meet both of the following conditions:
(A) the infectious potential has been eliminated from the sharps by treatment; and
(B) the sharps are rendered unrecognizable by treatment; or
(4) sharps that are managed in accordance with the following requirements:
(A) the infectious potential is eliminated from the sharps by treatment at a facility that is permitted by the Agency for the treatment of potentially infectious medical waste;
(B) the sharps are certified by the treatment facility as non-special waste in accordance with Section 22.48 of this Act;
(C) the sharps are packaged at the treatment facility the same as required under Board rules for potentially infectious medical waste;
(D) the sharps are transported under the custody of the treatment facility to a landfill permitted by the Agency under Section 21 of this Act to accept municipal waste for disposal; and
(E) the activities in subparagraphs (A) through (D) of this paragraph (4) are authorized in, and conducted in accordance with, a permit issued by the Agency to the treatment facility.
(Source: P.A. 98-366, eff. 1-1-14.)

(415 ILCS 5/3.363)
Sec. 3.363. Prevention of significant deterioration (PSD) permit. "Prevention of Significant Deterioration permit" or "PSD permit" means a permit or the portion of a permit for a new major source or major modification that is issued by the Illinois Environmental Protection Agency under the construction permit program pursuant to subsection (c) of Section 9.1 that has been approved by the United States Environmental Protection Agency and incorporated into the Illinois State Implementation Plan to implement the requirements of Section 165 of the Clean Air Act and 40 CFR 51.166.
(Source: P.A. 99-463, eff. 1-1-16.)

(415 ILCS 5/3.365) (was 415 ILCS 5/3.28)
Sec. 3.365. Public water supply. "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a "community water supply" or a "non-community water supply".
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.370) (was 415 ILCS 5/3.29)
Sec. 3.370. RCRA permit. "RCRA permit" means a permit issued by the Agency pursuant to authorization received by the Agency from the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act of

1976, (P.L. 94-580) (RCRA) and which meets the requirements of Section 3005 of RCRA and of this Act.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.375) (was 415 ILCS 5/3.81)

Sec. 3.375. Recycling center. "Recycling center" means a site or facility that accepts only segregated, nonhazardous, nonspecial, homogeneous, nonputrescible materials, such as dry paper, glass, cans or plastics, for subsequent use in the secondary materials market.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.380) (was 415 ILCS 5/3.30)

Sec. 3.380. Recycling, reclamation or reuse. "Recycling, reclamation or reuse" means a method, technique, or process designed to remove any contaminant from waste so as to render such waste reusable, or any process by which materials that would otherwise be disposed of or discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.385) (was 415 ILCS 5/3.31)

Sec. 3.385. Refuse. "Refuse" means waste.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.390) (was 415 ILCS 5/3.67)

Sec. 3.390. Regulated recharge area. "Regulated recharge area" means a compact geographic area, as determined by the Board, the geology of which renders a potable resource groundwater particularly susceptible to contamination.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.395) (was 415 ILCS 5/3.33)

Sec. 3.395. Release. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes (a) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; (b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; (c) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and (d) the normal application of fertilizer.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.400) (was 415 ILCS 5/3.34)

Sec. 3.400. Remedial action. "Remedial action" means those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion

destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the Governor and the Director determine that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term includes offsite transport of hazardous substances, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or contaminated materials.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.405) (was 415 ILCS 5/3.35)

Sec. 3.405. Remove; removal. "Remove" or "removal" means the cleanup or removal of released hazardous substances from the environment, actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, that may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals, and any emergency assistance that may be provided under the Illinois Emergency Management Agency Act or any other law.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.410) (was 415 ILCS 5/3.36)

Sec. 3.410. Re-refined oil. "Re-refined oil" means any oil which has been refined from used oil meeting substantially the same standards as new oil.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.415) (was 415 ILCS 5/3.37)

Sec. 3.415. Resident. "Resident" means a person who dwells or has a place of abode which is occupied by that person for 60 days or more each calendar year.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.420) (was 415 ILCS 5/3.38)

Sec. 3.420. Resource conservation. "Resource conservation" means reduction of the amounts of waste that are generated, reduction of overall resource consumption and the utilization of recovered resources.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.425) (was 415 ILCS 5/3.90)

Sec. 3.425. Resource Conservation and Recovery Act; RCRA. "Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.430) (was 415 ILCS 5/3.66)

Sec. 3.430. Resource groundwater. "Resource groundwater" means groundwater that is presently being or in the future capable of being put to beneficial use by reason of being of suitable quality.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.435) (was 415 ILCS 5/3.39)

Sec. 3.435. Resource recovery. "Resource recovery" means the recovery of material or energy from waste.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.440) (was 415 ILCS 5/3.40)

Sec. 3.440. Respond; response. "Respond" or "response" means remove, removal, remedy, and remedial action.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.445) (was 415 ILCS 5/3.41)

Sec. 3.445. Sanitary landfill. "Sanitary landfill" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.450) (was 415 ILCS 5/3.61)

Sec. 3.450. Setback zone. "Setback zone" means a geographic area, designated pursuant to this Act, containing a potable water supply well or a potential source or potential route, having a continuous boundary, and within which certain prohibitions or regulations are applicable in order to protect groundwaters.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.455) (was 415 ILCS 5/3.42)

Sec. 3.455. Sewage works. "Sewage works" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes or for the recovery of by-products from such wastes.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.458)

Sec. 3.458. Sharps collection station.

(a) "Sharps collection station" means a designated area at an applicable facility where (i) hypodermic, intravenous, or other medical needles or syringes or other sharps, or (ii) medical household waste containing medical sharps, including, but not limited to, hypodermic, intravenous, or other medical needles or syringes or other sharps, are collected for transport, storage, treatment, transfer, or disposal.

(b) For purposes of this Section, "applicable facility" means any of the following:

(1) A hospital.

(2) An ambulatory surgical treatment center, physician's office, clinic, or other setting where a physician provides care.

(3) A pharmacy employing a registered pharmacist.

(4) The principal place of business of any government

official who is authorized under Section 1 of the Hypodermic Syringes and Needles Act (720 ILCS 635/) to possess hypodermic, intravenous, or other medical needles, or hypodermic or intravenous syringes, by reason of his or her official duties.

(Source: P.A. 94-641, eff. 8-22-05.)

(415 ILCS 5/3.460) (was 415 ILCS 5/3.43)

Sec. 3.460. Site. "Site" means any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.465) (was 415 ILCS 5/3.44)

Sec. 3.465. Sludge. "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.470) (was 415 ILCS 5/3.82)

Sec. 3.470. Solid waste. "Solid waste" means waste.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.475) (was 415 ILCS 5/3.45)

Sec. 3.475. Special waste. "Special waste" means any of the following:

(a) potentially infectious medical waste;

(b) hazardous waste, as determined in conformance with RCRA hazardous waste determination requirements set forth in Section 722.111 of Title 35 of the Illinois Administrative Code, including a residue from burning or processing hazardous waste in a boiler or industrial furnace unless the residue has been tested in accordance with Section 726.212 of Title 35 of the Illinois Administrative Code and proven to be nonhazardous;

(c) industrial process waste or pollution control waste, except:

(1) any such waste certified by its generator, pursuant to Section 22.48 of this Act, not to be any of the following:

(A) a liquid, as determined using the paint filter test set forth in subdivision (3)(A) of subsection (m) of Section 811.107 of Title 35 of the Illinois Administrative Code;

(B) regulated asbestos-containing waste materials, as defined under the National Emission Standards for Hazardous Air Pollutants in 40 CFR Section 61.141;

(C) polychlorinated biphenyls (PCB's) regulated pursuant to 40 CFR Part 761;

(D) an industrial process waste or pollution control waste subject to the waste analysis and recordkeeping requirements of Section 728.107 of Title 35 of the Illinois Administrative Code under the land disposal restrictions of Part 728 of Title 35 of the Illinois Administrative Code; and

(E) a waste material generated by processing recyclable metals by shredding and required to be managed as a special waste under Section 22.29 of this Act;

(2) any empty portable device or container, including

but not limited to a drum, in which a special waste has been stored, transported, treated, disposed of, or otherwise handled, provided that the generator has certified that the device or container is empty and does not contain a liquid, as determined pursuant to item (A) of subdivision (1) of this subsection. For purposes of this subdivision, "empty portable device or container" means a device or container in which removal of special waste, except for a residue that shall not exceed one inch in thickness, has been accomplished by a practice commonly employed to remove materials of that type. An inner liner used to prevent contact between the special waste and the container shall be removed and managed as a special waste; or

(3) as may otherwise be determined under Section 22.9 of this Act.

"Special waste" does not mean fluorescent and high intensity discharge lamps as defined in subsection (a) of Section 22.23a of this Act, waste that is managed in accordance with the universal waste requirements set forth in Title 35 of the Illinois Administrative Code, Subtitle G, Chapter I, Subchapter c, Part 733, or waste that is subject to rules adopted pursuant to subsection (c)(2) of Section 22.23a of this Act.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.480) (was 415 ILCS 5/3.46)

Sec. 3.480. Storage. "Storage" means the containment of waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.485) (was 415 ILCS 5/3.47)

Sec. 3.485. Storage site. "Storage site" is a site at which waste is stored. "Storage site" includes transfer stations but does not include (i) a site that accepts or receives waste in transfer containers unless the waste is removed from the transfer container or unless the transfer container becomes stationary, en route to a disposal, treatment, or storage facility for more than 5 business days, or (ii) a site that accepts or receives open top units containing only clean construction and demolition debris, or (iii) a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptacle for no more than 24 hours, excluding Saturdays, Sundays, and holidays, but only if the detachable refuse receptacle is completely covered or enclosed and is stored on the same site as the refuse motor vehicle that transported the receptacle to the site.

Nothing in this Section shall be construed to be less stringent than or inconsistent with the provisions of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-480) or regulations adopted under it.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.487)

Sec. 3.487. Surface discharging private sewage disposal system. "Surface discharging private sewage disposal system" means a sewage disposal system that discharges into the waters of the United States, as that term is used in the Federal Water Pollution Control Act.
(Source: P.A. 96-801, eff. 1-1-10.)

(415 ILCS 5/3.488)

Sec. 3.488. Time-limited water quality standard. "Time-limited water quality standard" has the meaning ascribed to the

term "water quality standards variance" in 40 CFR 131.3(o).
(Source: P.A. 99-937, eff. 2-24-17.)

(415 ILCS 5/3.490) (was 415 ILCS 5/3.48)

Sec. 3.490. Trade secret. "Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process (including a manufacturing process), procedure, formula or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.495) (was 415 ILCS 5/3.48-5)

Sec. 3.495. Transfer container. "Transfer container" means a reusable transportable shipping container that is completely covered or enclosed, that has a volume of not less than 250 cubic feet based on the external dimensions, and that is constructed and maintained to protect the container contents (which may include smaller containers that are or are not transfer containers) from water, rain, and wind, to prevent the free movement of rodents and vectors into or out of the container, and to prevent leaking from the container.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.500) (was 415 ILCS 5/3.83)

Sec. 3.500. Transfer station. "Transfer station" means a site or facility that accepts waste for temporary storage or consolidation and further transfer to a waste disposal, treatment or storage facility. "Transfer station" includes a site where waste is transferred from (1) a rail carrier to a motor vehicle or water carrier; (2) a water carrier to a rail carrier or motor vehicle; (3) a motor vehicle to a rail carrier, water carrier or motor vehicle; (4) a rail carrier to a rail carrier, if the waste is removed from a rail car; or (5) a water carrier to a water carrier, if the waste is removed from a vessel.

"Transfer station" does not include (i) a site where waste is not removed from the transfer container, or (ii) a site that accepts or receives open top units containing only clean construction and demolition debris, or (iii) a site that stores waste on a refuse motor vehicle or in the vehicle's detachable refuse receptacle for no more than 24 hours, excluding Saturdays, Sundays, and holidays, but only if the detachable refuse receptacle is completely covered or enclosed and is stored on the same site as the refuse motor vehicle that transported the receptacle to the site.

Nothing in this Section shall be construed to be less stringent than or inconsistent with the provisions of the federal Resource Conservation and Recovery Act of 1976 (P.L. 94-480) or regulations adopted under it.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.505) (was 415 ILCS 5/3.49)

Sec. 3.505. Treatment. "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize it or render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form

or chemical composition of hazardous waste so as to render it nonhazardous.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.510) (was 415 ILCS 5/3.50)
Sec. 3.510. Underground injection. "Underground injection" means the subsurface emplacement of fluids by well injection.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.515) (was 415 ILCS 5/3.62)
Sec. 3.515. Unit. "Unit" means any device, mechanism, equipment, or area (exclusive of land utilized only for agricultural production). This term includes secondary containment structures and their contents at agrichemical facilities.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.520) (was 415 ILCS 5/3.51)
Sec. 3.520. Used oil. "Used oil" means any oil which has been refined from crude oil or refined from used oil, has been used, and as a result of such use has been contaminated by physical or chemical impurities, except that "used oil" shall not include that type of oil generated on farmland property devoted to agricultural use and used on that property for heating or burning.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.525) (was 415 ILCS 5/3.91)
Sec. 3.525. Vegetable by-products. "Vegetable by-products" means any waste consisting solely of the unused portion of fruits and vegetables, associated solids, and process water resulting from any commercial canning, freezing, preserving or other processing of fruits and vegetables. Vegetable by-products are not special wastes.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.530) (was 415 ILCS 5/3.52)
Sec. 3.530. Virgin oil. "Virgin oil" means any oil which has been refined from crude oil which may or may not contain additives and has not been used.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.535) (was 415 ILCS 5/3.53)
Sec. 3.535. Waste. "Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.540) (was 415 ILCS 5/3.54)

Sec. 3.540. Waste disposal site. "Waste disposal site" is a site on which solid waste is disposed.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.545) (was 415 ILCS 5/3.55)

Sec. 3.545. Water pollution. "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.550) (was 415 ILCS 5/3.56)

Sec. 3.550. Waters. "Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.555) (was 415 ILCS 5/3.57)

Sec. 3.555. Well. "Well" means a bored, drilled or driven shaft, or dug hole, the depth of which is greater than the largest surface dimension.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/3.560)

Sec. 3.560. Exceptional Quality biosolids. "Exceptional Quality biosolids" means solids that:

(1) are generated from the advanced processing of publicly-owned sewage treatment plant sludge;

(2) do not exceed the ceiling concentration limits in Table 1 of 40 CFR 503.13 and the pollutant concentration limits in Table 3 of 40 CFR 503.13;

(3) meet the requirements for classification as Class A with respect to pathogens in 40 CFR 503.32(a); and

(4) meet one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8).

(Source: P.A. 99-67, eff. 7-20-15.)

(415 ILCS 5/4) (from Ch. 111 1/2, par. 1004)

Sec. 4. Environmental Protection Agency; establishment; duties.

(a) There is established in the Executive Branch of the State Government an agency to be known as the Environmental Protection Agency. This Agency shall be under the supervision and direction of a Director who shall be appointed by the Governor with the advice and consent of the Senate. The term of office of the Director shall expire on the third Monday of January in odd numbered years, provided that he or she shall hold office until a successor is appointed and has qualified. For terms beginning after January 18, 2019 (the effective date of Public Act 100-1179) and before January 16, 2023, the Director's annual salary shall be an amount equal to 15% more than the Director's annual salary as of December 31, 2018. The calculation of the 2018 salary base for this adjustment shall not include any cost of living adjustments, as authorized by Senate Joint Resolution 192 of the 86th General Assembly, for the period beginning July 1, 2009 to June 30, 2019. Beginning

July 1, 2019 and each July 1 thereafter, the Director shall receive an increase in salary based on a cost of living adjustment as authorized by Senate Joint Resolution 192 of the 86th General Assembly. Notwithstanding any other provision of law, for terms beginning on or after January 16, 2023, the Director shall receive an annual salary of $180,000 or as set by the Governor, whichever is higher. On July 1, 2023, and on each July 1 thereafter, the Director shall receive an increase in salary based on a cost of living adjustment as authorized by Senate Joint Resolution 192 of the 86th General Assembly. The Director, in accord with the Personnel Code, shall employ and direct such personnel, and shall provide for such laboratory and other facilities, as may be necessary to carry out the purposes of this Act. In addition, the Director may by agreement secure such services as he or she may deem necessary from any other department, agency, or unit of the State Government, and may employ and compensate such consultants and technical assistants as may be required.

(b) The Agency shall have the duty to collect and disseminate such information, acquire such technical data, and conduct such experiments as may be required to carry out the purposes of this Act, including ascertainment of the quantity and nature of discharges from any contaminant source and data on those sources, and to operate and arrange for the operation of devices for the monitoring of environmental quality.

(c) The Agency shall have authority to conduct a program of continuing surveillance and of regular or periodic inspection of actual or potential contaminant or noise sources, of public water supplies, and of refuse disposal sites.

(d) In accordance with constitutional limitations, the Agency shall have authority to enter at all reasonable times upon any private or public property for the purpose of:

(1) Inspecting and investigating to ascertain possible violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order; or

(2) In accordance with the provisions of this Act, taking whatever preventive or corrective action, including but not limited to removal or remedial action, that is necessary or appropriate whenever there is a release or a substantial threat of a release of (A) a hazardous substance or pesticide or (B) petroleum from an underground storage tank.

(e) The Agency shall have the duty to investigate violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order; to issue administrative citations as provided in Section 31.1 of this Act; and to take such summary enforcement action as is provided for by Section 34 of this Act.

(f) The Agency shall appear before the Board in any hearing upon a petition for variance or time-limited water quality standard, the denial of a permit, or the validity or effect of a rule or regulation of the Board, and shall have the authority to appear before the Board in any hearing under the Act.

(g) The Agency shall have the duty to administer, in accord with Title X of this Act, such permit and certification systems as may be established by this Act or by regulations adopted thereunder. The Agency may enter into written delegation agreements with any department, agency, or unit of State or local government under which all or portions of this duty may be delegated for public water supply storage and transport systems, sewage collection and transport systems, air pollution control sources with uncontrolled emissions of 100 tons per year or less and application of algicides to waters of the State. Such

delegation agreements will require that the work to be performed thereunder will be in accordance with Agency criteria, subject to Agency review, and shall include such financial and program auditing by the Agency as may be required.

(h) The Agency shall have authority to require the submission of complete plans and specifications from any applicant for a permit required by this Act or by regulations thereunder, and to require the submission of such reports regarding actual or potential violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, as may be necessary for the purposes of this Act.

(i) The Agency shall have authority to make recommendations to the Board for the adoption of regulations under Title VII of the Act.

(j) The Agency shall have the duty to represent the State of Illinois in any and all matters pertaining to plans, procedures, or negotiations for interstate compacts or other governmental arrangements relating to environmental protection.

(k) The Agency shall have the authority to accept, receive, and administer on behalf of the State any grants, gifts, loans, indirect cost reimbursements, or other funds made available to the State from any source for purposes of this Act or for air or water pollution control, public water supply, solid waste disposal, noise abatement, or other environmental protection activities, surveys, or programs. Any federal funds received by the Agency pursuant to this subsection shall be deposited in a trust fund with the State Treasurer and held and disbursed by him in accordance with Treasurer as Custodian of Funds Act, provided that such monies shall be used only for the purposes for which they are contributed and any balance remaining shall be returned to the contributor.

The Agency is authorized to promulgate such regulations and enter into such contracts as it may deem necessary for carrying out the provisions of this subsection.

(l) The Agency is hereby designated as water pollution agency for the state for all purposes of the Federal Water Pollution Control Act, as amended; as implementing agency for the State for all purposes of the Safe Drinking Water Act, Public Law 93-523, as now or hereafter amended, except Section 1425 of that Act; as air pollution agency for the state for all purposes of the Clean Air Act of 1970, Public Law 91-604, approved December 31, 1970, as amended; and as solid waste agency for the state for all purposes of the Solid Waste Disposal Act, Public Law 89-272, approved October 20, 1965, and amended by the Resource Recovery Act of 1970, Public Law 91-512, approved October 26, 1970, as amended, and amended by the Resource Conservation and Recovery Act of 1976, (P.L. 94-580) approved October 21, 1976, as amended; as noise control agency for the state for all purposes of the Noise Control Act of 1972, Public Law 92-574, approved October 27, 1972, as amended; and as implementing agency for the State for all purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended; and otherwise as pollution control agency for the State pursuant to federal laws integrated with the foregoing laws, for financing purposes or otherwise. The Agency is hereby authorized to take all action necessary or appropriate to secure to the State the benefits of such federal Acts, provided that the Agency shall transmit to the United States without change any standards adopted by the Pollution Control Board pursuant to Section 5(c) of this Act. This subsection (l) of Section 4 shall not be construed to bar or prohibit the Environmental Protection Trust Fund Commission from accepting, receiving, and administering on behalf of the

State any grants, gifts, loans or other funds for which the Commission is eligible pursuant to the Environmental Protection Trust Fund Act. The Agency is hereby designated as the State agency for all purposes of administering the requirements of Section 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986.

Any municipality, sanitary district, or other political subdivision, or any Agency of the State or interstate Agency, which makes application for loans or grants under such federal Acts shall notify the Agency of such application; the Agency may participate in proceedings under such federal Acts.

(m) The Agency shall have authority, consistent with Section 5(c) and other provisions of this Act, and for purposes of Section 303(e) of the Federal Water Pollution Control Act, as now or hereafter amended, to engage in planning processes and activities and to develop plans in cooperation with units of local government, state agencies and officers, and other appropriate persons in connection with the jurisdiction or duties of each such unit, agency, officer or person. Public hearings shall be held on the planning process, at which any person shall be permitted to appear and be heard, pursuant to procedural regulations promulgated by the Agency.

(n) In accordance with the powers conferred upon the Agency by Sections 10(g), 13(b), 19, 22(d) and 25 of this Act, the Agency shall have authority to establish and enforce minimum standards for the operation of laboratories relating to analyses and laboratory tests for air pollution, water pollution, noise emissions, contaminant discharges onto land and sanitary, chemical, and mineral quality of water distributed by a public water supply. The Agency may enter into formal working agreements with other departments or agencies of state government under which all or portions of this authority may be delegated to the cooperating department or agency.

(o) The Agency shall have the authority to issue certificates of competency to persons and laboratories meeting the minimum standards established by the Agency in accordance with Section 4(n) of this Act and to promulgate and enforce regulations relevant to the issuance and use of such certificates. The Agency may enter into formal working agreements with other departments or agencies of state government under which all or portions of this authority may be delegated to the cooperating department or agency.

(p) Except as provided in Section 17.7, the Agency shall have the duty to analyze samples as required from each public water supply to determine compliance with the contaminant levels specified by the Pollution Control Board. The maximum number of samples which the Agency shall be required to analyze for microbiological quality shall be 6 per month, but the Agency may, at its option, analyze a larger number each month for any supply. Results of sample analyses for additional required bacteriological testing, turbidity, residual chlorine and radionuclides are to be provided to the Agency in accordance with Section 19. Owners of water supplies may enter into agreements with the Agency to provide for reduced Agency participation in sample analyses.

(q) The Agency shall have the authority to provide notice to any person who may be liable pursuant to Section 22.2(f) of this Act for a release or a substantial threat of a release of a hazardous substance or pesticide. Such notice shall include the identified response action and an opportunity for such person to perform the response action.

(r) The Agency may enter into written delegation agreements with any unit of local government under which it may delegate all or portions of its inspecting, investigating and enforcement

functions. Such delegation agreements shall require that work performed thereunder be in accordance with Agency criteria and subject to Agency review. Notwithstanding any other provision of law to the contrary, no unit of local government shall be liable for any injury resulting from the exercise of its authority pursuant to such a delegation agreement unless the injury is proximately caused by the willful and wanton negligence of an agent or employee of the unit of local government, and any policy of insurance coverage issued to a unit of local government may provide for the denial of liability and the nonpayment of claims based upon injuries for which the unit of local government is not liable pursuant to this subsection (r).

(s) The Agency shall have authority to take whatever preventive or corrective action is necessary or appropriate, including but not limited to expenditure of monies appropriated from the Build Illinois Bond Fund for removal or remedial action, whenever any hazardous substance or pesticide is released or there is a substantial threat of such a release into the environment. The State, the Director, and any State employee shall be indemnified for any damages or injury arising out of or resulting from any action taken under this subsection. The Director of the Agency is authorized to enter into such contracts and agreements as are necessary to carry out the Agency's duties under this subsection.

(t) The Agency shall have authority to distribute grants, subject to appropriation by the General Assembly, to units of local government for financing and construction of wastewater facilities in both incorporated and unincorporated areas. With respect to all monies appropriated from the Build Illinois Bond Fund for wastewater facility grants, the Agency shall make distributions in conformity with the rules and regulations established pursuant to the Anti-Pollution Bond Act, as now or hereafter amended.

(u) Pursuant to the Illinois Administrative Procedure Act, the Agency shall have the authority to adopt such rules as are necessary or appropriate for the Agency to implement Section 31.1 of this Act.

(v) (Blank.)

(w) Neither the State, nor the Director, nor the Board, nor any State employee shall be liable for any damages or injury arising out of or resulting from any action taken under subsection (s).

(x)(1) The Agency shall have authority to distribute grants, subject to appropriation by the General Assembly, to units of local government for financing and construction of public water supply facilities. With respect to all monies appropriated from the Build Illinois Bond Fund for public water supply grants, such grants shall be made in accordance with rules promulgated by the Agency. Such rules shall include a requirement for a local match of 30% of the total project cost for projects funded through such grants.

(2) The Agency shall not terminate a grant to a unit of local government for the financing and construction of public water supply facilities unless and until the Agency adopts rules that set forth precise and complete standards, pursuant to Section 5-20 of the Illinois Administrative Procedure Act, for the termination of such grants. The Agency shall not make determinations on whether specific grant conditions are necessary to ensure the integrity of a project or on whether subagreements shall be awarded, with respect to grants for the financing and construction of public water supply facilities, unless and until the Agency adopts rules that set forth precise and complete standards, pursuant to Section 5-20 of the Illinois Administrative Procedure Act, for making such determinations.

The Agency shall not issue a stop-work order in relation to such grants unless and until the Agency adopts precise and complete standards, pursuant to Section 5-20 of the Illinois Administrative Procedure Act, for determining whether to issue a stop-work order.

(y) The Agency shall have authority to release any person from further responsibility for preventive or corrective action under this Act following successful completion of preventive or corrective action undertaken by such person upon written request by the person.

(z) To the extent permitted by any applicable federal law or regulation, for all work performed for State construction projects which are funded in whole or in part by a capital infrastructure bill enacted by the 96th General Assembly by sums appropriated to the Environmental Protection Agency, at least 50% of the total labor hours must be performed by actual residents of the State of Illinois. For purposes of this subsection, "actual residents of the State of Illinois" means persons domiciled in the State of Illinois. The Department of Labor shall promulgate rules providing for the enforcement of this subsection.

(aa) The Agency may adopt rules requiring the electronic submission of any information required to be submitted to the Agency pursuant to any State or federal law or regulation or any court or Board order. Any rules adopted under this subsection (aa) must include, but are not limited to, identification of the information to be submitted electronically.

(Source: P.A. 102-1071, eff. 6-10-22; 102-1115, eff. 1-9-23.)

(415 ILCS 5/4.1)

Sec. 4.1. (Repealed).

(Source: P.A. 88-414. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/5) (from Ch. 111 1/2, par. 1005)

Sec. 5. Pollution Control Board.

(a) There is hereby created an independent board to be known as the Pollution Control Board.

On and after August 11, 2003 (the effective date of Public Act 93-509), the Board shall consist of 5 technically qualified members, no more than 3 of whom may be of the same political party, to be appointed by the Governor with the advice and consent of the Senate. Members shall have verifiable technical, academic, or actual experience in the field of pollution control or environmental law and regulation.

One member shall be appointed for a term ending July 1, 2004, 2 shall be appointed for terms ending July 1, 2005, and 2 shall be appointed for terms ending July 1, 2006. Thereafter, all members shall hold office for 3 years from the first day of July in the year in which they were appointed, except in case of an appointment to fill a vacancy. In case of a vacancy in the office when the Senate is not in session, the Governor may make a temporary appointment until the next meeting of the Senate, when he or she shall nominate some person to fill such office; and any person so nominated, who is confirmed by the Senate, shall hold the office during the remainder of the term.

Members of the Board shall hold office until their respective successors have been appointed and qualified. Any member may resign from office, such resignation to take effect when a successor has been appointed and has qualified.

Board members shall be paid $37,000 per year or an amount set by the Compensation Review Board, whichever is greater, and the Chairman shall be paid $43,000 per year or an amount set by the Compensation Review Board, whichever is greater. Each member shall devote his or her entire time to the duties of the office,

and shall hold no other office or position of profit, nor engage in any other business, employment, or vocation. Each member shall be reimbursed for expenses necessarily incurred and shall make a financial disclosure upon appointment.

The Board may employ one assistant for each member and 2 assistants for the Chairman. The Board also may employ and compensate hearing officers to preside at hearings under this Act, and such other personnel as may be necessary. Hearing officers shall be attorneys licensed to practice law in Illinois.

The Board may have an Executive Director; if so, the Executive Director shall be appointed by the Governor with the advice and consent of the Senate. The salary and duties of the Executive Director shall be fixed by the Board.

The Governor shall designate one Board member to be Chairman, who shall serve at the pleasure of the Governor.

The Board shall hold at least one meeting each month and such additional meetings as may be prescribed by Board rules. In addition, special meetings may be called by the Chairman or by any 2 Board members, upon delivery of 48 hours written notice to the office of each member. All Board meetings shall be open to the public, and public notice of all meetings shall be given at least 48 hours in advance of each meeting. In emergency situations in which a majority of the Board certifies that exigencies of time require the requirements of public notice and of 24 hour written notice to members may be dispensed with, and Board members shall receive such notice as is reasonable under the circumstances.

Three members of the Board shall constitute a quorum to transact business; and the affirmative vote of 3 members is necessary to adopt any order. The Board shall keep a complete and accurate record of all its meetings.

(b) The Board shall determine, define and implement the environmental control standards applicable in the State of Illinois and may adopt rules and regulations in accordance with Title VII of this Act.

(c) The Board shall have authority to act for the State in regard to the adoption of standards for submission to the United States under any federal law respecting environmental protection. Such standards shall be adopted in accordance with Title VII of the Act and upon adoption shall be forwarded to the Environmental Protection Agency for submission to the United States pursuant to subsections (l) and (m) of Section 4 of this Act. Nothing in this paragraph shall limit the discretion of the Governor to delegate authority granted to the Governor under any federal law.

(d) The Board shall have authority to conduct proceedings upon complaints charging violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order; upon administrative citations; upon petitions for variances, adjusted standards, or time-limited water quality standards; upon petitions for review of the Agency's final determinations on permit applications in accordance with Title X of this Act; upon petitions to remove seals under Section 34 of this Act; and upon other petitions for review of final determinations which are made pursuant to this Act or Board rule and which involve a subject which the Board is authorized to regulate. The Board may also conduct other proceedings as may be provided by this Act or any other statute or rule.

(e) In connection with any proceeding pursuant to subsection (b) or (d) of this Section, the Board may subpoena and compel the attendance of witnesses and the production of evidence reasonably necessary to resolution of the matter under

consideration. The Board shall issue such subpoenas upon the request of any party to a proceeding under subsection (d) of this Section or upon its own motion.

(f) The Board may prescribe reasonable fees for permits required pursuant to this Act. Such fees in the aggregate may not exceed the total cost to the Agency for its inspection and permit systems. The Board may not prescribe any permit fees which are different in amount from those established by this Act.

(Source: P.A. 99-934, eff. 1-27-17; 99-937, eff. 2-24-17; 100-863, eff. 8-14-18.)

(415 ILCS 5/5.1) (from Ch. 111 1/2, par. 1005.1)

Sec. 5.1. (Repealed).

(Source: P.A. 89-445, eff. 2-7-96. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/6.1) (from Ch. 111 1/2, par. 1006.1)

Sec. 6.1. The Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity) shall conduct studies of the effects of all State and federal sulfur dioxide regulations and emission standards on the use of Illinois coal and other fuels, and shall report the results of such studies to the Governor and the General Assembly. The reports shall be made by July 1, 1980 and biennially thereafter.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act.

(Source: P.A. 100-1148, eff. 12-10-18.)

(415 ILCS 5/6.2) (from Ch. 111 1/2, par. 1006.2)

Sec. 6.2. (Repealed).

(Source: P.A. 84-1438. Repealed by P.A. 89-445, eff. 2-7-96.)

(415 ILCS 5/7) (from Ch. 111 1/2, par. 1007)

Sec. 7. Public inspection; fees.

(a) All files, records, and data of the Agency, the Board, and the Department shall be open to reasonable public inspection and may be copied upon payment of reasonable fees to be established where appropriate by the Agency, the Board, or the Department, except for the following:

(i) information which constitutes a trade secret;

(ii) information privileged against introduction in judicial proceedings;

(iii) internal communications of the several agencies;

(iv) information concerning secret manufacturing processes or confidential data submitted by any person under this Act.

(b) Notwithstanding subsection (a) above, as to information from or concerning persons subject to NPDES permit requirements:

(i) effluent data may under no circumstances be kept confidential; and

(ii) the Agency, the Board, and the Department may make available to the public for inspection and copying any required records, reports, information, permits, and permit applications obtained from contaminant sources subject to the provisions of Section 12 (f) of this Act; provided that upon a showing satisfactory to the Agency, the Board or the Department, as the case may be, by any person that such information, or any part thereof (other than effluent data)

would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Agency, the Board, or the Department, as the case may be, shall treat such information as confidential.

(c) Notwithstanding any other provision of this Title or any other law to the contrary, all emission data reported to or otherwise obtained by the Agency, the Board or the Department in connection with any examination, inspection or proceeding under this Act shall be available to the public to the extent required by the federal Clean Air Act, as amended.

(d) Notwithstanding subsection (a) above, the quantity and identity of substances being placed or to be placed in landfills or hazardous waste treatment, storage or disposal facilities, and the name of the generator of such substances may under no circumstances be kept confidential.

(e) Notwithstanding any other provisions of this Title, or any other law to the contrary, any information accorded confidential treatment may be disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with or for the purposes of carrying out this Act or federal environmental statutes and regulations; provided, however, that such information shall be identified as confidential by the Agency, the Board, or the Department, as the case may be. Any confidential information disclosed or transmitted under this provision shall be used for the purposes stated herein.

(f) Except as provided in this Act neither the Agency, the Board, nor the Department shall charge any fee for the performance of its respective duties under this Act.

(g) All files, records and data of the Agency, the Board and the Department shall be made available to the Department of Public Health pursuant to the Illinois Health and Hazardous Substances Registry Act. Expenses incurred in the copying and transmittal of files, records and data requested pursuant to this subsection (g) shall be the responsibility of the Department of Public Health.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/7.1) (from Ch. 111 1/2, par. 1007.1)

Sec. 7.1. (a) All articles representing a trade secret reported to or otherwise obtained by the Agency, the Board or the Department in connection with any examination, inspection or proceeding under this Act, shall be considered confidential and shall not be disclosed, except that such articles may be disclosed confidentially to other officers or employees concerned with carrying out this Act or when relevant to any proceeding under this Act. In any such proceeding, the Agency, the Board, the Department or the court shall issue such orders as may be appropriate, including the impoundment of files or portions of files, to protect the confidentiality of trade secrets.

(b) The Board shall adopt regulations under Title VII of this Act which prescribe: (i) procedures for determining whether articles represent a trade secret; and (ii) procedures to protect the confidentiality of such articles. All such regulations shall be considered substantive regulations for purposes of Section 28 of this Act. (c) As used in this Section:

(1) "article" means any object, material, device or substance, or whole or partial copy thereof, including any writing, record, document, recording, drawing, sample, specimen, prototype, model, photograph, culture, microorganism, blueprint or map;

(2) "representing" means describing, depicting, containing, constituting, reflecting or recording; and

(3) "copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing or sketch made of or from an article.
(Source: P.A. 82-592.)

(415 ILCS 5/7.2) (from Ch. 111 1/2, par. 1007.2)
Sec. 7.2. Identical in substance rulemakings.

(a) In the context of a mandate that the Board adopt regulations to secure federal authorization for a program, regulations that are "identical in substance" means State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois. After consideration of comments from the USEPA, the Agency, the Attorney General and the public, the Board shall adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. In adopting "identical in substance" regulations, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations, except as follows:

(1) The Board shall not adopt the equivalent of USEPA rules that are not applicable to persons or facilities in Illinois, that govern the program authorization process, that are appropriate only in USEPA-administered programs, or that govern actions to be taken by USEPA, other federal agencies or other states.

(2) The Board shall not adopt rules prescribing things which are outside the Board's normal functions, such as rules specifying staffing or funding requirements for programs.

(3) If a USEPA rule prescribes the contents of a State regulation without setting forth the regulation itself, which would be an integral part of any regulation required to be adopted as an "identical in substance" regulation as defined in this Section, the Board shall adopt a regulation as prescribed, to the extent possible consistent with other relevant USEPA regulations and existing State law. The Board may not use this subsection to adopt any regulation which is a required rule as that term is defined by Section 28.2 of this Act. To the extent practicable, the Board in its proposed and adopted opinion shall include its rationale for adopting such regulation.

(4) Pursuant to subsection (a) of Section 5-75 of the Illinois Administrative Procedure Act, the Board may incorporate USEPA rules by reference where it is possible to do so without causing confusion to the affected public.

(5) If USEPA intends to retain decision-making authority for a portion of the program, the Board regulation shall so specify. In addition, the Board regulation shall specify whether a decision is to be made by the Board, the Agency or some other State agency, based upon the general division of functions within this Act and other Illinois statutes.

(6) Wherever appropriate, the Board regulations shall reflect any consistent, more stringent regulations adopted pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act.

(7) The Board may correct apparent typographical and grammatical errors in USEPA rules.

(b) In adopting regulations that are "identical in substance" with specified federal regulations under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, subsection (a) of Section 22.7, or subsection (a) of Section 22.40, subsection (H) of Section 10, or specified federal determinations under subsection (e) of Section 9.1, the Board shall complete its rulemaking proceedings within one year after the adoption of the corresponding federal rule. If the Board consolidates multiple federal rulemakings into a single Board rulemaking, the one-year period shall be calculated from the adoption date of the federal rule first adopted among those consolidated. After adopting an "identical in substance" rule, if the Board determines that an amendment is needed to that rule, the Board shall initiate a rulemaking proceeding to propose such amendment. The amendment shall be adopted within one year of the initiation of the Board's determination.

Additionally, if the Board, after adopting an "identical in substance" rule, determines that a technical correction to that rule is needed, the Board may initiate an application for certification of correction under Section 5-85 of the Illinois Administrative Procedure Act.

The one-year period may be extended by the Board for an additional period of time if necessary to complete the rulemaking proceeding. In order to extend the one-year period, the Board must make a finding, based upon the record in the rulemaking proceeding, that the one-year period is insufficient for completion of the rulemaking, and such finding shall specifically state the reasons for the extension. Except as otherwise provided above, the Board must make the finding that an extension of time is necessary prior to the expiration of the initial one-year period, and must also publish a notice of extension in the Illinois Register as expeditiously as practicable following its decision, stating the specific reasons for the Board's decision to extend. The notice of extension need not appear in the Illinois Register prior to the expiration of the initial one year period and shall specify a date certain by which the Board anticipates completion of the rulemaking, except that if a date certain cannot be specified because of a need to delay adoption pending occurrence of an event beyond the Board's control, the notice shall specify the event, explain its circumstances, and contain an estimate of the amount of time needed to complete the rulemaking after the occurrence of the specified event.

(Source: P.A. 97-945, eff. 8-10-12.)

(415 ILCS 5/7.3) (from Ch. 111 1/2, par. 1007.3)

Sec. 7.3. (a) The Board in its discretion may submit the following for publication in the Illinois Register as it deems appropriate:

(1) a regulatory agenda to solicit comments concerning any rule that the Board is considering for proposal, but for which no notice of rulemaking activity has been submitted to the Illinois Register;

(2) notices of all petitions for individual adjusted standards that have been filed with the Board;

(3) notices of all public hearings to be held by the Board, including any hearings scheduled by the Board for consideration of an individual adjusted standard petition;

(4) the results of Board determinations concerning the necessity for economic impact studies;

(5) restricted status lists, on a quarterly basis; and

(6) any other documents related to the activities of

the Pollution Control Board that the Board deems appropriate for publication.

(b) The Board shall publish the following in the Illinois Register:

(1) pursuant to Section 5-40 of the Illinois Administrative Procedure Act, notice of all proposed regulations;

(2) pursuant to Sections 5-45 and 5-50 of the Illinois Administrative Procedure Act, notice of all emergency and peremptory regulations; and

(3) the results of Board determinations concerning adjusted standards proceedings.

(Source: P.A. 88-45.)

(415 ILCS 5/7.4) (from Ch. 111 1/2, par. 1007.4)

Sec. 7.4. All moneys received by the Pollution Control Board from the collection of fees, photo reproduction costs and the sale of opinions and orders, shall be deposited into the Pollution Control Board Fund, a special fund which is hereby created in the State Treasury. The Pollution Control Board may use such funds for activities or purposes necessary to meet its responsibilities pursuant to the Environmental Protection Act. The Pollution Control Board shall establish guidelines governing fee schedules and administration of the Pollution Control Board Fund.

(Source: P.A. 85-1331.)

(415 ILCS 5/7.5) (from Ch. 111 1/2, par. 1007.5)

Sec. 7.5. Filing fees.

(a) The Board shall collect filing fees as prescribed in this Act. The fees shall be deposited in the Pollution Control Board Fund. The filing fees shall be as follows:

Petition for site-specific regulation, $75.

Petition for variance, $75.

Petition for review of permit, $75.

Petition to contest local government decision pursuant to Section 40.1, $75.

Petition for an adjusted standard, pursuant to Section 28.1, $75.

Petition for a time-limited water quality standard, $75 per petitioner.

(b) A person who has filed a petition for a variance from a water quality standard and paid the filing fee set forth in subsection (a) of this Section for that petition and whose variance petition is thereafter converted into a petition for a time-limited water quality standard under Section 38.5 of this Act shall not be required to pay a separate filing fee upon the conversion of the variance petition into a petition for a time-limited water quality standard.

(Source: P.A. 99-937, eff. 2-24-17.)

(415 ILCS 5/7.6)

Sec. 7.6. Electronic posting of permit information. Beginning January 1, 2014, the Agency shall maintain the following information on its website:

(1) a description of each type of permit it issues and the persons subject to each type of permit;

(2) a description of the process for obtaining each type of permit, including but not limited to any statutory or regulatory deadlines and whether public notices or hearings are required prior to permit issuance; and

(3) no later than February 1 of each year, a report

that contains the following information for the previous calendar year, with respect to each type of permit, based on information available to the Agency in a format the Agency can compile and publish electronically:

(A) the number of permit applications received by the Agency;

(B) the number of permits issued by the Agency; and

(C) the average number of days from the date the Agency receives all information necessary for the issuance of a permit until the date the Agency issues the permit.

(Source: P.A. 98-237, eff. 1-1-14.)

(415 ILCS 5/Tit. II heading)

TITLE II: AIR POLLUTION

(415 ILCS 5/8) (from Ch. 111 1/2, par. 1008)

Sec. 8. The General Assembly finds that pollution of the air of this State constitutes a menace to public health and welfare, creates public nuisances, adds to cleaning costs, accelerates the deterioration of materials, adversely affects agriculture, business, industry, recreation, climate, and visibility, depresses property values, and offends the senses.

It is the purpose of this Title to restore, maintain, and enhance the purity of the air of this State in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to prevent pollution.

(Source: P.A. 76-2429.)

(415 ILCS 5/9) (from Ch. 111 1/2, par. 1009)

Sec. 9. Acts prohibited. No person shall:

(a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act.

(b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, (1) without a permit granted by the Agency unless otherwise exempt by this Act or Board regulations or (2) in violation of any conditions imposed by such permit.

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning.

(d) Sell, offer, or use any fuel or other article in any areas in which the Board may by regulation forbid its sale, offer, or use for reasons of air-pollution control.

(e) Use, cause or allow the spraying of loose asbestos for

the purpose of fireproofing or insulating any building or building material or other constructions, or otherwise use asbestos in such unconfined manner as to permit asbestos fibers or particles to pollute the air.

(f) Commencing July 1, 1985, sell any used oil for burning or incineration in any incinerator, boiler, furnace, burner or other equipment unless such oil meets standards based on virgin fuel oil or re-refined oil, as defined in ASTM D-396 or specifications under VV-F-815C promulgated pursuant to the federal Energy Policy and Conservation Act, and meets the manufacturer's and current NFDA code standards for which such incinerator, boiler, furnace, burner or other equipment was approved, except that this prohibition does not apply to a sale to a permitted used oil re-refining or reprocessing facility or sale to a facility permitted by the Agency to burn or incinerate such oil.

Nothing herein shall limit the effect of any section of this Title with respect to any form of asbestos, or the spraying of any form of asbestos, or limit the power of the Board under this Title to adopt additional and further regulations with respect to any form of asbestos, or the spraying of any form of asbestos.

This Section shall not limit the burning of landscape waste upon the premises where it is produced or at sites provided and supervised by any unit of local government, except within any county having a population of more than 400,000. Nothing in this Section shall prohibit the burning of landscape waste for agricultural purposes, habitat management (including but not limited to forest and prairie reclamation), or firefighter training. For the purposes of this Act, the burning of landscape waste by production nurseries shall be considered to be burning for agricultural purposes.

Any grain elevator located outside of a major population area, as defined in Section 211.3610 of Title 35 of the Illinois Administrative Code, shall be exempt from the requirements of Section 212.462 of Title 35 of the Illinois Administrative Code provided that the elevator: (1) does not violate the prohibitions of subsection (a) of this Section or have a certified investigation, as defined in Section 211.970 of Title 35 of the Illinois Administrative Code, on file with the Agency and (2) is not required to obtain a Clean Air Act Permit Program permit pursuant to Section 39.5. Notwithstanding the above exemption, new stationary source performance standards for grain elevators, established pursuant to Section 9.1 of this Act and Section 111 of the federal Clean Air Act, shall continue to apply to grain elevators.
(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/9.1) (from Ch. 111 1/2, par. 1009.1)

Sec. 9.1. (a) The General Assembly finds that the federal Clean Air Act, as amended, and regulations adopted pursuant thereto establish complex and detailed provisions for State-federal cooperation in the field of air pollution control, provide for a Prevention of Significant Deterioration program to regulate the issuance of preconstruction permits to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and also provide for plan requirements for nonattainment areas to regulate the construction, modification and operation of sources of air pollution to insure that economic growth will occur in a manner consistent with the goal of achieving the national ambient air quality standards, and that the General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of such federal Act or all regulations which may be

established thereunder.

It is the purpose of this Section to avoid the existence of duplicative, overlapping or conflicting State and federal regulatory systems.

(b) The provisions of Section 111 of the federal Clean Air Act (42 USC 7411), as amended, relating to standards of performance for new stationary sources, and Section 112 of the federal Clean Air Act (42 USC 7412), as amended, relating to the establishment of national emission standards for hazardous air pollutants are applicable in this State and are enforceable under this Act. Any such enforcement shall be stayed consistent with any stay granted in any federal judicial action to review such standards. Enforcement shall be consistent with the results of any such judicial review.

(c) The Board shall adopt regulations establishing permit programs for PSD and NA NSR permits meeting the respective requirements of Sections 165 and 173 of the Clean Air Act (42 USC 7475 and 42 USC 7503) as amended. The Agency may adopt procedures for the administration of such programs.

The regulations adopted by the Board to establish a PSD permit program shall incorporate by reference, pursuant to subsection (a) of Section 5-75 of the Illinois Administrative Procedure Act, the provisions of 40 CFR 52.21, except for the following subparts: (a)(1) Plan disapproval, (q) Public participation, (s) Environmental impact statements, (t) Disputed permits or redesignations and (u) Delegation of authority; the Board may adopt more stringent or additional provisions to the extent it deems appropriate. To the extent that the provisions of 40 CFR 52.21 provide for the Administrator to make various determinations and to take certain actions, these provisions shall be modified to indicate the Agency if appropriate. Nothing in this subsection shall be construed to limit the right of any person to submit a proposal to the Board or the authority of the Board to adopt elements of a PSD permit program that are more stringent than those contained in 40 CFR 52.21, pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act.

(d) No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto; or

(2) construct, install, modify or operate any equipment, building, facility, source or installation which is subject to regulation under Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, except in compliance with the requirements of such Sections and federal regulations adopted pursuant thereto, and no such action shall be undertaken (A) without a permit granted by the Agency whenever a permit is required pursuant to (i) this Act or Board regulations or (ii) Section 111, 112, 165, or 173 of the Clean Air Act or federal regulations adopted pursuant thereto or (B) in violation of any conditions imposed by such permit. The issuance or any denial of such a PSD permit or any conditions imposed therein shall be reviewable by the Board in accordance with Section 40.3 of this Act. Other permits addressed in this subsection (d) shall be reviewable by the Board in accordance with Section 40 of this Act.

(e) The Board shall exempt from regulation under the State Implementation Plan for ozone the volatile organic compounds which have been determined by the U.S. Environmental Protection Agency to be exempt from regulation under state implementation plans for ozone due to negligible photochemical reactivity. In accordance with subsection (b) of Section 7.2, the Board shall

adopt regulations identical in substance to the U.S. Environmental Protection Agency exemptions or deletion of exemptions published in policy statements on the control of volatile organic compounds in the Federal Register by amending the list of exemptions to the Board's definition of volatile organic material found at 35 Ill. Adm. Code Part 211. The provisions and requirements of Title VII of this Act shall not apply to regulations adopted under this subsection. Section 5-35 of the Illinois Administrative Procedure Act, relating to procedures for rulemaking, does not apply to regulations adopted under this subsection. However, the Board shall provide for notice, a hearing if required by the U.S. Environmental Protection Agency, and public comment before adopted rules are filed with the Secretary of State. The Board may consolidate into a single rulemaking under this subsection all such federal policy statements published in the Federal Register within a period of time not to exceed 6 months.

(f) (Blank).

(Source: P.A. 98-284, eff. 8-9-13; 99-463, eff. 1-1-16.)

(415 ILCS 5/9.2) (from Ch. 111 1/2, par. 1009.2)

Sec. 9.2. Sulfur dioxide emission standards.

(a) (Blank.)

(b) In granting any alternative emission standard or variance relating to sulfur dioxide emissions from a coal-burning stationary source, the Board may require the use of Illinois coal as a condition of such alternative standard or variance, provided that the Board determines that Illinois coal of the proper quality is available and competitive in price; such determination shall include consideration of the cost of pollution control equipment and the economic impact on the Illinois coal mining industry.

(Source: P.A. 92-574, eff. 9-26-02.)

(415 ILCS 5/9.3) (from Ch. 111 1/2, par. 1009.3)

Sec. 9.3. Alternative control strategies.

(a) The General Assembly finds that control strategies, including emission limitations, alternative but environmentally equivalent to those required by Board regulations or the terms of this Act, can assure equivalent protection of the environment and that the use of such alternative control strategies can encourage technological innovation, reduce the likelihood of shutdown of older sources, and can result in decreased costs of compliance and increased availability of resources for use in productive capital investments.

(b) (Blank.)

(c) On or before December 31, 1982, the Board shall adopt regulations establishing a permit program pursuant to Section 39.1 in accordance with Title VII of this Act.

(d) Board rules pursuant to this Section 9.3 shall set forth reasonable requirements for issuance of an alternative control strategy permit, provided that the Board may not impose any condition or requirement more stringent than required by the Clean Air Act or for compliance with this Act or other Board regulations thereunder. The Agency shall promptly adopt any necessary procedures for the administration of such permit programs. The burden of establishing that any procedure, condition or requirement imposed by the Agency in or for the issuance of a permit is more stringent than required by applicable law shall be upon the permit applicant.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/9.4) (from Ch. 111 1/2, par. 1009.4)

Sec. 9.4. Municipal waste incineration emission standards.

(a) The General Assembly finds:

(1) That air pollution from municipal waste incineration may constitute a threat to public health, welfare and the environment. The amounts and kinds of pollutants depend on the nature of the waste stream, operating conditions of the incinerator, and the effectiveness of emission controls. Under normal operating conditions, municipal waste incinerators produce pollutants such as organic compounds, metallic compounds and acid gases which may be a threat to public health, welfare and the environment.

(2) That a combustion and flue-gas control system, which is properly designed, operated and maintained, can substantially reduce the emissions of organic materials, metallic compounds and acid gases from municipal waste incineration.

(b) It is the purpose of this Section to insure that emissions from new municipal waste incineration facilities which burn a total of 25 tons or more of municipal waste per day are adequately controlled.

Such facilities shall be subject to emissions limits and operating standards based upon the application of Best Available Control Technology, as determined by the Agency, for emissions of the following categories of pollutants:

(1) particulate matter, sulfur dioxide and nitrogen oxides;

(2) acid gases;

(3) heavy metals; and

(4) organic materials.

(c) The Agency shall issue permits, pursuant to Section 39, to new municipal waste incineration facilities only if the Agency finds that such facilities are designed, constructed and operated so as to comply with the requirements prescribed by this Section.

Prior to adoption of Board regulations under subsection (d) of this Section the Agency may issue permits for the construction of new municipal waste incineration facilities. The Agency determination of Best Available Control Technology shall be based upon consideration of the specific pollutants named in subsection (d), and emissions of particulate matter, sulfur dioxide and nitrogen oxides.

Nothing in this Section shall limit the applicability of any other Sections of this Act, or of other standards or regulations adopted by the Board, to municipal waste incineration facilities. In issuing such permits, the Agency may prescribe those conditions necessary to assure continuing compliance with the emission limits and operating standards determined pursuant to subsection (b); such conditions may include the monitoring and reporting of emissions.

(d) Within one year after July 1, 1986, the Board shall adopt regulations pursuant to Title VII of this Act, which define the terms in items (2), (3) and (4) of subsection (b) of this Section which are to be used by the Agency in making its determination pursuant to this Section. The provisions of Section 27(b) of this Act shall not apply to this rulemaking.

Such regulations shall be written so that the categories of pollutants include, but need not be limited to, the following specific pollutants:

(1) hydrogen chloride in the definition of acid gases;

(2) arsenic, cadmium, mercury, chromium, nickel and lead in the definition of heavy metals; and

(3) polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans and polynuclear aromatic hydrocarbons in the definition of organic materials.

(e) For the purposes of this Section, the term "Best Available Control Technology" means an emission limitation (including a visible emission standard) based on the maximum degree of pollutant reduction which the Agency, on a case-by-case basis, taking into account energy, environmental and economic impacts, determines is achievable through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques. If the Agency determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard not feasible, it may instead prescribe a design, equipment, work practice or operational standard, or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(f) "Municipal waste incineration" means the burning of municipal waste or fuel derived therefrom in a combustion apparatus designed to burn municipal waste that may produce electricity or steam as a by-product. A "new municipal waste incinerator" is an incinerator initially permitted for development or construction after January 1, 1986.

(g) The provisions of this Section shall not apply to the following:

(1) industrial incineration facilities that burn waste generated at the same site; or

(2) industrial incineration facilities that burn material or fuel derived therefrom for which the United States Environmental Protection Agency has issued a non-waste determination finding the material is not a solid waste under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et. seq.) Non-Hazardous Secondary Materials Rule at 40 CFR 241.3(c).

(Source: P.A. 101-125, eff. 7-26-19.)

(415 ILCS 5/9.5) (from Ch. 111 1/2, par. 1009.5)

Sec. 9.5. (a) The General Assembly finds that:

(1) The public health and welfare may be endangered by the release of toxic contaminants into the air which are carcinogenic, teratogenic, mutagenic or otherwise injurious to humans or the environment.

(2) Existing federal programs may not be adequate to protect the public and the environment from low-level, chronic exposure to toxic air contaminants.

(b) It is the purpose of this Section to establish a State program to identify and adopt regulations for toxic air contaminants in Illinois.

(c) The Board, pursuant to Title VII, shall promulgate a list of toxic air contaminants. The list published under this subsection shall include any air contaminant which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or may pose a significant threat to human health or the environment. The Agency shall propose to the Board for adoption a list which meets the requirement of this subsection.

The provisions of subsection (b) of Section 27 of this Act shall not apply to rulemakings under this subsection (c).

(d) The Board, pursuant to Title VII, shall adopt regulations establishing a program to control toxic contaminants released into the air in a manner that protects the public health and the environment. The Agency shall propose regulations

to the Board for adoption which meet the requirements of this subsection.

(e) The requirements of this Section shall not apply to the following:

(1) retail dry cleaning operations;

(2) retail and noncommercial storage and handling of motor fuels;

(3) combustion processes using only commercial fuel, including internal combustion engines;

(4) incidental or minor sources including laboratory-scale operations, and such other sources or categories of sources which are determined by the Board to be of minor significance.
(Source: P.A. 85-752.)

(415 ILCS 5/9.6) (from Ch. 111 1/2, par. 1009.6)

Sec. 9.6. Air pollution operating permit fee.

(a) For any site for which an air pollution operating permit is required, other than a site permitted solely as a retail liquid dispensing facility that has air pollution control equipment or an agrichemical facility with an endorsed permit pursuant to Section 39.4, the owner or operator of that site shall pay an initial annual fee to the Agency within 30 days of receipt of the permit and an annual fee each year thereafter for as long as a permit is in effect. The owner or operator of a portable emission unit, as defined in 35 Ill. Adm. Code 201.170, may change the site of any unit previously permitted without paying an additional fee under this Section for each site change, provided that no further change to the permit is otherwise necessary or requested.

(b) The following fee amounts shall apply:

(1) The fee for a site permitted to emit less than 25 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, except greenhouse gases, is $200 per year beginning July 1, 2003, and increases, beginning January 1, 2012, to $235 per year for lifetime operating permits and $235 per year for federally enforceable state operating permits, except as provided in subsection (c) of this Section.

(2) The fee for a site permitted to emit at least 25 tons per year but less than 100 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, except greenhouse gases, is $1,800 per year beginning July 1, 2003, and increases, beginning January 1, 2012, to $2,150 per year, except as provided in subsection (c) of this Section.

(3) The fee for a site permitted to emit at least 100 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, except greenhouse gases, is $18 per ton, per year, beginning July 1, 2003, and increases, beginning January 1, 2012 to $21.50 per ton, per year, except as provided in subsection (c) of this Section. However, the maximum fee under this paragraph (3) is $3,500 before January 1, 2012, and is $4,112 beginning January 1, 2012.

(c) The owner or operator of any site subject to subsection (b) of this Section that becomes subject to Section 39.5 of this Act shall continue to pay the fee set forth in this Section until the site becomes subject to the CAAPP fee set forth within subsection 18 of Section 39.5 of this Act. If an owner or operator has paid a fee under this Section during the 12-month period following the effective date of the CAAPP for that site, the amount of that fee shall be deducted from the amount due under subsection 18 of Section 39.5 of this Act.

(d) Only one air pollution site fee may be collected from

any site, even if such site receives more than one air pollution control permit.

(e) The Agency shall establish procedures for the collection of air pollution site fees. Air pollution site fees may be paid annually, or in advance for the number of years for which the permit is issued, at the option of the owner or operator. Payment in advance does not exempt the owner or operator from paying any increase in the fee that may occur during the term of the permit; the owner or operator must pay the amount of the increase upon and from the effective date of the increase.

(f) The Agency may deny an application for the issuance, transfer, or renewal of an air pollution operating permit if any air pollution site fee owed by the applicant has not been paid within 60 days of the due date, unless the applicant, at the time of application, pays to the Agency in advance the air pollution site fee for the site that is the subject of the operating permit, plus any other air pollution site fees then owed by the applicant. The denial of an air pollution operating permit for failure to pay an air pollution site fee shall be subject to review by the Board pursuant to the provisions of subsection (a) of Section 40 of this Act.

(g) If the Agency determines that an owner or operator of a site was required, but failed, to timely obtain an air pollution operating permit, and as a result avoided the payment of permit fees, the Agency may collect the avoided permit fees with or without pursuing enforcement under Section 31 of this Act. The avoided permit fees shall be calculated as double the amount that would have been owed had a permit been timely obtained. Fees collected pursuant to this subsection (g) shall be deposited into the Environmental Protection Permit and Inspection Fund.

(h) If the Agency determines that an owner or operator of a site was required, but failed, to timely obtain an air pollution operating permit and as a result avoided the payment of permit fees, an enforcement action may be brought under Section 31 of this Act. In addition to any other relief that may be obtained as part of this action, the Agency may seek to recover the avoided permit fees. The avoided permit fees shall be calculated as double the amount that would have been owed had a permit been timely obtained. Fees collected pursuant to this subsection (h) shall be deposited into the Environmental Protection Permit and Inspection Fund.

(i) If a permittee subject to a fee under this Section fails to pay the fee within 90 days of its due date, or makes the fee payment from an account with insufficient funds to cover the amount of the fee payment, the Agency shall notify the permittee of the failure to pay the fee. If the permittee fails to pay the fee within 60 days after such notification, the Agency may, by written notice, immediately revoke the air pollution operating permit. Failure of the Agency to notify the permittee of failure to pay a fee due under this Section, or the payment of the fee from an account with insufficient funds to cover the amount of the fee payment, does not excuse or alter the duty of the permittee to comply with the provisions of this Section.
(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/9.7) (from Ch. 111 1/2, par. 1009.7)

Sec. 9.7. CFC's. The General Assembly hereby finds that the manufacture and use of chlorofluorocarbons (CFCs) present a serious threat to the environment, and declares it to be the public policy of this State to discourage the unnecessary use of CFCs, to encourage producers of CFCs to replace them with alternative substances that have a less deleterious impact on the environment, and to promote the use of equipment to recover

and recycle existing CFCs.
(Source: P.A. 90-372, eff. 7-1-98.)

(415 ILCS 5/9.8)

Sec. 9.8. Emissions reductions market system.

(a) The General Assembly finds:

(1) That achieving compliance with the ozone attainment provisions of federal Clean Air Act Amendments (CAAA) of 1990 calls for innovative and cost-effective implementation strategies.

(2) That economic incentives and market-based approaches can be used to achieve clean air compliance in an innovative and cost-effective manner.

(3) That development and operation of an emissions market system should significantly lessen the economic impacts associated with implementation of the federal Clean Air Act Amendments of 1990 and still achieve the desired air quality for the area.

(b) The Agency shall design an emissions market system that will assist the State in meeting applicable post-1996 provisions under the CAAA of 1990, provide maximum flexibility for designated sources that reduce emissions, and that takes into account the findings of the national ozone transport assessment, existing air quality conditions, and resultant emissions levels necessary to achieve or maintain attainment.

(c) The Agency may develop proposed rules for a market-based emissions reduction, banking, and trading system that will enable stationary sources to implement cost-effective, compliance options. In developing such a market system, the Agency may take into consideration a suitable ozone control season and related reconciliation period, seasonal allotments of actual emissions and adjustments thereto, phased participation by size of source, suitable emissions and compliance monitoring provisions, an annual allotment set-aside for market assurance, and suitable means for the market system to be provided for in an appropriate State implementation plan. The proposal shall be filed with the Board and shall be subject to the rulemaking provisions of Sections 27 and 28 of this Act. The rules adopted by the Board shall include provisions that:

(1) Assure that compliance with the required emissions reductions under the market system shall be, at a minimum, as cost-effective as the traditional regulatory control requirements in the State of Illinois.

(2) Assure that emissions reductions under the market system will not be mandated unless it is necessary for the attainment and maintenance of the National Ambient Air Quality Standard for ozone in the Chicago nonattainment area, as required of this State by applicable federal law or regulation.

(3) Assure that sources subject to the program will not be required to reduce emissions to an extent that exceeds their proportionate share of the total emission reductions required of all emission sources, including mobile and area sources, to attain and maintain the National Ambient Air Quality Standard for ozone in the Chicago nonattainment area.

(4) Assure that credit is given or exclusion is granted for those emission units which have reduced emissions, either voluntarily or through the application of maximum available control technology or national emissions standards for hazardous air pollutants, such that those reductions would be counted as if they had occurred after the initiation of the program.

(5) Assure that unusual or abnormal operational

patterns can be accounted for in the determination of any source's baseline from which reductions would be made.

(6) Assure that relative economic impact and technical feasibility of emissions reductions under the banking and trading program, as compared to other alternatives, is considered.

(7) Assure that the feasibility of measuring and quantifying emissions is considered in developing and adopting the banking and trading program.

(d) Notwithstanding the other provisions of this Act, any source or other authorized person that participates in an emissions market system shall be eligible to exchange allotment trading units with other sources provided that established rules are followed.

(e) There is hereby created within the State Treasury an interest-bearing special fund to be known as the Alternative Compliance Market Account Fund, which shall be used and administered by the Agency for the following public purposes:

(1) To accept and retain funds from persons who purchase allotment trading units from the Agency pursuant to regulatory provisions and payments of interest and principal.

(2) To purchase services, equipment, or commodities that help generate emissions reductions in or around the ozone nonattainment area in Northeastern Illinois.

(Source: P.A. 89-173, eff. 7-19-95; 89-465, eff. 6-13-96.)

(415 ILCS 5/9.9)

Sec. 9.9. Nitrogen oxides trading system.

(a) The General Assembly finds:

(1) That USEPA has issued a Final Rule published in the Federal Register on October 27, 1998, entitled "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone", hereinafter referred to as the "NOx SIP Call", compliance with which will require reducing emissions of nitrogen oxides ("NOx");

(2) That reducing emissions of NOx in the State helps the State to meet the national ambient air quality standard for ozone;

(3) That emissions trading is a cost-effective means of obtaining reductions of NOx emissions.

(b) The Agency shall propose and the Board shall adopt regulations to implement an interstate NOx trading program (hereinafter referred to as the "NOx Trading Program") as provided for in 40 CFR Part 96, including incorporation by reference of appropriate provisions of 40 CFR Part 96 and regulations to address 40 CFR Section 96.4(b), Section 96.55(c), Subpart E, and Subpart I. In addition, the Agency shall propose and the Board shall adopt regulations to implement NOx emission reduction programs for cement kilns and stationary internal combustion engines.

(c) Allocations of NOx allowances to large electric generating units ("EGUs") and large non-electric generating units ("non-EGUs"), as defined by 40 CFR Part 96.4(a), shall not exceed the State's trading budget for those source categories to be included in the State Implementation Plan for NOx.

(d) In adopting regulations to implement the NOx Trading Program, the Board shall:

(1) assure that the economic impact and technical feasibility of NOx emissions reductions under the NOx Trading Program are considered relative to the traditional

regulatory control requirements in the State for EGUs and non-EGUs;

(2) provide that emission units, as defined in Section 39.5(1) of this Act, may opt into the NOx Trading Program;

(3) provide for voluntary reductions of NOx emissions from emission units, as defined in Section 39.5(1) of this Act, not otherwise included under paragraph (c) or (d)(2) of this Section to provide additional allowances to EGUs and non-EGUs to be allocated by the Agency. The regulations shall further provide that such voluntary reductions are verifiable, quantifiable, permanent, and federally enforceable;

(4) provide that the Agency allocate to non-EGUs allowances that are designated in the rule, unless the Agency has been directed to transfer the allocations to another unit subject to the requirements of the NOx Trading Program, and that upon shutdown of a non-EGU, the unit may transfer or sell the NOx allowances that are allocated to such unit;

(5) provide that the Agency shall set aside annually a number of allowances, not to exceed 5% of the total EGU trading budget, to be made available to new EGUs; and

(6) provide that those EGUs that commence commercial operation, as defined in 40 CFR Section 96.2, at a time that is more than half way through the control period in 2003 shall return to the Agency any allowances that were issued to it by the Agency and were not used for compliance in 2004.

(d-5) The Agency may sell NOx allowances to sources in Illinois that are subject to 35 Ill. Adm. Code 217, either Subpart U or W, as follows:

(1) any unearned Early Reduction Credits set aside for non-EGUs under 35 Ill. Adm. Code 217, Subpart U, but only to those sources that make qualifying early reductions of NOx in 2003 pursuant to 35 Ill. Adm. Code 217 for which the source did not receive an allocation thereunder. If the Agency receives requests to purchase more ERCs than are available for sale, allowances shall be offered for sale to qualifying sources on a pro-rata basis;

(2) any remaining Early Reduction Credits allocated under 35 Ill. Adm. Code 217, Subpart U or W, that could not be allocated on a pro-rata, whole allowance basis, but only to those sources that made qualifying early reductions of NOx in 2003 pursuant to 35 Ill. Adm. Code 217 for which the source did not receive an allocation;

(3) any allowances under 35 Ill. Adm. Code 217, Subpart W, that remain after each 3-year allocation period that could not be allocated on a pro-rata, whole allowance basis pursuant to the provisions of Subpart W; and

(4) any allowances requested from the New Source Set Aside for those sources that commenced operation, as defined in 40 CFR Section 96.2, on or after January 1, 2004.

(d-10) The selling price for ERC allowances shall be 70% of the market price index for 2005 NOx allowances, determined by the Agency as follows:

(1) using the mean of 2 or more published market price indexes for the 2005 NOx allowances as of October 6, 2003; or

(2) if there are not 2 published market price indexes for 2005 NOx allowances as of October 6, 2003, the Agency may use any reasonable indication of market price.

(e) The Agency may adopt procedural rules, as necessary, to implement the regulations promulgated by the Board pursuant to

subsections (b) and (d) and to implement subsections (d-5), (d-10), (i), and (j) of this Section.

(f) Notwithstanding any provisions in subparts T, U, and W of Section 217 of Title 35 of the Illinois Administrative Code to the contrary, compliance with the regulations promulgated by the Board pursuant to subsections (b) and (d) of this Section is required by May 31, 2004.

(g) To the extent that a court of competent jurisdiction finds a provision of 40 CFR Part 96 invalid, the corresponding Illinois provision shall be stayed until such provision of 40 CFR Part 96 is found to be valid or is re-promulgated. To the extent that USEPA or any court of competent jurisdiction stays the applicability of any provision of the NOx SIP Call to any person or circumstance relating to Illinois, during the period of that stay, the effectiveness of the corresponding Illinois provision shall be stayed. To the extent that the invalidity of the particular requirement or application does not affect other provisions or applications of the NOx SIP Call pursuant to 40 CFR 51.121 or the NOx trading program pursuant to 40 CFR Part 96 or 40 CFR Part 97, this Section, and rules or regulations promulgated hereunder, will be given effect without the invalid provisions or applications.

(h) Notwithstanding any other provision of this Act, any source or other authorized person that participates in the NOx Trading Program shall be eligible to exchange NOx allowances with other sources in accordance with this Section and with regulations promulgated by the Board or the Agency.

(i) (Blank).

(j) Moneys generated from the sale of early reduction credits shall be deposited into the Clean Air Act Permit Fund created pursuant to Section 39.5(18)(d) of this Act, and the proceeds shall be used and administered by the Agency to finance the costs associated with the Clean Air Act Permit Program.
(Source: P.A. 102-1071, eff. 6-10-22.)

(415 ILCS 5/9.10)

Sec. 9.10. Fossil fuel-fired electric generating plants.

(a) The General Assembly finds and declares that:

(1) fossil fuel-fired electric generating plants are a significant source of air emissions in this State and have become the subject of a number of important new studies of their effects on the public health;

(2) existing state and federal policies, that allow older plants that meet federal standards to operate without meeting the more stringent requirements applicable to new plants, are being questioned on the basis of their environmental impacts and the economic distortions such policies cause in a deregulated energy market;

(3) fossil fuel-fired electric generating plants are, or may be, affected by a number of regulatory programs, some of which are under review or development on the state and national levels, and to a certain extent the international level, including the federal acid rain program, tropospheric ozone, mercury and other hazardous pollutant control requirements, regional haze, and global warming;

(4) scientific uncertainty regarding the formation of certain components of regional haze and the air quality modeling that predict impacts of control measures requires careful consideration of the timing of the control of some of the pollutants from these facilities, particularly sulfur dioxides and nitrogen oxides that each interact with ammonia and other substances in the atmosphere;

(5) the development of energy policies to promote a

safe, sufficient, reliable, and affordable energy supply on the state and national levels is being affected by the on-going deregulation of the power generation industry and the evolving energy markets;

(6) the Governor's formation of an Energy Cabinet and the development of a State energy policy calls for actions by the Agency and the Board that are in harmony with the energy needs and policy of the State, while protecting the public health and the environment;

(7) Illinois coal is an abundant resource and an important component of Illinois' economy whose use should be encouraged to the greatest extent possible consistent with protecting the public health and the environment;

(8) renewable forms of energy should be promoted as an important element of the energy and environmental policies of the State and that it is a goal of the State that at least 5% of the State's energy production and use be derived from renewable forms of energy by 2010 and at least 15% from renewable forms of energy by 2020;

(9) efforts on the state and federal levels are underway to consider the multiple environmental regulations affecting electric generating plants in order to improve the ability of government and the affected industry to engage in effective planning through the use of multi-pollutant strategies; and

(10) these issues, taken together, call for a comprehensive review of the impact of these facilities on the public health, considering also the energy supply, reliability, and costs, the role of renewable forms of energy, and the developments in federal law and regulations that may affect any state actions, prior to making final decisions in Illinois.

(b) Taking into account the findings and declarations of the General Assembly contained in subsection (a) of this Section, the Agency shall, before September 30, 2004, but not before September 30, 2003, issue to the House and Senate Committees on Environment and Energy findings that address the potential need for the control or reduction of emissions from fossil fuel-fired electric generating plants, including the following provisions:

(1) reduction of nitrogen oxide emissions, as appropriate, with consideration of maximum annual emissions rate limits or establishment of an emissions trading program and with consideration of the developments in federal law and regulations that may affect any State action, prior to making final decisions in Illinois;

(2) reduction of sulfur dioxide emissions, as appropriate, with consideration of maximum annual emissions rate limits or establishment of an emissions trading program and with consideration of the developments in federal law and regulations that may affect any State action, prior to making final decisions in Illinois;

(3) incentives to promote renewable sources of energy consistent with item (8) of subsection (a) of this Section;

(4) reduction of mercury as appropriate, consideration of the availability of control technology, industry practice requirements, or incentive programs, or some combination of these approaches that are sufficient to prevent unacceptable local impacts from individual facilities and with consideration of the developments in federal law and regulations that may affect any state action, prior to making final decisions in Illinois; and

(5) establishment of a banking system, consistent with the United States Department of Energy's voluntary reporting system, for certifying credits for voluntary

offsets of emissions of greenhouse gases, as identified by the United States Environmental Protection Agency, or other voluntary reductions of greenhouse gases. Such reduction efforts may include, but are not limited to, carbon sequestration, technology-based control measures, energy efficiency measures, and the use of renewable energy sources.

The Agency shall consider the impact on the public health, considering also energy supply, reliability and costs, the role of renewable forms of energy, and developments in federal law and regulations that may affect any state actions, prior to making final decisions in Illinois.

(c) Nothing in this Section is intended to or should be interpreted in a manner to limit or restrict the authority of the Illinois Environmental Protection Agency to propose, or the Illinois Pollution Control Board to adopt, any regulations applicable or that may become applicable to the facilities covered by this Section that are required by federal law.

(d) The Agency may file proposed rules with the Board to effectuate its findings provided to the Senate Committee on Environment and Energy and the House Committee on Environment and Energy in accordance with subsection (b) of this Section. Any such proposal shall not be submitted sooner than 90 days after the issuance of the findings provided for in subsection (b) of this Section. The Board shall take action on any such proposal within one year of the Agency's filing of the proposed rules.

(e) This Section shall apply only to those electrical generating units that are subject to the provisions of Subpart W of Part 217 of Title 35 of the Illinois Administrative Code, as promulgated by the Illinois Pollution Control Board on December 21, 2000.

(Source: P.A. 92-12, eff. 7-1-01; 92-279, eff. 8-7-01.)

(415 ILCS 5/9.11)

Sec. 9.11. Great Lakes Areas of Concern; mercury.

(a) The General Assembly finds that:

(1) The government of the United States of America and the government of Canada have entered into agreements on Great Lakes water quality by signature of the Great Lakes Water Quality Agreement of 1978, which was amended by Protocol signed on November 18, 1987.

(2) The government of the United States of America and the government of Canada, in cooperation with the state and provincial governments, were required to designate geographic areas, called Areas of Concern, that fail to meet the general or specific objectives of the Great Lakes Water Quality Agreement, and where such failure has caused or is likely to cause impairment of beneficial use or failure of the ability of the area to support aquatic life.

(3) The government of the United States of America and the government of Canada have identified 43 Areas of Concern, 26 of which are in waters of the United States of America and 17 of which are in the waters of Canada.

(4) Waukegan Harbor in Illinois was designated an Area of Concern in 1981 by the International Joint Commission, the United States Environmental Protection Agency, and the Illinois Environmental Protection Agency as a result of the discovery of 5 beneficial use impairments, as defined in Annex 2 of the Great Lakes Water Quality Agreement. Beneficial use impairments at the Waukegan Harbor Area of Concern were identified as the restrictions on fish consumption, degradation of benthos, restrictions on dredging activities, degradation of phytoplankton and

zooplankton populations, and loss of fish and wildlife habitat.

(5) The government of the United States of America and the government of Canada cooperate with the state and provincial governments to ensure that remedial action plans are developed to restore all impaired uses to the Areas of Concern.

(6) Mercury has been identified as a persistent bioaccumulative contaminant of concern throughout the Great Lakes, including Lake Michigan, resulting in health advisories and restrictions on fish consumption.

(7) The thermal treatment of sludge creates mercury emissions.

(b) The Agency shall not issue any permit to develop, construct, or operate, within one mile of any portion of Lake Michigan that has been designated an Area of Concern under the Great Lakes Water Quality Agreement as of the effective date of this Section, any site or facility for the thermal treatment of sludge, unless the applicant submits to the Agency proof that the site or facility has received local siting approval from the governing body of the municipality in which the site or facility is proposed to be located (or from the county board if located in an unincorporated area), in accordance with Section 39.2 of this Act. For the purposes of this Section, "thermal treatment" includes, without limitation, drying, incinerating, and any other processing that subjects the sludge to an elevated temperature.

(Source: P.A. 93-202, eff. 7-14-03.)

(415 ILCS 5/9.12)

Sec. 9.12. Construction permit fees for air pollution sources.

(a) An applicant for a new or revised air pollution construction permit shall pay a fee, as established in this Section, to the Agency at the time that he or she submits the application for a construction permit. Except as set forth below, the fee for each activity or category listed in this Section is separate and is cumulative with any other applicable fee listed in this Section.

(b) The fee amounts in this subsection (b) apply to construction permit applications relating to (i) a source subject to Section 39.5 of this Act (the Clean Air Act Permit Program); (ii) a source that, upon issuance of the requested construction permit, will become a major source subject to Section 39.5; or (iii) a source that has or will require a federally enforceable State operating permit limiting its potential to emit.

(1) Base fees for each construction permit application shall be assessed as follows:

(A) If the construction permit application relates to one or more new emission units or to a combination of new and modified emission units, a fee of $4,000 for the first new emission unit and a fee of $1,000 for each additional new or modified emission unit; provided that the total base fee under this subdivision (A) shall not exceed $10,000.

(B) If the construction permit application relates to one or more modified emission units but not to any new emission unit, a fee of $2,000 for the first modified emission unit and a fee of $1,000 for each additional modified emission unit; provided that the total base fee under this subdivision (B) shall not exceed $5,000.

(2) Supplemental fees for each construction permit

application shall be assessed as follows:

(A) If, based on the construction permit application, the source will be, but is not currently, subject to Section 39.5 of this Act, a CAAPP entry fee of $5,000.

(B) If the construction permit application involves (i) a new source or emission unit subject to Section 39.2 of this Act, (ii) a commercial incinerator or other municipal waste, hazardous waste, or waste tire incinerator, (iii) a commercial power generator, or (iv) one or more other emission units designated as a complex source by Agency rulemaking, a fee of $25,000.

(C) If the construction permit application involves an emissions netting exercise or reliance on a contemporaneous emissions decrease for a pollutant to avoid application of the PSD permit program or nonattainment new source review, a fee of $3,000 for each such pollutant.

(D) If the construction permit application is for a new major source subject to the PSD permit program, a fee of $12,000.

(E) If the construction permit application is for a new major source subject to nonattainment new source review, a fee of $20,000.

(F) If the construction permit application is for a major modification subject to the PSD permit program, a fee of $6,000.

(G) If the construction permit application is for a major modification subject to nonattainment new source review, a fee of $12,000.

(H) (Blank).

(I) If the construction permit application review involves a determination of the Maximum Achievable Control Technology standard for a pollutant and the project is not otherwise subject to BACT or LAER for a related pollutant under the PSD permit program or nonattainment new source review, a fee of $5,000 per unit for which a determination is requested or otherwise required.

(J) (Blank).

(3) If a public hearing is held regarding the construction permit application, an administrative fee of $10,000. This fee shall be submitted at the time the applicant requests a public hearing or, if a public hearing is not requested by the applicant, then within 30 days after the applicant is informed by the Agency that a public hearing will be held.

(c) The fee amounts in this subsection (c) apply to construction permit applications relating to a source that, upon issuance of the construction permit, will not (i) be or become subject to Section 39.5 of this Act (the Clean Air Act Permit Program) or (ii) have or require a federally enforceable state operating permit limiting its potential to emit.

(1) Base fees for each construction permit application shall be assessed as follows:

(A) For a construction permit application involving a single new emission unit, a fee of $500.

(B) For a construction permit application involving more than one new emission unit, a fee of $1,000.

(C) For a construction permit application involving no more than 2 modified emission units, a fee of $500.

(D) For a construction permit application

involving more than 2 modified emission units, a fee of $1,000.

(2) Supplemental fees for each construction permit application shall be assessed as follows:

(A) If the source is a new source, i.e., does not currently have an operating permit, an entry fee of $500;

(B) If the construction permit application involves (i) a new source or emission unit subject to Section 39.2 of this Act, (ii) a commercial incinerator or a municipal waste, hazardous waste, or waste tire incinerator, (iii) a commercial power generator, or (iv) an emission unit designated as a complex source by Agency rulemaking, a fee of $15,000.

(3) If a public hearing is held regarding the construction permit application, an administrative fee of $10,000. This fee shall be submitted at the time the applicant requests a public hearing or, if a public hearing is not requested by the applicant, then within 30 days after the applicant is informed by the Agency that a public hearing will be held.

(d) If no other fee is applicable under this Section, a construction permit application addressing one or more of the following shall be subject to a filing fee of $500:

(1) A construction permit application to add or replace a control device on a permitted emission unit.

(2) A construction permit application to conduct a pilot project or trial burn for a permitted emission unit.

(3) A construction permit application for a land remediation project.

(4) (Blank).

(5) A construction permit application to revise an emissions testing methodology or the timing of required emissions testing.

(6) A construction permit application that provides for a change in the name, address, or phone number of any person identified in the permit, or for a change in the stated ownership or control, or for a similar minor administrative permit change at the source.

(e) No fee shall be assessed for a request to correct an issued permit that involves only an Agency error, if the request is received within the deadline for a permit appeal to the Pollution Control Board.

(f) The applicant for a new or revised air pollution construction permit shall submit to the Agency, with the construction permit application, both a certification of the fee that he or she estimates to be due under this Section and the fee itself.

(g) Notwithstanding the requirements of subsection (a) of Section 39 of this Act, the application for an air pollution construction permit shall not be deemed to be filed with the Agency until the Agency receives the initial air pollution construction permit application fee and the certified estimate of the fee required by this Section. Unless the Agency has received the initial air pollution construction permit application fee and the certified estimate of the fee required by this Section, the Agency is not required to review or process the application.

(h) If the Agency determines at any time that a construction permit application is subject to an additional fee under this Section that the applicant has not submitted, the Agency shall notify the applicant in writing of the amount due under this Section. The applicant shall have 60 days to remit the assessed fee to the Agency.

If the proper fee established under this Section is not submitted within 60 days after the request for further remittance:

(1) If the construction permit has not yet been issued, the Agency is not required to further review or process, and the provisions of subsection (a) of Section 39 of this Act do not apply to, the application for a construction permit until such time as the proper fee is remitted.

(2) If the construction permit has been issued, the Agency may, upon written notice, immediately revoke the construction permit.

The denial or revocation of a construction permit does not excuse the applicant from the duty of paying the fees required under this Section.

(i) The Agency may deny the issuance of a pending air pollution construction permit or the subsequent operating permit if the applicant has not paid the required fees by the date required for issuance of the permit. The denial or revocation of a permit for failure to pay a construction permit fee is subject to review by the Board pursuant to the provisions of subsection (a) of Section 40 of this Act.

(j) If the owner or operator undertakes construction without obtaining an air pollution construction permit, the fee under this Section is still required. Payment of the required fee does not preclude the Agency or the Attorney General or other authorized persons from pursuing enforcement against the applicant for failure to have an air pollution construction permit prior to commencing construction.

(k) If an air pollution construction permittee makes a fee payment under this Section from an account with insufficient funds to cover the amount of the fee payment, the Agency shall notify the permittee of the failure to pay the fee. If the permittee fails to pay the fee within 60 days after such notification, the Agency may, by written notice, immediately revoke the air pollution construction permit. Failure of the Agency to notify the permittee of the permittee's failure to make payment does not excuse or alter the duty of the permittee to comply with the provisions of this Section.

(l) The Agency may establish procedures for the collection of air pollution construction permit fees.

(m) Fees collected pursuant to this Section shall be deposited into the Environmental Protection Permit and Inspection Fund.

(Source: P.A. 99-463, eff. 1-1-16.)

(415 ILCS 5/9.12a)

Sec. 9.12a. Notice. When a permit for a new facility is required by this Title II, the Agency shall provide notice: (i) by certified or registered mail or, upon request, electronically, to the State Senator and State Representative of the district where the facility will be located; and (ii) to the public via a posting on its website in a format that is searchable by zip code. Within 6 months after the effective date of this amendatory Act of the 101st General Assembly, the Agency shall adopt rules to implement this Section.

(Source: P.A. 101-422, eff. 1-1-20.)

(415 ILCS 5/9.13)

Sec. 9.13. Asbestos fees.

(a) For any site for which the owner or operator must file an original 10-day notice of intent to renovate or demolish pursuant to 40 CFR 61.145(b) (part of the federal asbestos National Emission Standard for Hazardous Air Pollutants or

NESHAP), the owner or operator shall pay to the Agency with the filing of each 10-day Notice a fee of $150.

(b) If demolition or renovation of a site has commenced without proper filing of the 10-day Notice, the fee is double the amount otherwise due. This doubling of the fee is in addition to any other penalties under this Act, the federal NESHAP, or otherwise, and does not preclude the Agency, the Attorney General, or other authorized persons from pursuing an enforcement action against the owner or operator for failure to file a 10-day Notice prior to commencing demolition or renovation activities.

(c) In the event that an owner or operator makes a fee payment under this Section from an account with insufficient funds to cover the amount of the fee payment, the 10-day Notice shall be deemed improperly filed. The Agency shall so notify the owner or operator within 60 days of receiving the notice of insufficient funds. Failure of the Agency to so notify the owner or operator does not excuse or alter the duty of the owner or operator to comply with the requirements of this Section.

(d) Where asbestos remediation or demolition activities have not been conducted in accordance with the asbestos NESHAP, in addition to the fees imposed by this Section, the Agency may also collect its actual costs incurred for asbestos-related activities at the site, including without limitation costs of sampling, sample analysis, remediation plan review, and activity oversight for demolition or renovation.

(e) Fees and cost recovery amounts collected under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund.

(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/9.14)

Sec. 9.14. Registration of smaller sources.

(a) After the effective date of rules implementing this Section, the owner or operator of an eligible source shall annually register with the Agency instead of complying with the requirement to obtain an air pollution construction or operating permit under this Act. The criteria for determining an eligible source shall include the following:

(1) the source must not be required to obtain a permit pursuant to the Illinois Clean Air Act Permit Program or Federally Enforceable State Operating Permit program, or under regulations promulgated pursuant to Section 111 or 112 of the Clean Air Act;

(2) the USEPA has not otherwise determined that a permit is required;

(3) the source emits less than an actual 5 tons per year of combined particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, and volatile organic material air pollutant emissions;

(4) the source emits less than an actual 0.5 tons per year of combined hazardous air pollutant emissions;

(5) the source emits less than an actual 0.05 tons per year of lead air emissions;

(6) the source emits less than an actual 0.05 tons per year of mercury air emissions; and

(7) the source does not have an emission unit subject to a standard pursuant to 40 CFR Part 61 Maximum Achievable Control Technology, or 40 CFR Part 63 National Emissions Standards for Hazardous Air Pollutants other than those regulations that the USEPA has categorized as "area source".

(b) Complete registration of an eligible source, including payment of the required fee as specified in subsection (c) of this Section, shall provide the owner or operator of the

eligible source with an exemption from the requirement to obtain an air pollution construction or operating permit under this Act. The registration of smaller sources program does not relieve an owner or operator from the obligation to comply with any other applicable rules or regulations.

(c) The owner or operator of an eligible source shall pay an annual registration fee of $235 to the Agency at the time of registration submittal and each year thereafter. Fees collected under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund.

(d) The Agency shall propose rules to implement the registration of smaller sources program. Within 120 days after the Agency proposes those rules, the Board shall adopt rules to implement the registration of smaller sources program. These rules may be subsequently amended from time to time pursuant to a proposal filed with the Board by any person, and any necessary amendments shall be adopted by the Board within 120 days after proposal. Such amendments may provide for the alteration or revision of the initial criteria included in subsection (a) of this Section.

(Source: P.A. 97-95, eff. 7-12-11; 97-1081, eff. 8-24-12.)

(415 ILCS 5/9.15)

Sec. 9.15. Greenhouse gases.

(a) An air pollution construction permit shall not be required due to emissions of greenhouse gases if the equipment, site, or source is not subject to regulation, as defined by 40 CFR 52.21, as now or hereafter amended, for greenhouse gases or is otherwise not addressed in this Section or by the Board in regulations for greenhouse gases. These exemptions do not relieve an owner or operator from the obligation to comply with other applicable rules or regulations.

(b) An air pollution operating permit shall not be required due to emissions of greenhouse gases if the equipment, site, or source is not subject to regulation, as defined by Section 39.5 of this Act, for greenhouse gases or is otherwise not addressed in this Section or by the Board in regulations for greenhouse gases. These exemptions do not relieve an owner or operator from the obligation to comply with other applicable rules or regulations.

(c) (Blank).

(d) (Blank).

(e) (Blank).

(f) As used in this Section:

"Carbon dioxide emission" means the plant annual CO_2 total output emission as measured by the United States Environmental Protection Agency in its Emissions & Generation Resource Integrated Database (eGrid), or its successor.

"Carbon dioxide equivalent emissions" or "CO_2e" means the sum total of the mass amount of emissions in tons per year, calculated by multiplying the mass amount of each of the 6 greenhouse gases specified in Section 3.207, in tons per year, by its associated global warming potential as set forth in 40 CFR 98, subpart A, table A-1 or its successor, and then adding them all together.

"Cogeneration" or "combined heat and power" refers to any system that, either simultaneously or sequentially, produces electricity and useful thermal energy from a single fuel source.

"Copollutants" refers to the 6 criteria pollutants that have been identified by the United States Environmental Protection Agency pursuant to the Clean Air Act.

"Electric generating unit" or "EGU" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle

system that serves a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

"Environmental justice community" means the definition of that term based on existing methodologies and findings, used and as may be updated by the Illinois Power Agency and its program administrator in the Illinois Solar for All Program.

"Equity investment eligible community" or "eligible community" means the geographic areas throughout Illinois that would most benefit from equitable investments by the State designed to combat discrimination and foster sustainable economic growth. Specifically, eligible community means the following areas:

(1) areas where residents have been historically excluded from economic opportunities, including opportunities in the energy sector, as defined as R3 areas pursuant to Section 10-40 of the Cannabis Regulation and Tax Act; and

(2) areas where residents have been historically subject to disproportionate burdens of pollution, including pollution from the energy sector, as established by environmental justice communities as defined by the Illinois Power Agency pursuant to the Illinois Power Agency Act, excluding any racial or ethnic indicators.

"Equity investment eligible person" or "eligible person" means the persons who would most benefit from equitable investments by the State designed to combat discrimination and foster sustainable economic growth. Specifically, eligible person means the following people:

(1) persons whose primary residence is in an equity investment eligible community;

(2) persons whose primary residence is in a municipality, or a county with a population under 100,000, where the closure of an electric generating unit or mine has been publicly announced or the electric generating unit or mine is in the process of closing or closed within the last 5 years;

(3) persons who are graduates of or currently enrolled in the foster care system; or

(4) persons who were formerly incarcerated.

"Existing emissions" means:

(1) for CO_2e, the total average tons-per-year of CO_2e emitted by the EGU or large GHG-emitting unit either in the years 2018 through 2020 or, if the unit was not yet in operation by January 1, 2018, in the first 3 full years of that unit's operation; and

(2) for any copollutant, the total average tons-per-year of that copollutant emitted by the EGU or large GHG-emitting unit either in the years 2018 through 2020 or, if the unit was not yet in operation by January 1, 2018, in the first 3 full years of that unit's operation.

"Green hydrogen" means a power plant technology in which an EGU creates electric power exclusively from electrolytic hydrogen, in a manner that produces zero carbon and copollutant emissions, using hydrogen fuel that is electrolyzed using a 100% renewable zero carbon emission energy source.

"Large greenhouse gas-emitting unit" or "large GHG-emitting unit" means a unit that is an electric generating unit or other fossil fuel-fired unit that itself has a nameplate capacity or serves a generator that has a nameplate capacity greater than 25 MWe and that produces electricity, including, but not limited to, coal-fired, coal-derived, oil-fired, natural gas-fired, and cogeneration units.

"NO_x emission rate" means the plant annual NO_x total output

emission rate as measured by the United States Environmental Protection Agency in its Emissions & Generation Resource Integrated Database (eGrid), or its successor, in the most recent year for which data is available.

"Public greenhouse gas-emitting units" or "public GHG-emitting unit" means large greenhouse gas-emitting units, including EGUs, that are wholly owned, directly or indirectly, by one or more municipalities, municipal corporations, joint municipal electric power agencies, electric cooperatives, or other governmental or nonprofit entities, whether organized and created under the laws of Illinois or another state.

"SO_2 emission rate" means the "plant annual SO_2 total output emission rate" as measured by the United States Environmental Protection Agency in its Emissions & Generation Resource Integrated Database (eGrid), or its successor, in the most recent year for which data is available.

(g) All EGUs and large greenhouse gas-emitting units that use coal or oil as a fuel and are not public GHG-emitting units shall permanently reduce all CO_2e and copollutant emissions to zero no later than January 1, 2030.

(h) All EGUs and large greenhouse gas-emitting units that use coal as a fuel and are public GHG-emitting units shall permanently reduce CO_2e emissions to zero no later than December 31, 2045. Any source or plant with such units must also reduce their CO_2e emissions by 45% from existing emissions by no later than January 1, 2035. If the emissions reduction requirement is not achieved by December 31, 2035, the plant shall retire one or more units or otherwise reduce its CO_2e emissions by 45% from existing emissions by June 30, 2038.

(i) All EGUs and large greenhouse gas-emitting units that use gas as a fuel and are not public GHG-emitting units shall permanently reduce all CO_2e and copollutant emissions to zero, including through unit retirement or the use of 100% green hydrogen or other similar technology that is commercially proven to achieve zero carbon emissions, according to the following:

(1) No later than January 1, 2030: all EGUs and large greenhouse gas-emitting units that have a NO_x emissions rate of greater than 0.12 lbs/MWh or a SO_2 emission rate of greater than 0.006 lb/MWh, and are located in or within 3 miles of an environmental justice community designated as of January 1, 2021 or an equity investment eligible community.

(2) No later than January 1, 2040: all EGUs and large greenhouse gas-emitting units that have a NO_x emission rate of greater than 0.12 lbs/MWh or a SO_2 emission rate greater than 0.006 lb/MWh, and are not located in or within 3 miles of an environmental justice community designated as of January 1, 2021 or an equity investment eligible community. After January 1, 2035, each such EGU and large greenhouse gas-emitting unit shall reduce its CO_2e emissions by at least 50% from its existing emissions for CO_2e, and shall be limited in operation to, on average, 6 hours or less per day, measured over a calendar year, and shall not run for more than 24 consecutive hours except in emergency conditions, as designated by a Regional Transmission Organization or Independent System Operator.

(3) No later than January 1, 2035: all EGUs and large greenhouse gas-emitting units that began operation prior to the effective date of this amendatory Act of the 102nd General Assembly and have a NO_x emission rate of less than or equal to 0.12 lb/MWh and a SO_2 emission rate less than or

equal to 0.006 lb/MWh, and are located in or within 3 miles of an environmental justice community designated as of January 1, 2021 or an equity investment eligible community. Each such EGU and large greenhouse gas-emitting unit shall reduce its CO_2e emissions by at least 50% from its existing emissions for CO_2e no later than January 1, 2030.

(4) No later than January 1, 2040: All remaining EGUs and large greenhouse gas-emitting units that have a heat rate greater than or equal to 7000 BTU/kWh. Each such EGU and Large greenhouse gas-emitting unit shall reduce its CO_2e emissions by at least 50% from its existing emissions for CO_2e no later than January 1, 2035.

(5) No later than January 1, 2045: all remaining EGUs and large greenhouse gas-emitting units.

(j) All EGUs and large greenhouse gas-emitting units that use gas as a fuel and are public GHG-emitting units shall permanently reduce all CO_2e and copollutant emissions to zero, including through unit retirement or the use of 100% green hydrogen or other similar technology that is commercially proven to achieve zero carbon emissions by January 1, 2045.

(k) All EGUs and large greenhouse gas-emitting units that utilize combined heat and power or cogeneration technology shall permanently reduce all CO_2e and copollutant emissions to zero, including through unit retirement or the use of 100% green hydrogen or other similar technology that is commercially proven to achieve zero carbon emissions by January 1, 2045.

(k-5) No EGU or large greenhouse gas-emitting unit that uses gas as a fuel and is not a public GHG-emitting unit may emit, in any 12-month period, CO_2e or copollutants in excess of that unit's existing emissions for those pollutants.

(l) Notwithstanding subsections (g) through (k-5), large GHG-emitting units including EGUs may temporarily continue emitting CO_2e and copollutants after any applicable deadline specified in any of subsections (g) through (k-5) if it has been determined, as described in paragraphs (1) and (2) of this subsection, that ongoing operation of the EGU is necessary to maintain power grid supply and reliability or ongoing operation of large GHG-emitting unit that is not an EGU is necessary to serve as an emergency backup to operations. Up to and including the occurrence of an emission reduction deadline under subsection (i), all EGUs and large GHG-emitting units must comply with the following terms:

(1) if an EGU or large GHG-emitting unit that is a participant in a regional transmission organization intends to retire, it must submit documentation to the appropriate regional transmission organization by the appropriate deadline that meets all applicable regulatory requirements necessary to obtain approval to permanently cease operating the large GHG-emitting unit;

(2) if any EGU or large GHG-emitting unit that is a participant in a regional transmission organization receives notice that the regional transmission organization has determined that continued operation of the unit is required, the unit may continue operating until the issue identified by the regional transmission organization is resolved. The owner or operator of the unit must cooperate with the regional transmission organization in resolving the issue and must reduce its emissions to zero, consistent with the requirements under subsection (g), (h), (i), (j), (k), or (k-5), as applicable, as soon as practicable when the issue identified by the regional transmission organization is resolved; and

(3) any large GHG-emitting unit that is not a participant in a regional transmission organization shall be allowed to continue emitting CO_2e and copollutants after the zero-emission date specified in subsection (g), (h), (i), (j), (k), or (k-5), as applicable, in the capacity of an emergency backup unit if approved by the Illinois Commerce Commission.

(m) No variance, adjusted standard, or other regulatory relief otherwise available in this Act may be granted to the emissions reduction and elimination obligations in this Section.

(n) By June 30 of each year, beginning in 2025, the Agency shall prepare and publish on its website a report setting forth the actual greenhouse gas emissions from individual units and the aggregate statewide emissions from all units for the prior year.

(o) Every 5 years beginning in 2025, the Environmental Protection Agency, Illinois Power Agency, and Illinois Commerce Commission shall jointly prepare, and release publicly, a report to the General Assembly that examines the State's current progress toward its renewable energy resource development goals, the status of CO_2e and copollutant emissions reductions, the current status and progress toward developing and implementing green hydrogen technologies, the current and projected status of electric resource adequacy and reliability throughout the State for the period beginning 5 years ahead, and proposed solutions for any findings. The Environmental Protection Agency, Illinois Power Agency, and Illinois Commerce Commission shall consult PJM Interconnection, LLC and Midcontinent Independent System Operator, Inc., or their respective successor organizations regarding forecasted resource adequacy and reliability needs, anticipated new generation interconnection, new transmission development or upgrades, and any announced large GHG-emitting unit closure dates and include this information in the report. The report shall be released publicly by no later than December 15 of the year it is prepared. If the Environmental Protection Agency, Illinois Power Agency, and Illinois Commerce Commission jointly conclude in the report that the data from the regional grid operators, the pace of renewable energy development, the pace of development of energy storage and demand response utilization, transmission capacity, and the CO_2e and copollutant emissions reductions required by subsection (i) or (k-5) reasonably demonstrate that a resource adequacy shortfall will occur, including whether there will be sufficient in-state capacity to meet the zonal requirements of MISO Zone 4 or the PJM ComEd Zone, per the requirements of the regional transmission organizations, or that the regional transmission operators determine that a reliability violation will occur during the time frame the study is evaluating, then the Illinois Power Agency, in conjunction with the Environmental Protection Agency shall develop a plan to reduce or delay CO_2e and copollutant emissions reductions requirements only to the extent and for the duration necessary to meet the resource adequacy and reliability needs of the State, including allowing any plants whose emission reduction deadline has been identified in the plan as creating a reliability concern to continue operating, including operating with reduced emissions or as emergency backup where appropriate. The plan shall also consider the use of renewable energy, energy storage, demand response, transmission development, or other strategies to resolve the identified resource adequacy shortfall or reliability violation.

(1) In developing the plan, the Environmental Protection Agency and the Illinois Power Agency shall hold at least one workshop open to, and accessible at a time and

place convenient to, the public and shall consider any comments made by stakeholders or the public. Upon development of the plan, copies of the plan shall be posted and made publicly available on the Environmental Protection Agency's, the Illinois Power Agency's, and the Illinois Commerce Commission's websites. All interested parties shall have 60 days following the date of posting to provide comment to the Environmental Protection Agency and the Illinois Power Agency on the plan. All comments submitted to the Environmental Protection Agency and the Illinois Power Agency shall be encouraged to be specific, supported by data or other detailed analyses, and, if objecting to all or a portion of the plan, accompanied by specific alternative wording or proposals. All comments shall be posted on the Environmental Protection Agency's, the Illinois Power Agency's, and the Illinois Commerce Commission's websites. Within 30 days following the end of the 60-day review period, the Environmental Protection Agency and the Illinois Power Agency shall revise the plan as necessary based on the comments received and file its revised plan with the Illinois Commerce Commission for approval.

(2) Within 60 days after the filing of the revised plan at the Illinois Commerce Commission, any person objecting to the plan shall file an objection with the Illinois Commerce Commission. Within 30 days after the expiration of the comment period, the Illinois Commerce Commission shall determine whether an evidentiary hearing is necessary. The Illinois Commerce Commission shall also host 3 public hearings within 90 days after the plan is filed. Following the evidentiary and public hearings, the Illinois Commerce Commission shall enter its order approving or approving with modifications the reliability mitigation plan within 180 days.

(3) The Illinois Commerce Commission shall only approve the plan if the Illinois Commerce Commission determines that it will resolve the resource adequacy or reliability deficiency identified in the reliability mitigation plan at the least amount of CO_2e and copollutant emissions, taking into consideration the emissions impacts on environmental justice communities, and that it will ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account the impact of increases in emissions.

(4) If the resource adequacy or reliability deficiency identified in the reliability mitigation plan is resolved or reduced, the Environmental Protection Agency and the Illinois Power Agency may file an amended plan adjusting the reduction or delay in CO_2e and copollutant emission reduction requirements identified in the plan.

(Source: P.A. 102-662, eff. 9-15-21; 102-1031, eff. 5-27-22.)

(415 ILCS 5/9.16)

Sec. 9.16. Control of ethylene oxide sterilization sources.

(a) As used in this Section:

"Ethylene oxide sterilization operations" means the process of using ethylene oxide at an ethylene oxide sterilization source to make one or more items free from microorganisms, pathogens, or both microorganisms and pathogens.

"Ethylene oxide sterilization source" means any stationary source with ethylene oxide usage that would subject it to the emissions standards in 40 CFR 63.362. "Ethylene oxide sterilization source" does not include beehive fumigators, research or laboratory facilities, hospitals, doctors' offices,

clinics, or other stationary sources for which the primary purpose is to provide medical services to humans or animals.

"Exhaust point" means any point through which ethylene oxide-laden air exits an ethylene oxide sterilization source.

"Stationary source" has the meaning set forth in subsection 1 of Section 39.5.

(b) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-22), no person shall conduct ethylene oxide sterilization operations, unless the ethylene oxide sterilization source captures, and demonstrates that it captures, 100% of all ethylene oxide emissions and reduces ethylene oxide emissions to the atmosphere from each exhaust point at the ethylene oxide sterilization source by at least 99.9% or to 0.2 parts per million.

(1) Within 180 days after June 21, 2019 (the effective date of Public Act 101-22) for any existing ethylene oxide sterilization source, or prior to any ethylene oxide sterilization operation for any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section, the owner or operator of the ethylene oxide sterilization source shall conduct an initial emissions test in accordance with all of the requirements set forth in this paragraph (1) to verify that ethylene oxide emissions to the atmosphere from each exhaust point at the ethylene oxide sterilization source have been reduced by at least 99.9% or to 0.2 parts per million:

(A) At least 30 days prior to the scheduled emissions test date, the owner or operator of the ethylene oxide sterilization source shall submit a notification of the scheduled emissions test date and a copy of the proposed emissions test protocol to the Agency for review and written approval. Emissions test protocols submitted to the Agency shall address the manner in which testing will be conducted, including, but not limited to:

(i) the name of the independent third party company that will be performing sampling and analysis and the company's experience with similar emissions tests;

(ii) the methodologies to be used;

(iii) the conditions under which emissions tests will be performed, including a discussion of why these conditions will be representative of maximum emissions from each of the 3 cycles of operation (chamber evacuation, back vent, and aeration) and the means by which the operating parameters for the emission unit and any control equipment will be determined;

(iv) the specific determinations of emissions and operations that are intended to be made, including sampling and monitoring locations; and

(v) any changes to the test method or methods proposed to accommodate the specific circumstances of testing, with justification.

(B) The owner or operator of the ethylene oxide sterilization source shall perform emissions testing in accordance with an Agency-approved test protocol and at representative conditions to verify that ethylene oxide emissions to the atmosphere from each exhaust point at the ethylene oxide sterilization source have been reduced by at least 99.9% or to 0.2 parts per million. The duration of the test must incorporate all 3 cycles

of operation for determination of the emission reduction efficiency.

(C) Upon Agency approval of the test protocol, any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section may undertake ethylene oxide sterilization operations in accordance with the Agency-approved test protocol for the sole purpose of demonstrating compliance with this subsection (b).

(D) The owner or operator of the ethylene oxide sterilization source shall submit to the Agency the results of any and all emissions testing conducted after June 21, 2019 (the effective date of Public Act 101-22), until the Agency accepts testing results under subparagraph (E) of paragraph (1) of this subsection (b), for any existing source or prior to any ethylene oxide sterilization operation for any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section. The results documentation shall include at a minimum:

(i) a summary of results;

(ii) a description of test method or methods, including description of sample points, sampling train, analysis equipment, and test schedule;

(iii) a detailed description of test conditions, including process information and control equipment information; and

(iv) data and calculations, including copies of all raw data sheets, opacity observation records and records of laboratory analyses, sample calculations, and equipment calibration.

(E) Within 30 days of receipt, the Agency shall accept, accept with conditions, or decline to accept a stack testing protocol and the testing results submitted to demonstrate compliance with paragraph (1) of this subsection (b). If the Agency accepts with conditions or declines to accept the results submitted, the owner or operator of the ethylene oxide sterilization source shall submit revised results of the emissions testing or conduct emissions testing again. If the owner or operator revises the results, the revised results shall be submitted within 15 days after the owner or operator of the ethylene oxide sterilization source receives written notice of the Agency's conditional acceptance or rejection of the emissions testing results. If the owner or operator conducts emissions testing again, such new emissions testing shall conform to the requirements of this subsection (b).

(2) The owner or operator of the ethylene oxide sterilization source shall conduct emissions testing on all exhaust points at the ethylene oxide sterilization source at least once each calendar year to demonstrate compliance with the requirements of this Section and any applicable requirements concerning ethylene oxide that are set forth in either United States Environmental Protection Agency rules or Board rules. Annual emissions tests required under this paragraph (2) shall take place at least 6 months apart. An initial emissions test conducted under paragraph (1) of this subsection (b) satisfies the testing requirement of this paragraph (2) for the calendar year in which the initial emissions test is conducted.

(3) At least 30 days before conducting the annual

emissions test required under paragraph (2) of this subsection (b), the owner or operator shall submit a notification of the scheduled emissions test date and a copy of the proposed emissions test protocol to the Agency for review and written approval. Emissions test protocols submitted to the Agency under this paragraph (3) must address each item listed in subparagraph (A) of paragraph (1) of this subsection (b). Emissions testing shall be performed in accordance with an Agency-approved test protocol and at representative conditions. In addition, as soon as practicable, but no later than 30 days after the emissions test date, the owner or operator shall submit to the Agency the results of the emissions testing required under paragraph (2) of this subsection (b). Such results must include each item listed in subparagraph (D) of paragraph (1) of this subsection (b).

(4) If the owner or operator of an ethylene oxide sterilization source conducts any emissions testing in addition to tests required by Public Act 101-22, the owner or operator shall submit to the Agency the results of such emissions testing within 30 days after the emissions test date.

(5) The Agency shall accept, accept with conditions, or decline to accept testing results submitted to demonstrate compliance with paragraph (2) of this subsection (b). If the Agency accepts with conditions or declines to accept the results submitted, the owner or operator of the ethylene oxide sterilization source shall submit revised results of the emissions testing or conduct emissions testing again. If the owner or operator revises the results, the revised results shall be submitted within 15 days after the owner or operator of the ethylene oxide sterilization source receives written notice of the Agency's conditional acceptance or rejection of the emissions testing results. If the owner or operator conducts emissions testing again, such new emissions testing shall conform to the requirements of this subsection (b).

(c) If any emissions test conducted more than 180 days after June 21, 2019 (the effective date of Public Act 101-22) fails to demonstrate that ethylene oxide emissions to the atmosphere from each exhaust point at the ethylene oxide sterilization source have been reduced by at least 99.9% or to 0.2 parts per million, the owner or operator of the ethylene oxide sterilization source shall immediately cease ethylene oxide sterilization operations and notify the Agency within 24 hours of becoming aware of the failed emissions test. Within 60 days after the date of the test, the owner or operator of the ethylene oxide sterilization source shall:

(1) complete an analysis to determine the root cause of the failed emissions test;

(2) take any actions necessary to address that root cause;

(3) submit a report to the Agency describing the findings of the root cause analysis, any work undertaken to address findings of the root cause analysis, and identifying any feasible best management practices to enhance capture and further reduce ethylene oxide levels within the ethylene oxide sterilization source, including a schedule for implementing such practices; and

(4) upon approval by the Agency of the report required by paragraph (3) of this subsection, restart ethylene oxide sterilization operations only to the extent necessary to conduct additional emissions test or tests. The ethylene oxide sterilization source shall conduct such

emissions test or tests under the same requirements as the annual test described in paragraphs (2) and (3) of subsection (b). The ethylene oxide sterilization source may restart operations once an emissions test successfully demonstrates that ethylene oxide emissions to the atmosphere from each exhaust point at the ethylene oxide sterilization source have been reduced by at least 99.9% or to 0.2 parts per million, the source has submitted the results of all emissions testing conducted under this subsection to the Agency, and the Agency has approved the results demonstrating compliance.

(d) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-22) this amendatory Act of the 101st General Assembly for any existing source or prior to any ethylene oxide sterilization operation for any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section, no person shall conduct ethylene oxide sterilization operations unless the owner or operator of the ethylene oxide sterilization source submits for review and approval by the Agency a plan describing how the owner or operator will continuously collect emissions information at the ethylene oxide sterilization source. This plan must also specify locations at the ethylene oxide sterilization source from which emissions will be collected and identify equipment used for collection and analysis, including the individual system components.

(1) The owner or operator of the ethylene oxide sterilization source must provide a notice of acceptance of any conditions added by the Agency to the plan, or correct any deficiencies identified by the Agency in the plan, within 3 business days after receiving the Agency's conditional acceptance or denial of the plan.

(2) Upon the Agency's approval of the plan, the owner or operator of the ethylene oxide sterilization source shall implement the plan in accordance with its approved terms.

(e) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-22) for any existing source or prior to any ethylene oxide sterilization operation for any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section, no person shall conduct ethylene oxide sterilization operations unless the owner or operator of the ethylene oxide sterilization source submits for review and approval by the Agency an Ambient Air Monitoring Plan.

(1) The Ambient Air Monitoring Plan shall include, at a minimum, the following:

(A) Detailed plans to collect and analyze air samples for ethylene oxide on at least a quarterly basis near the property boundaries of the ethylene oxide sterilization source and at community locations with the highest modeled impact pursuant to the modeling conducted under subsection (f). Each quarterly sampling under this subsection shall be conducted over a multiple-day sampling period.

(B) A schedule for implementation.

(C) The name of the independent third party company that will be performing sampling and analysis and the company's experience with similar testing.

(2) The owner or operator of the ethylene oxide sterilization source must provide a notice of acceptance of any conditions added by the Agency to the Ambient Air Monitoring Plan, or correct any deficiencies identified by

the Agency in the Ambient Air Monitoring Plan, within 3 business days after receiving the Agency's conditional acceptance or denial of the plan.

(3) Upon the Agency's approval of the plan, the owner or operator of the ethylene oxide sterilization source shall implement the Ambient Air Monitoring Plan in accordance with its approved terms.

(f) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-22) for any existing source or prior to any ethylene oxide sterilization operation for any source that first becomes subject to regulation after June 21, 2019 (the effective date of Public Act 101-22) as an ethylene oxide sterilization source under this Section, no person shall conduct ethylene oxide sterilization operations unless the owner or operator of the ethylene oxide sterilization source has performed dispersion modeling and the Agency approves such modeling.

(1) Dispersion modeling must:

(A) be conducted using accepted United States Environmental Protection Agency methodologies, including 40 CFR Part 51, Appendix W, except that no background ambient levels of ethylene oxide shall be used;

(B) use emissions and stack parameter data from the emissions test conducted in accordance with paragraph (1) of subsection (b), and use 5 years of hourly meteorological data that is representative of the source's location; and

(C) use a receptor grid that extends to at least one kilometer around the source and ensure the modeling domain includes the area of maximum impact, with receptor spacing no greater than every 50 meters starting from the building walls of the source extending out to a distance of at least one-half kilometer, then every 100 meters extending out to a distance of at least one kilometer.

(2) The owner or operator of the ethylene oxide sterilization source shall submit revised results of all modeling if the Agency accepts with conditions or declines to accept the results submitted.

(g) A facility permitted to emit ethylene oxide that has been subject to a seal order under Section 34 is prohibited from using ethylene oxide for sterilization or fumigation purposes, unless (i) the facility can provide a certification to the Agency by the supplier of a product to be sterilized or fumigated that ethylene oxide sterilization or fumigation is the only available method to completely sterilize or fumigate the product and (ii) the Agency has certified that the facility's emission control system uses technology that produces the greatest reduction in ethylene oxide emissions currently available. The certification shall be made by a company representative with knowledge of the sterilization requirements of the product. The certification requirements of this Section shall apply to any group of products packaged together and sterilized as a single product if sterilization or fumigation is the only available method to completely sterilize or fumigate more than half of the individual products contained in the package.

A facility is not subject to the requirements of this subsection if the supporting findings of the seal order under Section 34 are found to be without merit by a court of competent jurisdiction.

(h) If an entity, or any parent or subsidiary of an entity, that owns or operates a facility permitted by the Agency to emit ethylene oxide acquires by purchase, license, or any other

method of acquisition any intellectual property right in a sterilization technology that does not involve the use of ethylene oxide, or by purchase, merger, or any other method of acquisition of any entity that holds an intellectual property right in a sterilization technology that does not involve the use of ethylene oxide, that entity, parent, or subsidiary shall notify the Agency of the acquisition within 30 days of acquiring it. If that entity, parent, or subsidiary has not used the sterilization technology within 3 years of its acquisition, the entity shall notify the Agency within 30 days of the 3-year period elapsing.

An entity, or any parent or subsidiary of an entity, that owns or operates a facility permitted by the Agency to emit ethylene oxide that has any intellectual property right in any sterilization technology that does not involve the use of ethylene oxide shall notify the Agency of any offers that it makes to license or otherwise allow the technology to be used by third parties within 30 days of making the offer.

An entity, or any parent or subsidiary of an entity, that owns or operates a facility permitted by the Agency to emit ethylene oxide shall provide the Agency with a list of all U.S. patent registrations for sterilization technology that the entity, parent, or subsidiary has any property right in. The list shall include the following:

(1) The patent number assigned by the United States Patent and Trademark Office for each patent.

(2) The date each patent was filed.

(3) The names and addresses of all owners or assignees of each patent.

(4) The names and addresses of all inventors of each patent.

(i) If a CAAPP permit applicant applies to use ethylene oxide as a sterilant or fumigant at a facility not in existence prior to January 1, 2020, the Agency shall issue a CAAPP permit for emission of ethylene oxide only if:

(1) the nearest school or park is at least 10 miles from the permit applicant in counties with populations greater than 50,000;

(2) the nearest school or park is at least 15 miles from the permit applicant in counties with populations less than or equal to 50,000; and

(3) within 7 days after the application for a CAAPP permit, the permit applicant has published its permit request on its website, published notice in a local newspaper of general circulation, and provided notice to:

(A) the State Representative for the representative district in which the facility is located;

(B) the State Senator for the legislative district in which the facility is located;

(C) the members of the county board for the county in which the facility is located; and

(D) the local municipal board members and executives.

(j) The owner or operator of an ethylene oxide sterilization source must apply for and obtain a construction permit from the Agency for any modifications made to the source to comply with the requirements of Public Act 101-22, including, but not limited to, installation of a permanent total enclosure, modification of airflow to create negative pressure within the source, and addition of one or more control devices. Additionally, the owner or operator of the ethylene oxide sterilization source must apply for and obtain from the Agency a modification of the source's operating permit to incorporate

such modifications made to the source. Both the construction permit and operating permit must include a limit on ethylene oxide usage at the source.

(k) Nothing in this Section shall be interpreted to excuse the ethylene oxide sterilization source from complying with any applicable local requirements.

(l) The owner or operator of an ethylene oxide sterilization source must notify the Agency within 5 days after discovering any deviation from any of the requirements in this Section or deviations from any applicable requirements concerning ethylene oxide that are set forth in this Act, United States Environmental Protection Agency rules, or Board rules. As soon as practicable, but no later than 5 business days, after the Agency receives such notification, the Agency must post a notice on its website and notify the members of the General Assembly from the Legislative and Representative Districts in which the source in question is located, the county board members of the county in which the source in question is located, the corporate authorities of the municipality in which the source in question is located, and the Illinois Department of Public Health.

(m) The Agency must conduct at least one unannounced inspection of all ethylene oxide sterilization sources subject to this Section per year. Nothing in this Section shall limit the Agency's authority under other provisions of this Act to conduct inspections of ethylene oxide sterilization sources.

(n) The Agency shall conduct air testing to determine the ambient levels of ethylene oxide throughout the State. The Agency shall, within 180 days after June 21, 2019 (the effective date of Public Act 101-22), submit rules for ambient air testing of ethylene oxide to the Board.

(Source: P.A. 101-22, eff. 6-21-19; 102-558, eff. 8-20-21.)

(415 ILCS 5/9.17)

Sec. 9.17. Nonnegligible ethylene oxide emissions sources.

(a) In this Section, "nonnegligible ethylene oxide emissions source" means an ethylene oxide emissions source permitted by the Agency that currently emits more than 150 pounds of ethylene oxide as reported on the source's 2017 Toxic Release Inventory and is located in a county with a population of at least 700,000 based on 2010 census data. "Nonnegligible ethylene oxide emissions source" does not include facilities that are ethylene oxide sterilization sources or hospitals that are licensed under the Hospital Licensing Act or operated under the University of Illinois Hospital Act.

(b) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-23), no nonnegligible ethylene oxide emissions source shall conduct activities that cause ethylene oxide emissions unless the owner or operator of the nonnegligible ethylene oxide emissions source submits for review and approval of the Agency a plan describing how the owner or operator will continuously collect emissions information. The plan must specify locations at the nonnegligible ethylene oxide emissions source from which emissions will be collected and identify equipment used for collection and analysis, including the individual system components.

(1) The owner or operator of the nonnegligible ethylene oxide emissions source must provide a notice of acceptance of any conditions added by the Agency to the plan or correct any deficiencies identified by the Agency in the plan within 3 business days after receiving the Agency's conditional acceptance or denial of the plan.

(2) Upon the Agency's approval of the plan the owner or operator of the nonnegligible ethylene oxide emissions source shall implement the plan in accordance with its

approved terms.

(c) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-23), no nonnegligible ethylene oxide emissions source shall conduct activities that cause ethylene oxide emissions unless the owner or operator of the nonnegligible ethylene oxide emissions source has performed dispersion modeling and the Agency approves the dispersion modeling.

(1) Dispersion modeling must:

(A) be conducted using accepted United States Environmental Protection Agency methodologies, including Appendix W to 40 CFR 51, except that no background ambient levels of ethylene oxide shall be used;

(B) use emissions and stack parameter data from any emissions test conducted and 5 years of hourly meteorological data that is representative of the nonnegligible ethylene oxide emissions source's location; and

(C) use a receptor grid that extends to at least one kilometer around the nonnegligible ethylene oxide emissions source and ensures the modeling domain includes the area of maximum impact, with receptor spacing no greater than every 50 meters starting from the building walls of the nonnegligible ethylene oxide emissions source extending out to a distance of at least 1/2 kilometer, then every 100 meters extending out to a distance of at least one kilometer.

(2) The owner or operator of the nonnegligible ethylene oxide emissions source shall submit revised results of all modeling if the Agency accepts with conditions or declines to accept the results submitted.

(d) Beginning 180 days after June 21, 2019 (the effective date of Public Act 101-23), no nonnegligible ethylene oxide emissions source shall conduct activities that cause ethylene oxide emissions unless the owner or operator of the nonnegligible ethylene oxide emissions source obtains a permit consistent with the requirements in this Section from the Agency to conduct activities that may result in the emission of ethylene oxide.

(e) The Agency in issuing the applicable permits to a nonnegligible ethylene oxide emissions source shall:

(1) impose a site-specific annual cap on ethylene oxide emissions set to protect the public health; and

(2) include permit conditions granting the Agency the authority to reopen the permit if the Agency determines that the emissions of ethylene oxide from the permitted nonnegligible ethylene oxide emissions source pose a risk to the public health as defined by the Agency.

(Source: P.A. 101-23, eff. 6-21-19; 102-558, eff. 8-20-21.)

(415 ILCS 5/9.18)

(Section scheduled to be repealed on January 1, 2024)

Sec. 9.18. Commission on market-based carbon pricing solutions.

(a) In the United States, state-based market policies to reduce greenhouse gases have been in operation since 2009. More than a quarter of the US population lives in a state with carbon pricing and these states represent one-third of the United States' gross domestic product. Market-based policies have proved effective at reducing emissions in states across the United States, and around the world. Additionally, well-designed carbon pricing incentivizes energy efficiency and drives investments in low-carbon solutions and technologies, such as renewables, hydrogen, biofuels, and carbon capture, use, and

storage. Illinois must assess available suites of programs and policies to support a rapid, economy-wide decarbonization and spur the development of a clean energy economy in the State, while maintaining Illinois' competitive advantage.

(b) The Governor is hereby authorized to create a carbon pricing commission to study the short-term and long-term impacts of joining, implementing, or designing a sector-based, statewide, or regional carbon pricing program. The commission shall analyze and compare the relative cost of, and greenhouse gas reductions from, various carbon pricing programs available to Illinois and the Midwest, including, but not limited to: the Regional Greenhouse Gas Initiative (RGGI), the Transportation and Climate Initiative (TCI), California's cap-and-trade program, California's low carbon fuel standard, Washington State's cap-and-invest program, the Oregon Clean Fuels Program, and other relevant market-based programs. At the conclusion of the study, no later than December 31, 2022, the commission shall issue a public report containing its findings.

(c) This Section is repealed on January 1, 2024.

(Source: P.A. 102-662, eff. 9-15-21.)

(415 ILCS 5/10) (from Ch. 111 1/2, par. 1010)

Sec. 10. Regulations.

(A) The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe:

(a) (Blank);

(b) Emission standards specifying the maximum amounts or concentrations of various contaminants that may be discharged into the atmosphere;

(c) Standards for the issuance of permits for construction, installation, or operation of any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution;

(d) Standards and conditions regarding the sale, offer, or use of any fuel, vehicle, or other article determined by the Board to constitute an air-pollution hazard;

(e) Alert and abatement standards relative to air-pollution episodes or emergencies constituting an acute danger to health or to the environment;

(f) Requirements and procedures for the inspection of any equipment, facility, vehicle, vessel, or aircraft that may cause or contribute to air pollution;

(g) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, the collection of samples and the collection, reporting and retention of data resulting from such monitoring.

(B) The Board may adopt regulations and emission standards that are applicable or that may become applicable to stationary emission sources located in all areas of the State in accordance with any of the following:

(1) that are required by federal law;

(2) that are otherwise part of the State's attainment plan and are necessary to attain the national ambient air quality standards; or

(3) that are necessary to comply with the requirements of the federal Clean Air Act.

(C) The Board may not adopt any regulation banning the burning of landscape waste throughout the State generally. The Board may, by regulation, restrict or prohibit the burning of

landscape waste within any geographical area of the State if it determines based on medical and biological evidence generally accepted by the scientific community that such burning will produce in the atmosphere of that geographical area contaminants in sufficient quantities and of such characteristics and duration as to be injurious to humans, plant, or animal life, or health.

(D) The Board shall adopt regulations requiring the owner or operator of a gasoline dispensing system that dispenses more than 10,000 gallons of gasoline per month to install and operate a system for the recovery of gasoline vapor emissions arising from the fueling of motor vehicles that meets the requirements of Section 182 of the federal Clean Air Act (42 USC 7511a). These regulations shall apply only in areas of the State that are classified as moderate, serious, severe or extreme nonattainment areas for ozone pursuant to Section 181 of the federal Clean Air Act (42 USC 7511), but shall not apply in such areas classified as moderate nonattainment areas for ozone if the Administrator of the U.S. Environmental Protection Agency promulgates standards for vehicle-based (onboard) systems for the control of vehicle refueling emissions pursuant to Section 202(a)(6) of the federal Clean Air Act (42 USC 7521(a)(6)) by November 15, 1992.

(E) The Board shall not adopt or enforce any regulation requiring the use of a tarpaulin or other covering on a truck, trailer, or other vehicle that is stricter than the requirements of Section 15-109.1 of the Illinois Vehicle Code. To the extent that it is in conflict with this subsection, the Board's rule codified as 35 Ill. Admin. Code, Section 212.315 is hereby superseded.

(F) Any person who prior to June 8, 1988, has filed a timely Notice of Intent to Petition for an Adjusted RACT Emissions Limitation and who subsequently timely files a completed petition for an adjusted RACT emissions limitation pursuant to 35 Ill. Adm. Code, Part 215, Subpart I, shall be subject to the procedures contained in Subpart I but shall be excluded by operation of law from 35 Ill. Adm. Code, Part 215, Subparts PP, QQ and RR, including the applicable definitions in 35 Ill. Adm. Code, Part 211. Such persons shall instead be subject to a separate regulation which the Board is hereby authorized to adopt pursuant to the adjusted RACT emissions limitation procedure in 35 Ill. Adm. Code, Part 215, Subpart I. In its final action on the petition, the Board shall create a separate rule which establishes Reasonably Available Control Technology (RACT) for such person. The purpose of this procedure is to create separate and independent regulations for purposes of SIP submittal, review, and approval by USEPA.

(G) Subpart FF of Subtitle B, Title 35 Ill. Adm. Code, Sections 218.720 through 218.730 and Sections 219.720 through 219.730, are hereby repealed by operation of law and are rendered null and void and of no force and effect.

(H) In accordance with subsection (b) of Section 7.2, the Board shall adopt ambient air quality standards specifying the maximum permissible short-term and long-term concentrations of various contaminants in the atmosphere; those standards shall be identical in substance to the national ambient air quality standards promulgated by the Administrator of the United States Environmental Protection Agency in accordance with Section 109 of the Clean Air Act. The Board may consolidate into a single rulemaking under this subsection all such federal regulations adopted within a period of time not to exceed 6 months. The provisions and requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act, relating to procedures for rulemaking, shall not apply to identical in substance regulations adopted pursuant to this subsection.

However, the Board shall provide for notice and public comment before adopted rules are filed with the Secretary of State. Nothing in this subsection shall be construed to limit the right of any person to submit a proposal to the Board, or the authority of the Board to adopt, air quality standards more stringent than the standards promulgated by the Administrator, pursuant to the rulemaking requirements of Title VII of this Act and Section 5-35 of the Illinois Administrative Procedure Act.
(Source: P.A. 97-945, eff. 8-10-12.)

(415 ILCS 5/Tit. III heading)

TITLE III: WATER POLLUTION

(415 ILCS 5/11) (from Ch. 111 1/2, par. 1011)

Sec. 11. (a) The General Assembly finds:

(1) that pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, depresses property values, and offends the senses;

(2) that the Federal Water Pollution Control Act, as now or hereafter amended, provides for a National Pollutant Discharge Elimination System (NPDES) to regulate the discharge of contaminants to the waters of the United States;

(3) that the Safe Drinking Water Act (P.L. 93-523), as amended, provides for an Underground Injection Control (UIC) program to regulate the underground injection of contaminants;

(4) that it would be inappropriate and misleading for the State of Illinois to issue permits to contaminant sources subject to such federal law, as well as State law, which do not contain such terms and conditions as are required by federal law, or the issuance of which is contrary to federal law;

(5) that the Federal Water Pollution Control Act, as now or hereafter amended, provides that NPDES permits shall be issued by the United States Environmental Protection Agency unless (a) the State is authorized by and under its law to establish and administer its own permit program for discharges into waters within its jurisdiction, and (b) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency approves such State program to issue permits which will implement the provisions of such federal Act;

(6) that Part C of the Safe Drinking Water Act (P.L. 93-523), as amended, provides that the United States Environmental Protection Agency shall implement the UIC program authorized therein unless (a) the State is authorized by and under its law to establish and administer its own UIC program, and (b) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency approves such State program which will implement the provisions of such federal Act;

(7) that it is in the interest of the People of the State of Illinois for the State to authorize such NPDES and UIC programs and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting state and federal statutory permit systems;

(8) that the federal requirements for the securing of such NPDES and UIC permit program approval, as set forth in the Federal Water Pollution Control Act, as now or hereafter amended, and in the Safe Drinking Water Act (P.L. 93-523), as amended, respectively, and in regulations promulgated by the Administrator of the United States Environmental Protection Agency pursuant thereto are complex and detailed, and the

General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of such federal Act or all regulations which may be established thereunder.

(b) It is the purpose of this Title to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law; and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval to issue NPDES permits pursuant to the provisions of the Federal Water Pollution Control Act, as now or hereafter amended, and federal regulations pursuant thereto and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval of the State UIC program pursuant to the provisions of Part C of the Safe Drinking Water Act (P.L. 93-523), as amended, and federal regulations pursuant thereto.

(c) The provisions of this Act authorizing implementation of the regulations pursuant to an NPDES program shall not be construed to limit, affect, impair, or diminish the authority, duties and responsibilities of the Board, Agency, Department or any other governmental agency or officer, or of any unit of local government, to regulate and control pollution of any kind, to restore, to protect or to enhance the quality of the environment, or to achieve all other purposes, or to enforce provisions, set forth in this Act or other State law or regulation.

(Source: P.A. 86-671.)

(415 ILCS 5/12) (from Ch. 111 1/2, par. 1012)

Sec. 12. Actions prohibited. No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

(c) Increase the quantity or strength of any discharge of contaminants into the waters, or construct or install any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State, without a permit granted by the Agency.

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

(e) Sell, offer, or use any article in any area in which the Board has by regulation forbidden its sale, offer, or use for reasons of water pollution control.

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without

an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

No permit shall be required under this subsection and under Section 39(b) of this Act for any discharge for which a permit is not required under the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

For all purposes of this Act, a permit issued by the Administrator of the United States Environmental Protection Agency under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, shall be deemed to be a permit issued by the Agency pursuant to Section 39(b) of this Act. However, this shall not apply to the exclusion from the requirement of an operating permit provided under Section 13(b)(i).

Compliance with the terms and conditions of any permit issued under Section 39(b) of this Act shall be deemed compliance with this subsection except that it shall not be deemed compliance with any standard or effluent limitation imposed for a toxic pollutant injurious to human health.

In any case where a permit has been timely applied for pursuant to Section 39(b) of this Act but final administrative disposition of such application has not been made, it shall not be a violation of this subsection to discharge without such permit unless the complainant proves that final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(g) Cause, threaten or allow the underground injection of contaminants without a UIC permit issued by the Agency under Section 39(d) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any regulations or standards adopted by the Board or of any order adopted by the Board with respect to the UIC program.

No permit shall be required under this subsection and under Section 39(d) of this Act for any underground injection of contaminants for which a permit is not required under Part C of the Safe Drinking Water Act (P.L. 93-523), as amended, unless a permit is authorized or required under regulations adopted by the Board pursuant to Section 13 of this Act.

(h) Introduce contaminants into a sewage works from any nondomestic source except in compliance with the regulations and standards adopted by the Board under this Act.

(i) Beginning January 1, 2013 or 6 months after the date of issuance of a general NPDES permit for surface discharging private sewage disposal systems by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency, whichever is later, construct or install a surface discharging private sewage disposal system that discharges into the waters of the United States, as that term is used in the Federal Water Pollution Control Act, unless he or she has a coverage letter under a NPDES permit issued by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency or he or she is constructing or installing the surface discharging private sewage disposal system in a jurisdiction in which the local public health department has a general NPDES permit issued by the Illinois Environmental Protection Agency or by the United States Environmental Protection Agency and the surface discharging private sewage disposal system is covered under the general

NPDES permit.
(Source: P.A. 96-801, eff. 1-1-10; 97-1081, eff. 8-24-12.)

(415 ILCS 5/12.1) (from Ch. 111 1/2, par. 1012.1)
Sec. 12.1. (Repealed).
(Source: P.A. 83-1358. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/12.2) (from Ch. 111 1/2, par. 1012.2)
Sec. 12.2. Water pollution construction permit fees.

(a) Beginning July 1, 2003, the Agency shall collect a fee in the amount set forth in this Section:

(1) for any sewer which requires a construction permit under paragraph (b) of Section 12, from each applicant for a sewer construction permit under paragraph (b) of Section 12 or regulations adopted hereunder; and

(2) for any treatment works, industrial pretreatment works, or industrial wastewater source that requires a construction permit under paragraph (b) of Section 12, from the applicant for the construction permit. However, no fee shall be required for a treatment works or wastewater source directly covered and authorized under an NPDES permit issued by the Agency, nor for any treatment works, industrial pretreatment works, or industrial wastewater source (i) that is under or pending construction authorized by a valid construction permit issued by the Agency prior to July 1, 2003, during the term of that construction permit, or (ii) for which a completed construction permit application has been received by the Agency prior to July 1, 2003, with respect to the permit issued under that application.

(b) Each applicant or person required to pay a fee under this Section shall submit the fee to the Agency along with the permit application. The Agency shall deny any construction permit application for which a fee is required under this Section that does not contain the appropriate fee.

(c) The amount of the fee is as follows:

(1) A $100 fee shall be required for any sewer constructed with a design population of 1.

(2) A $400 fee shall be required for any sewer constructed with a design population of 2 to 20.

(3) A $800 fee shall be required for any sewer constructed with a design population greater than 20 but less than 101.

(4) A $1200 fee shall be required for any sewer constructed with a design population greater than 100 but less than 500.

(5) A $2400 fee shall be required for any sewer constructed with a design population of 500 or more.

(6) A $1,000 fee shall be required for any industrial wastewater source that does not require pretreatment of the wastewater prior to discharge to the publicly owned treatment works or publicly regulated treatment works.

(7) A $3,000 fee shall be required for any industrial wastewater source that requires pretreatment of the wastewater for non-toxic pollutants prior to discharge to the publicly owned treatment works or publicly regulated treatment works.

(8) A $6,000 fee shall be required for any industrial wastewater source that requires pretreatment of the wastewater for toxic pollutants prior to discharge to the publicly owned treatment works or publicly regulated treatment works.

(9) A $2,500 fee shall be required for construction

relating to land application of industrial sludge or spray irrigation of industrial wastewater.

All fees collected by the Agency under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund in accordance with Section 22.8.

(d) Prior to a final Agency decision on a permit application for which a fee has been paid under this Section, the applicant may propose modification to the application in accordance with this Act and regulations adopted hereunder without any additional fee becoming due, unless the proposed modifications cause an increase in the design population served by the sewer specified in the permit application before the modifications or the modifications cause a change in the applicable fee category stated in subsection (c). If the modifications cause such an increase or change the fee category and the increase results in additional fees being due under subsection (c), the applicant shall submit the additional fee to the Agency with the proposed modifications.

(e) No fee shall be due under this Section from:

(1) any department, agency or unit of State government for installing or extending a sewer;

(2) any unit of local government with which the Agency has entered into a written delegation agreement under Section 4 which allows such unit to issue construction permits under this Title, or regulations adopted hereunder, for installing or extending a sewer; or

(3) any unit of local government or school district for installing or extending a sewer where both of the following conditions are met:

(i) the cost of the installation or extension is paid wholly from monies of the unit of local government or school district, State grants or loans, federal grants or loans, or any combination thereof; and

(ii) the unit of local government or school district is not given monies, reimbursed or paid, either in whole or in part, by another person (except for State grants or loans or federal grants or loans) for the installation or extension.

(f) The Agency may establish procedures relating to the collection of fees under this Section. The Agency shall not refund any fee paid to it under this Section. Notwithstanding the provisions of any rule adopted before July 1, 2003 concerning fees under this Section, the Agency shall assess and collect the fees imposed under subdivision (a)(2) of this Section and the increases in the fees imposed under subdivision (a)(1) of this Section beginning on July 1, 2003, for all completed applications received on or after that date.

(g) Notwithstanding any other provision of this Act, the Agency shall, not later than 45 days following the receipt of both an application for a construction permit and the fee required by this Section, either approve that application and issue a permit or tender to the applicant a written statement setting forth with specificity the reasons for the disapproval of the application and denial of a permit. If the Agency takes no final action within 45 days after the filing of the application for a permit, the applicant may deem the permit issued.

(h) For purposes of this Section:

"Toxic pollutants" means those pollutants defined in Section 502(13) of the federal Clean Water Act and regulations adopted pursuant to that Act.

"Industrial" refers to those industrial users referenced in Section 502(13) of the federal Clean Water Act and regulations adopted pursuant to that Act.

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing those pollutants into a publicly owned treatment works or publicly regulated treatment works.
(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/12.3) (from Ch. 111 1/2, par. 1012.3)

Sec. 12.3. Septic system sludge. Beginning January 1, 1993, any wastewater treatment facility or other appropriate waste disposal facility owned or operated by a unit of local government located in a county with a population of less than 3,000,000 may accept, for appropriate treatment or disposal, any septic system sludge generated by any private residence within that unit of local government or within any other unit of local government that is located within the same county and not served by its own wastewater treatment facility. The unit of local government may establish and charge reasonable fees for the acceptance, handling, treatment, and disposal of the sludge to defray any additional capital costs incurred specifically to comply with this Section.

This Section does not limit any power exercised by a unit of local government under any other law.
(Source: P.A. 87-1138.)

(415 ILCS 5/12.4)

Sec. 12.4. Vegetable by-product; land application; report. In addition to any other requirements of this Act, a generator of vegetable by-products utilizing land application shall prepare an annual report identifying the quantity of vegetable by-products transported for land application during the reporting period, the hauler or haulers utilized for the transportation, and the sites to which the vegetable by-products were transported. The report must be retained on the premises of the generator for a minimum of 5 calendar years after the end of the applicable reporting period and must, during that time, be made available to the Agency for inspection and copying during normal business hours.
(Source: P.A. 100-103, eff. 8-11-17.)

(415 ILCS 5/12.5)

Sec. 12.5. NPDES discharge fees; sludge permit fees.

(a) Beginning July 1, 2003, the Agency shall assess and collect annual fees (i) in the amounts set forth in subsection (e) for all discharges that require an NPDES permit under subsection (f) of Section 12, from each person holding an NPDES permit authorizing those discharges (including a person who continues to discharge under an expired permit pending renewal), and (ii) in the amounts set forth in subsection (f) of this Section for all activities that require a permit under subsection (b) of Section 12, from each person holding a domestic sewage sludge generator or user permit.

Each person subject to this Section must remit the applicable annual fee to the Agency in accordance with the requirements set forth in this Section and any rules adopted pursuant to this Section.

(b) Within 30 days after the effective date of this Section, and each year thereafter, except when a fee is not due because of the operation of subsection (c), the Agency shall send a fee notice by mail to each existing permittee subject to a fee under this Section at his or her address of record. The notice shall state the amount of the applicable annual fee and the date by which payment is required.

Except as provided in subsection (c) with respect to initial fees under new permits and certain modifications of existing permits, fees payable under this Section are due by the date specified in the fee notice, which shall be no less than 30 days after the date the fee notice is mailed by the Agency.

(c) The initial annual fee for discharges under a new NPDES permit or for activity under a new sludge generator or sludge user permit must be remitted to the Agency prior to the issuance of the permit. The Agency shall provide notice of the amount of the fee to the applicant during its review of the application. In the case of a new NPDES or sludge permit issued during the months of January through June, the Agency may prorate the initial annual fee payable under this Section.

The initial annual fee for discharges or other activity under a general NPDES permit must be remitted to the Agency as part of the application for coverage under that general permit.

Beginning January 1, 2010, in the case of construction site storm water discharges for which a coverage letter under a general NPDES permit or individual NPDES permit has been issued or for which the application for coverage under an NPDES permit has been filed with the Agency, no annual fee shall be due after payment of an initial annual fee in the amount provided in subsection (e)(10) of this Section.

If a requested modification to an existing NPDES permit causes a change in the applicable fee categories under subsection (e) that results in an increase in the required fee, the permittee must pay to the Agency the amount of the increase, prorated for the number of months remaining before the next July 1, before the modification is granted.

(d) Failure to submit the fee required under this Section by the due date constitutes a violation of this Section. Late payments shall incur an interest penalty, calculated at the rate in effect from time to time for tax delinquencies under subsection (a) of Section 1003 of the Illinois Income Tax Act, from the date the fee is due until the date the fee payment is received by the Agency.

(e) The annual fees applicable to discharges under NPDES permits are as follows:

(1) For NPDES permits for publicly owned treatment works, other facilities for which the wastewater being treated and discharged is primarily domestic sewage, and wastewater discharges from the operation of public water supply treatment facilities, the fee is:

(i) $1,500 for the 12 months beginning July 1, 2003 and $500 for each subsequent year, for facilities with a Design Average Flow rate of less than 100,000 gallons per day;

(ii) $5,000 for the 12 months beginning July 1, 2003 and $2,500 for each subsequent year, for facilities with a Design Average Flow rate of at least 100,000 gallons per day but less than 500,000 gallons per day;

(iii) $7,500 for facilities with a Design Average Flow rate of at least 500,000 gallons per day but less than 1,000,000 gallons per day;

(iv) $15,000 for facilities with a Design Average Flow rate of at least 1,000,000 gallons per day but less than 5,000,000 gallons per day;

(v) $30,000 for facilities with a Design Average Flow rate of at least 5,000,000 gallons per day but less than 10,000,000 gallons per day; and

(vi) $50,000 for facilities with a Design Average Flow rate of 10,000,000 gallons per day or more.

(2) For NPDES permits for treatment works or sewer

collection systems that include combined sewer overflow outfalls, the fee is:

(i) $1,000 for systems serving a tributary population of 10,000 or less;

(ii) $5,000 for systems serving a tributary population that is greater than 10,000 but not more than 25,000; and

(iii) $20,000 for systems serving a tributary population that is greater than 25,000.

The fee amounts in this subdivision (e)(2) are in addition to the fees stated in subdivision (e)(1) when the combined sewer overflow outfall is contained within a permit subject to subsection (e)(1) fees.

(3) For NPDES permits for mines producing coal, the fee is $5,000.

(4) For NPDES permits for mines other than mines producing coal, the fee is $5,000.

(5) For NPDES permits for industrial activity where toxic substances are not regulated, other than permits covered under subdivision (e)(3) or (e)(4), the fee is:

(i) $1,000 for a facility with a Design Average Flow rate that is not more than 10,000 gallons per day;

(ii) $2,500 for a facility with a Design Average Flow rate that is more than 10,000 gallons per day but not more than 100,000 gallons per day; and

(iii) $10,000 for a facility with a Design Average Flow rate that is more than 100,000 gallons per day.

(6) For NPDES permits for industrial activity where toxic substances are regulated, other than permits covered under subdivision (e)(3) or (e)(4), the fee is:

(i) $15,000 for a facility with a Design Average Flow rate that is not more than 250,000 gallons per day; and

(ii) $20,000 for a facility with a Design Average Flow rate that is more than 250,000 gallons per day.

(7) For NPDES permits for industrial activity classified by USEPA as a major discharge, other than permits covered under subdivision (e)(3) or (e)(4), the fee is:

(i) $30,000 for a facility where toxic substances are not regulated; and

(ii) $50,000 for a facility where toxic substances are regulated.

(8) For NPDES permits for municipal separate storm sewer systems, the fee is $1,000.

(9) For NPDES permits for industrial storm water, the fee is $500.

(10) For NPDES permits for construction site storm water, the fee

(A) for applications received before January 1, 2010 is $500;

(B) for applications received on or after January 1, 2010 is:

(i) $250 if less than 5 acres are disturbed; and

(ii) $750 if 5 or more acres are disturbed.

(11) For an NPDES permit for a Concentrated Animal Feeding Operation (CAFO), the fee is:

(A) $750 for a Large CAFO, as defined in 40 C.F.R. 122.23(b)(4);

(B) $350 for a Medium CAFO, as defined in 40 C.F.R. 122.23(b)(6); and

(C) $150 for a Small CAFO, as defined in 40

C.F.R. 122.23(b)(9).

(f) The annual fee for activities under a permit that authorizes applying sludge on land is $2,500 for a sludge generator permit and $5,000 for a sludge user permit.

(g) More than one of the annual fees specified in subsections (e) and (f) may be applicable to a permit holder. These fees are in addition to any other fees required under this Act.

(h) The fees imposed under this Section do not apply to the State or any department or agency of the State, nor to any school district, or to any private sewage disposal system as defined in the Private Sewage Disposal Licensing Act (225 ILCS 225/).

(i) The Agency may adopt rules to administer the fee program established in this Section. The Agency may include provisions pertaining to invoices, notice of late payment, refunds, and disputes concerning the amount or timeliness of payment. The Agency may set forth procedures and criteria for the acceptance of payments. The absence of such rules does not affect the duty of the Agency to immediately begin the assessment and collection of fees under this Section.

(j) All fees and interest penalties collected by the Agency under this Section shall be deposited into the Illinois Clean Water Fund, which is hereby created as a special fund in the State treasury. Gifts, supplemental environmental project funds, and grants may be deposited into the Fund. Investment earnings on moneys held in the Fund shall be credited to the Fund.

Subject to appropriation, the moneys in the Fund shall be used by the Agency to carry out the Agency's clean water activities.

(k) Except as provided in subsection (l) or Agency rules, fees paid to the Agency under this Section are not refundable.

(l) The Agency may refund the difference between (a) the amount paid by any person under subsection (e)(1)(i) or (e)(1)(ii) of this Section for the 12 months beginning July 1, 2004 and (b) the amount due under subsection (e)(1)(i) or (e)(1)(ii) as established by this amendatory Act of the 93rd General Assembly.

(Source: P.A. 96-245, eff. 8-11-09; 97-962, eff. 8-15-12.)

(415 ILCS 5/12.6)

Sec. 12.6. Certification fees.

(a) Beginning July 1, 2003, the Agency shall collect a fee in the amount set forth in subsection (b) from each applicant for a state water quality certification required by Section 401 of the federal Clean Water Act prior to a federal authorization pursuant to Section 404 of that Act; except that the fee does not apply to the State or any department or agency of the State, nor to any school district.

(b) The amount of the fee for a State water quality certification is $350 or 1% of the gross value of the proposed project, whichever is greater, but not to exceed $10,000.

(c) Each applicant seeking a federal authorization of an action requiring a Section 401 state water quality certification by the Agency shall submit the required fee to the Agency prior to the issuance of the certification. The Agency shall provide notice of the amount of the fee to the applicant during its review of the application. The Agency shall not issue a Section 401 state water quality certification until the appropriate fee has been received from the applicant.

(d) The Agency may establish procedures relating to the collection of fees under this Section. Notwithstanding the adoption of any rules establishing such procedures, the Agency may begin collecting fees under this Section on July 1, 2003 for

all complete applications received on or after that date.

All fees collected by the Agency under this Section shall be deposited into the Illinois Clean Water Fund. Fees paid under this Section are not refundable.

(Source: P.A. 95-516, eff. 8-28-07.)

(415 ILCS 5/13) (from Ch. 111 1/2, par. 1013)

Sec. 13. Regulations.

(a) The Board, pursuant to procedures prescribed in Title VII of this Act, may adopt regulations to promote the purposes and provisions of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe:

(1) Water quality standards specifying among other things, the maximum short-term and long-term concentrations of various contaminants in the waters, the minimum permissible concentrations of dissolved oxygen and other desirable matter in the waters, and the temperature of such waters;

(2) Effluent standards specifying the maximum amounts or concentrations, and the physical, chemical, thermal, biological and radioactive nature of contaminants that may be discharged into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well, or from any source within the State;

(3) Standards for the issuance of permits for construction, installation, or operation of any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution or designed to prevent water pollution or for the construction or installation of any sewer or sewage treatment facility or any new outlet for contaminants into the waters of this State;

(4) The circumstances under which the operators of sewage works are required to obtain and maintain certification by the Agency under Section 13.5 and the types of sewage works to which those requirements apply, which may, without limitation, include wastewater treatment works, pretreatment works, and sewers and collection systems;

(5) Standards for the filling or sealing of abandoned water wells and holes, and holes for disposal of drainage in order to protect ground water against contamination;

(6) Standards and conditions regarding the sale, offer, or use of any pesticide, detergent, or any other article determined by the Board to constitute a water pollution hazard, provided that any such regulations relating to pesticides shall be adopted only in accordance with the "Illinois Pesticide Act", approved August 14, 1979 as amended;

(7) Alert and abatement standards relative to water-pollution episodes or emergencies which constitute an acute danger to health or to the environment;

(8) Requirements and procedures for the inspection of any equipment, facility, or vessel that may cause or contribute to water pollution;

(9) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, the collection of samples and the collection, reporting and retention of data resulting from such monitoring.

(b) Notwithstanding other provisions of this Act and for purposes of implementing an NPDES program, the Board shall adopt:

(1) Requirements, standards, and procedures which,

together with other regulations adopted pursuant to this Section 13, are necessary or appropriate to enable the State of Illinois to implement and participate in the National Pollutant Discharge Elimination System (NPDES) pursuant to and under the Federal Water Pollution Control Act, as now or hereafter amended. All regulations adopted by the Board governing the NPDES program shall be consistent with the applicable provisions of such federal Act and regulations pursuant thereto, and otherwise shall be consistent with all other provisions of this Act, and shall exclude from the requirement to obtain any operating permit otherwise required under this Title a facility for which an NPDES permit has been issued under Section 39(b); provided, however, that for purposes of this paragraph, a UIC permit, as required under Section 12(g) and 39(d) of this Act, is not an operating permit.

(2) Regulations for the exemption of any category or categories of persons or contaminant sources from the requirement to obtain any NPDES permit prescribed or from any standards or conditions governing such permit when the environment will be adequately protected without the requirement of such permit, and such exemption is either consistent with the Federal Water Pollution Control Act, as now or hereafter amended, or regulations pursuant thereto, or is necessary to avoid an arbitrary or unreasonable hardship to such category or categories of persons or sources.

(c) In accordance with Section 7.2, and notwithstanding any other provisions of this Act, for purposes of implementing a State UIC program, the Board shall adopt regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency in accordance with Section 1421 of the Safe Drinking Water Act (P.L. 93-523), as amended. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months. The provisions and requirements of Title VII of this Act shall not apply to regulations adopted under this subsection. Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to regulations adopted under this subsection.

(d) The Board may adopt regulations relating to a State UIC program that are not inconsistent with and are at least as stringent as the Safe Drinking Water Act (P.L. 93-523), as amended, or regulations adopted thereunder. Regulations adopted pursuant to this subsection shall be adopted in accordance with the provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act.

(Source: P.A. 93-170, eff. 7-10-03.)

(415 ILCS 5/13.1) (from Ch. 111 1/2, par. 1013.1)

Sec. 13.1. Groundwater monitoring network.

(a) (Blank.)

(b) The Agency shall establish a Statewide groundwater monitoring network. Such network shall include a sufficient number of testing wells to assess the current levels of contamination in the groundwaters of the State and to detect any future degradation of groundwater resources. The monitoring network shall give special emphasis to critical groundwater areas and to locations near hazardous waste disposal facilities. To the extent possible, the network shall utilize existing publicly or privately operated drinking water or monitoring

wells.

(c) (Blank.)

(d) (Blank.)

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/13.2) (from Ch. 111 1/2, par. 1013.2)

Sec. 13.2. At the request of the owner or user of a private well, the Agency shall provide for annual testing of water from private wells located within 1/2 mile of any active or inactive sanitary landfill or hazardous waste disposal facility at no charge to the owner of the well.

Before obtaining a sample for testing, the Agency shall, not less than 5 business days prior to obtaining the sample, notify the owner or operator of the sanitary landfill or hazardous waste disposal facility of the opportunity to obtain a split sample and specify the sampling procedure, testing procedure and analytical parameters to be evaluated.

Sample collection shall be conducted in cooperation with the Illinois Department of Public Health and the recognized local health department, where one exists, in whose jurisdiction the well is located. The Illinois Department of Public Health and the local health department shall be provided with a written report of results upon completion of sample testing.

(Source: P.A. 83-1528.)

(415 ILCS 5/13.3) (from Ch. 111 1/2, par. 1013.3)

Sec. 13.3. In accordance with Section 7.2, the Board shall adopt regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 307(b), (c), (d), 402(b)(8) and 402(b)(9) of the Federal Water Pollution Control Act, as amended. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months. The provisions and requirements of Title VII of this Act shall not apply to regulations adopted under this Section. Sections 5-35 and 5-75 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to regulations adopted under this Section. However, the Board shall provide for notice and public comment before adopted rules are filed with the Secretary of State.

(Source: P.A. 88-45; 89-445, eff. 2-7-96.)

(415 ILCS 5/13.4)

Sec. 13.4. Pretreatment market system.

(a) The General Assembly finds:

(1) That achieving compliance with federal, State, and local pretreatment regulatory requirements calls for innovative and cost-effective implementation strategies.

(2) That economic incentives and market-based approaches can be used to achieve pretreatment compliance in an innovative and cost-effective manner.

(3) That development and operation of a pretreatment market system should significantly lessen the economic impacts associated with implementation of the pretreatment requirements and still achieve the desired water quality, sludge quality, and protection of the sewers and treatment system.

(b) The Agency shall design a pretreatment market system that will provide more flexibility for municipalities and their tributary dischargers to develop cost-effective solutions and will result in at least the total pollutant reduction as achieved by the current application of federal categorical

standards, State pretreatment limits, and locally derived limits, as applicable. Such a system should also assist publicly-owned treatment works in meeting applicable NPDES permit limits and in preventing the discharge of pollutants in quantities that would interfere with the operation of the municipal sewer system. In developing this system, the Agency shall consult with interested publicly-owned treatment works and tributary dischargers to ensure that relevant economic, environmental, and administrative factors are taken into account. As necessary, the Agency shall also consult with the United States Environmental Protection Agency regarding the suitability of such a system.

(c) The Agency may adopt proposed rules for a market-based pretreatment pollutant reduction, banking, and trading system that will enable publicly-owned treatment works and their tributary dischargers to implement cost-effective compliance options. Any proposal shall be adopted in accordance with the provisions of the Illinois Administrative Procedure Act.

(d) Notwithstanding the other provisions of this Act, a publicly-owned treatment works may implement a pretreatment market system that is consistent with subsection (b) of this Section, provided that the publicly-owned treatment works:

(1) operates an approved local pretreatment program pursuant to State and federal NPDES regulations;

(2) is not currently subject to enforcement action for violation of NPDES requirements;

(3) receives wastewater from tributary dischargers that are subject to federal categorical pretreatment standards or approved local pretreatment limits; and

(4) has modified, as appropriate, the local pretreatment program to incorporate such market system.

(e) Prior to implementation of any pretreatment market system, a publicly-owned treatment works shall notify the Agency in writing of its intention and request the Agency to make a consistency determination regarding the local system's conformance with the rules promulgated pursuant to subsection (c) of this Section. Within 120 days, the Agency shall provide the determination in writing to the publicly-owned treatment works.

(f) Notwithstanding the other provisions of this Act, any discharger that is tributary to a publicly-owned treatment works with a pretreatment market system shall be eligible to exchange trading units with dischargers tributary to the same publicly-owned treatment works or with the publicly-owned treatment works to which it is tributary.

(g) Nothing in this Section shall be deemed to authorize a publicly-owned treatment works:

(1) to mandate the exchange of trading units by a tributary discharger in a pretreatment market system implemented pursuant to this Section; or

(2) to mandate reductions in pollutants from any tributary discharger beyond that otherwise required by federal categorical and State pretreatment standards or approved local pretreatment limits.

(Source: P.A. 90-773, eff. 8-14-98.)

(415 ILCS 5/13.5)

Sec. 13.5. Sewage works; operator certification.

(a) For the purposes of this Section, the term "sewage works" includes, without limitation, wastewater treatment works, pretreatment works, and sewers and collection systems.

(b) The Agency may establish and enforce standards for the definition and certification of the technical competency of personnel who operate sewage works, and for ascertaining that

sewage works are under the supervision of trained individuals whose qualifications have been approved by the Agency.

(c) The Agency may issue certificates of competency to persons meeting the standards of technical competency established by the Agency under this Section, and may promulgate and enforce regulations pertaining to the issuance and use of those certificates.

(d) The Agency shall administer the certification program established under this Section. The Agency may enter into formal working agreements with other departments or agencies of State or local government under which all or portions of its authority under this Section may be delegated to the cooperating department or agency.

(e) This Section and the changes made to subdivision (a)(4) of Section 13 by this amendatory Act of the 93rd General Assembly do not invalidate the operator certification rules previously adopted by the Agency and codified as Part 380 of Title 35, Subtitle C, Chapter II of the Illinois Administrative Code. Those rules, as amended from time to time, shall continue in effect until they are superseded or repealed.
(Source: P.A. 93-170, eff. 7-10-03.)

(415 ILCS 5/13.6)

Sec. 13.6. Release of radionuclides at nuclear power plants.

(a) The purpose of this Section is to require the detection and reporting of unpermitted releases of any radionuclides into groundwater, surface water, or soil at nuclear power plants, to the extent that federal law or regulation does not preempt such requirements.

(b) No owner or operator of a nuclear power plant shall violate any rule adopted under this Section.

(c) Within 24 hours after an unpermitted release of a radionuclide from a nuclear power plant, the owner or operator of the nuclear power plant where the release occurred shall report the release to the Agency and the Illinois Emergency Management Agency. For purposes of this Section, "unpermitted release of a radionuclide" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a radionuclide into groundwater, surface water, or soil that is not permitted under State or federal law or regulation.

(d) The Agency and the Illinois Emergency Management Agency shall inspect each nuclear power plant for compliance with the requirements of this Section and rules adopted pursuant to this Section no less than once each calendar quarter. Nothing in this Section shall limit the Agency's authority to make inspections under Section 4 or any other provision of this Act.

(e) No later than one year after the effective date of this amendatory Act of the 94th General Assembly, the Agency, in consultation with the Illinois Emergency Management Agency, shall propose rules to the Board prescribing standards for detecting and reporting unpermitted releases of radionuclides. No later than one year after receipt of the Agency's proposal, the Board shall adopt rules prescribing standards for detecting and reporting unpermitted releases of radionuclides.
(Source: P.A. 94-849, eff. 6-12-06; 95-66, eff. 8-13-07.)

(415 ILCS 5/13.7)

Sec. 13.7. Carbon dioxide sequestration sites.

(a) For purposes of this Section, the term "carbon dioxide sequestration site" means a site or facility for which the Agency has issued a permit for the underground injection of carbon dioxide.

(b) The Agency shall inspect carbon dioxide sequestration sites for compliance with this Act, rules adopted under this

Act, and permits issued by the Agency.

(c) If the Agency issues a seal order under Section 34 of this Act in relation to a carbon dioxide sequestration site, or if a civil action for an injunction to halt activity at a carbon dioxide sequestration site is initiated under Section 43 of this Act at the request of the Agency, then the Agency shall post notice of such action on its website.

(d) Persons seeking a permit or permit modification for the underground injection of carbon dioxide shall be liable to the Agency for all reasonable and documented costs incurred by the Agency that are associated with review and issuance of the permit, including, but not limited to, costs associated with public hearings and the review of permit applications. Once a permit is issued, the permittee shall be liable to the Agency for all reasonable and documented costs incurred by the Agency that are associated with inspections and other oversight of the carbon dioxide sequestration site. Persons liable for costs under this subsection (d) must pay the costs upon invoicing, or other request or demand for payment, by the Agency. Costs for which a person is liable under this subsection (d) are in addition to any other fees, penalties, or other relief provided under this Act or any other law.

Moneys collected under this subsection (d) shall be deposited into the Environmental Protection Permit and Inspection Fund established under Section 22.8 of this Act. The Agency may adopt rules relating to the collection of costs due under this subsection (d).

(e) The Agency shall not issue a permit or permit modification for the underground injection of carbon dioxide unless all costs for which the permittee is liable under subsection (d) of this Section have been paid.

(f) No person shall fail or refuse to pay costs for which the person is liable under subsection (d) of this Section.
(Source: P.A. 97-96, eff. 7-13-11; 97-239, eff. 8-2-11.)

(415 ILCS 5/13.8)

Sec. 13.8. Algicide permits. No person shall be required to obtain a permit from the Agency to apply a commercially available algicide, such as copper sulfate or a copper sulfate solution, in accordance with the instructions of its manufacturer, to a body of water that: (i) is located wholly on private property, (ii) is not a water of the United States for purposes of the Federal Water Pollution Control Act, and (iii) is not used as a community water supply source.
(Source: P.A. 100-802, eff. 8-10-18.)

(415 ILCS 5/13.9)

Sec. 13.9. Mahomet Aquifer natural gas storage study.

(a) Subject to appropriation, the Prairie Research Institute shall:

(1) use remote sensing technologies, such as helicopter-based time domain electromagnetics, post-processing methods, and geologic modeling software, to examine, characterize, and prepare three-dimensional models of the unconsolidated geologic materials overlying any underground natural gas storage facility located within the boundaries of the Mahomet Aquifer; and

(2) to the extent possible, identify within those unconsolidated geologic materials potential structures and migration pathways for natural gas that may be released from the underground natural gas storage facility.

(b) For purposes of this Section, "underground natural gas storage facility" has the meaning provided in Section 5 of the

Illinois Underground Natural Gas Storage Safety Act.
(Source: P.A. 101-573, eff. 1-1-20.)

(415 ILCS 5/Tit. IV heading)

TITLE IV: PUBLIC WATER SUPPLIES

(415 ILCS 5/14) (from Ch. 111 1/2, par. 1014)

Sec. 14. The General Assembly finds that state supervision of public water supplies is necessary in order to protect the public from disease and to assure an adequate supply of pure water for all beneficial uses.

It is the purpose of this Title to assure adequate protection of public water supplies.
(Source: P.A. 76-2429.)

(415 ILCS 5/14.1) (from Ch. 111 1/2, par. 1014.1)

Sec. 14.1. Community water supply; minimum setback zone. A minimum setback zone is established for the location of each new community water supply well as follows:

(a) No new community water supply well may be located within 200 feet of any potential primary or potential secondary source or any potential route.

(b) No new community water supply well deriving water from fractured or highly permeable bedrock or from an unconsolidated and unconfined sand and gravel formation may be located within 400 feet of any potential primary or potential secondary source or any potential route. Such 400 foot setback is not applicable to any new community water supply well where the potential primary or potential secondary source is located within a site for which certification is currently in effect pursuant to Section 14.5.

(c) Nothing in this Section shall affect any location and construction requirement imposed in Section 6 of the "Illinois Water Well Construction Code", approved August 20, 1965, as amended, and the regulations promulgated thereunder.

(d) For the purposes of this Section, a community water supply well is "new" if it is constructed after September 24, 1987.

(e) Nothing in this Section shall affect the minimum distance requirements for new community water supply wells relative to common sources of sanitary pollution as specified by rules adopted under Section 17 of this Act.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/14.2) (from Ch. 111 1/2, par. 1014.2)

Sec. 14.2. New potential source or route; minimum setback zone. A minimum setback zone is established for the location of each new potential source or new potential route as follows:

(a) Except as provided in subsections (b), (c) and (h) of this Section, no new potential route or potential primary source or potential secondary source may be placed within 200 feet of any existing or permitted community water supply well or other potable water supply well.

(b) The owner of a new potential primary source or a potential secondary source or a potential route may secure a waiver from the requirement of subsection (a) of this Section for a potable water supply well other than a community water supply well. A written request for a waiver shall be made to the owner of the water well and the Agency. Such request shall identify the new or proposed potential source or potential route, shall generally describe the possible effect of such

potential source or potential route upon the water well and any applicable technology-based controls which will be utilized to minimize the potential for contamination, and shall state whether, and under what conditions, the requestor will provide an alternative potable water supply. Waiver may be granted by the owner of the water well no less than 90 days after receipt of the request unless prior to such time the Agency notifies the well owner that it does not concur with the request.

The Agency shall not concur with any such request which fails to accurately describe reasonably foreseeable effects of the potential source or potential route upon the water well or any applicable technology-based controls. Such notification by the Agency shall be in writing, and shall include a statement of reasons for the nonconcurrence. Waiver of the minimum setback zone established under subsection (a) of this Section shall extinguish the water well owner's rights under Section 6b of the Illinois Water Well Construction Code but shall not preclude enforcement of any law regarding water pollution. If the owner of the water well has not granted a waiver within 120 days after receipt of the request or the Agency has notified the owner that it does not concur with the request, the owner of a potential source or potential route may file a petition for an exception with the Board and the Agency pursuant to subsection (c) of this Section.

No waiver under this Section is required where the potable water supply well is part of a private water system as defined in the Illinois Groundwater Protection Act, and the owner of such well will also be the owner of a new potential secondary source or a potential route. In such instances, a prohibition of 75 feet shall apply and the owner shall notify the Agency of the intended action so that the Agency may provide information regarding the potential hazards associated with location of a potential secondary source or potential route in close proximity to a potable water supply well.

(c) The Board may grant an exception from the setback requirements of this Section and subsection (e) of Section 14.3 to the owner of a new potential route, a new potential primary source other than landfilling or land treating, or a new potential secondary source. The owner seeking an exception with respect to a community water supply well shall file a petition with the Board and the Agency. The owner seeking an exception with respect to a potable water supply well other than a community water supply well shall file a petition with the Board and the Agency, and set forth therein the circumstances under which a waiver has been sought but not obtained pursuant to subsection (b) of this Section. A petition shall be accompanied by proof that the owner of each potable water supply well for which setback requirements would be affected by the requested exception has been notified and been provided with a copy of the petition. A petition shall set forth such facts as may be required to support an exception, including a general description of the potential impacts of such potential source or potential route upon groundwaters and the affected water well, and an explanation of the applicable technology-based controls which will be utilized to minimize the potential for contamination of the potable water supply well.

The Board shall grant an exception, whenever it is found upon presentation of adequate proof, that compliance with the setback requirements of this Section would pose an arbitrary and unreasonable hardship upon the petitioner, that the petitioner will utilize the best available technology controls economically achievable to minimize the likelihood of contamination of the potable water supply well, that the maximum feasible alternative setback will be utilized, and that the location of such potential source or potential route will not constitute a

significant hazard to the potable water supply well.

The Board shall adopt procedural rules governing requests for exceptions under this subsection. The rulemaking provisions of Title VII of this Act and of Section 5-35 of the Illinois Administrative Procedure Act shall not apply to such rules. A decision made by the Board pursuant to this subsection shall constitute a final determination.

The granting of an exception by the Board shall not extinguish the water well owner's rights under Section 6b of the Illinois Water Well Construction Code in instances where the owner has elected not to provide a waiver pursuant to subsection (b) of this Section.

(d) Except as provided in subsections (c) and (h) of this Section and Section 14.5, no new potential route or potential primary source or potential secondary source may be placed within 400 feet of any existing or permitted community water supply well deriving water from an unconfined shallow fractured or highly permeable bedrock formation or from an unconsolidated and unconfined sand and gravel formation. The Agency shall notify the owner and operator of each well which is afforded this setback protection and shall maintain a directory of all community water supply wells to which the 400 foot minimum setback zone applies.

(e) The minimum setback zones established under subsections (a) and (b) of this Section shall not apply to new common sources of sanitary pollution as specified pursuant to Section 17 and the regulations adopted thereunder by the Agency; however, no such common sources may be located within the applicable minimum distance from a community water supply well specified by such regulations.

(f) Nothing in this Section shall be construed as limiting the power of any county or municipality to adopt ordinances which are consistent with but not more stringent than the prohibitions herein.

(g) Nothing in this Section shall preclude any arrangement under which the owner or operator of a new source or route does the following:

(1) purchases an existing water supply well and attendant property with the intent of eventually abandoning or totally removing the well;

(2) replaces an existing water supply well with a new water supply of substantially equivalent quality and quantity as a precondition to locating or constructing such source or route;

(3) implements any other arrangement which is mutually agreeable with the owner of a water supply well; or

(4) modifies the on-site storage capacity at an agrichemical facility such that the volume of pesticide storage does not exceed 125% of the available capacity in existence on April 1, 1990, or the volume of fertilizer storage does not exceed 150% of the available capacity in existence on April 1, 1990; provided that a written endorsement for an agrichemical facility permit is in effect under Section 39.4 of this Act and the maximum feasible setback is maintained. This on-site storage capacity includes mini-bulk pesticides, package agrichemical storage areas, liquid or dry fertilizers, and liquid or dry pesticides.

(h) A new potential route, which is an excavation for stone, sand or gravel and which becomes active on lands which were acquired or were being held as mineral reserves prior to September 24, 1987, shall only be subject to the setback requirements of subsections (a) and (d) of this Section with respect to any community water supply well, non-community water

system well, or semi-private water system well in existence prior to January 1, 1988.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/14.3) (from Ch. 111 1/2, par. 1014.3)

Sec. 14.3. Community water supply; maximum setback zone. A maximum setback zone may be established for a community water supply well as follows:

(a) Owners of community water supplies which utilize any water well, or any county or municipality served by any community water supply well, may determine the lateral area of influence of the well under normal operational conditions. The Agency shall adopt procedures by which such determinations may be made including, where appropriate, pumping tests and estimation techniques.

(b) Where the results of any determination made pursuant to subsection (a) of this Section disclose that the distance from the well to the outermost boundary of the lateral area of influence of the well under normal operational conditions exceeds the radius of the minimum setback zone established for that well pursuant to Section 14.2, any county or municipality served by such water supply may in writing request the Agency to review and confirm the technical adequacy of such determination. The Agency shall, within 90 days of the request, notify the county or municipality whether the determination is technically adequate for describing the outer boundary of drawdown of the affected groundwater by the well under normal operational conditions. Any action by the Agency hereunder shall be in writing and shall constitute a final determination of the Agency.

(c) Upon receipt of Agency confirmation of the technical adequacy of such determination, the county or municipality may, after notice and opportunity for comment, adopt an ordinance setting forth the location of each affected well and specifying the boundaries of a maximum setback zone, which boundaries may be irregular. In no event, however, shall any portion of such a boundary be in excess of 1,000 feet from the wellhead, except as provided by subsection (f) of this Section. Such ordinance shall include the area within the applicable minimum setback zone and shall incorporate requirements which are consistent with but not more stringent than the prohibitions of this Act and the regulations promulgated by the Board under Section 14.4, except as provided by subsection (f) of this Section. Upon adoption, the county or municipality shall provide a copy of the ordinance to the Agency. Any county or municipality which fails to adopt such an ordinance within 2 years of receipt of Agency confirmation of technical adequacy may not proceed under the authority of this Section without obtaining a new confirmation of the technical adequacy pursuant to subsection (b) of this Section.

(d) After July 1, 1989, and upon written notice to the county or municipality, the Agency may propose to the Board a regulation establishing a maximum setback zone for any well subject to this Section. Such proposal shall be based upon all reasonably available hydrogeologic information, include the justification for expanding the zone of wellhead protection, and specify the boundaries of such zone, no portion of which boundaries shall be in excess of 1,000 feet from the wellhead. Such justification may include the need to protect a sole source of public water supply or a highly vulnerable source of groundwater, or an Agency finding that the presence of potential primary or potential secondary sources or potential routes represents a significant hazard to the public health or the environment. The Agency may proceed with the filing of such a

proposal unless the county or municipality, within 30 days of the receipt of the written notice, files a written request for a conference with the Agency. Upon receipt of such a request, the Agency shall schedule a conference to be held within 90 days thereafter. At the conference, the Agency shall inform the county or municipality regarding the proposal. Within 30 days after the conference, the affected unit of local government may provide written notice to the Agency of its intent to establish a maximum setback zone in lieu of the Agency acting on a proposal. Upon receipt of such a notice of intent, the Agency may not file a proposal with the Board for a period of 6 months. Rulemaking proceedings initiated by the Agency under this subsection shall be conducted by the Board pursuant to Title VII of this Act, except that subsection (b) of Section 27 shall not apply.

Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act. Nothing in this subsection shall limit the right of any person to participate in rulemaking proceedings conducted by the Board under this subsection.

(e) Except as provided in subsection (c) of Section 14.2, no new potential primary source shall be placed within the maximum setback zone established for any community water supply well pursuant to subsection (c) or (d) of this Section. Nothing in this subsection shall be construed as limiting the power of any county or municipality to adopt ordinances which are consistent with but not more stringent than the prohibition as stated herein.

(f) If an active community water supply well is withdrawing groundwater from within the alluvial deposits and is located within 1000 feet of public waters, the boundaries of a maximum setback zone adopted by ordinance pursuant to subsection (c) may be established to a distance of 2,500 feet from the wellhead. No new potential route shall be placed, operated or utilized within the maximum setback zone established for any community water supply well pursuant to this subsection. Restrictions provided in subsection (e) shall not be applied beyond 1,000 feet from the wellhead for maximum setback zones adopted pursuant to this subsection. An ordinance which creates a maximum setback zone as described by this subsection shall also be consistent with subsections (a), (b) and (c) of this Section, including incorporation of requirements which are consistent with but no more stringent than the prohibitions of this Act. For purposes of this subsection, the term "public waters" means public waters as defined in Section 18 of the Rivers, Lakes, and Streams Act, as now or hereafter amended.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/14.4) (from Ch. 111 1/2, par. 1014.4)

Sec. 14.4. Groundwater rules.

(a) No later than January 1, 1989, the Agency, after consultation with the Interagency Coordinating Committee on Groundwater and the Groundwater Advisory Council, shall propose regulations to the Board prescribing standards and requirements for the following activities:

(1) landfilling, land treating, surface impounding or piling of special waste and other wastes which could cause contamination of groundwater and which are generated on the site, other than hazardous, livestock and landscape waste, and construction and demolition debris;

(2) storage of special waste in an underground storage tank for which federal regulatory requirements for the protection of groundwater are not applicable;

(3) storage and related handling of pesticides and

fertilizers at a facility for the purpose of commercial application;

(4) storage and related handling of road oils and de-icing agents at a central location; and

(5) storage and related handling of pesticides and fertilizers at a central location for the purpose of distribution to retail sales outlets.

In preparing such regulation, the Agency shall provide as it deems necessary for more stringent provisions for those activities enumerated in this subsection which are not already in existence. Any activity for which such standards and requirements are proposed may be referred to as a new activity. For the purposes of this Section, the term "commercial application" shall not include the use of pesticides or fertilizers in a manner incidental to the primary business activity.

(b) No later than October 1, 1993, the Board shall promulgate appropriate regulations for existing activities. In promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) appropriate programs for water quality monitoring;

(2) reporting, recordkeeping and remedial response measures;

(3) appropriate technology-based measures for pollution control; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any existing activity which is located:

(A) within a setback zone regulated by this Act, other than an activity located on the same site as a non-community water system well and for which the owner is the same for both the activity and the well; or

(B) within a regulated recharge area as delineated by Board regulation, provided that:

(i) the boundary of the lateral area of influence of a community water supply well located within the recharge area includes such activity therein;

(ii) the distance from the wellhead of the community water supply to the activity does not exceed 2500 feet; and

(iii) the community water supply well was in existence prior to January 1, 1988.

In addition, the Board shall ensure that the promulgated regulations are consistent with and not pre-emptive of the certification system provided by Section 14.5. The Board shall modify the regulations adopted under this subsection to provide an exception for existing activities subject to Section 14.6.

(c) Concurrently with the action mandated by subsection (a), the Agency shall evaluate, with respect to the protection of groundwater, the adequacy of existing federal and State regulations regarding the disposal of hazardous waste and the offsite disposal of special and municipal wastes. The Agency shall then propose, as it deems necessary, additional regulations for such new disposal activities as may be necessary to achieve a level of groundwater protection that is consistent with the regulations proposed under subsection (a) of this Section.

(d) Following receipt of proposed regulations submitted by the Agency pursuant to subsection (a) of this Section, the Board shall promulgate appropriate regulations for new activities. In

promulgating these regulations, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) appropriate programs for water quality monitoring, including, where appropriate, notification limitations to trigger preventive response activities;

(2) design practices and technology-based measures appropriate for minimizing the potential for groundwater contamination;

(3) reporting, recordkeeping and remedial response measures; and

(4) requirements for closure or discontinuance of operations.

Such regulations as are promulgated pursuant to this subsection shall be for the express purpose of protecting groundwaters. The applicability of such regulations shall be limited to any new activity which is to be located within a setback zone regulated by this Act, or which is to be located within a regulated recharge area as delineated by Board regulation. In addition, the Board shall ensure that the promulgated regulations are consistent with and not pre-emptive of the certification system provided by Section 14.5. The Board shall modify the regulations adopted under this subsection to provide an exception for new activities subject to Section 14.6.

(e) Nothing in this Section shall be construed as prohibiting any person for whom regulations are promulgated by the Board pursuant to subsection (b) or (c) of this Section, from proposing and obtaining, concurrently with the regulations proposed by the Agency pursuant to subsection (a) of this Section, a rule specific to individual persons or sites pursuant to Title VII of this Act which codifies alternative groundwater protection methods that provide substantially equivalent protection for community water supplies.

(f) Nothing in this Section shall be construed as limiting the power of any county or municipality to adopt ordinances, which are consistent with but not more stringent than the regulations adopted by the Board pursuant to this Section, for application of standards and requirements within such setback zones as are provided by this Act.

(g) The Agency shall prepare a groundwater protection regulatory agenda for submittal to the Interagency Coordinating Committee on Groundwater and the Groundwater Advisory Council. In preparing this agenda, the Agency shall consider situations where gaps may exist in federal or State regulatory protection for groundwater, or where further refinements could be necessary to achieve adequate protection of groundwater.

(h) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act.

(i) The Board's rulemaking with respect to subsection (a)(3) of this Section shall take into account the relevant aspects of the Department of Agriculture's Part 255 regulations which specify containment rules for agrichemical facilities.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/14.5) (from Ch. 111 1/2, par. 1014.5)

Sec. 14.5. (a) The Agency shall administer a certification system for sites which represent a minimal hazard with respect to contamination of groundwaters by potential primary or potential secondary sources. No later than January 1, 1988, the Agency shall develop and make available a minimal hazard certification form and guidelines for the use and management of containers and above ground tanks, and for the piling of waste.

(b) After January 1, 1988, the owner of any site which would

otherwise be subject to the provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder may provide a certification of minimal hazard to the Agency if the following conditions are met:

(1) no on-site landfilling, land treating, or surface impounding of waste, other than landscape waste or construction and demolition debris, has taken place and such circumstance will continue;

(2) no on-site piles of special or hazardous waste are present and such circumstance will continue, and any piling of other wastes which could cause contamination of groundwater will be consistent with guidelines developed by the Agency;

(3) no underground storage tanks are present on the site and such circumstances will continue;

(4) use and management of containers and above ground tanks will be consistent with guidelines developed by the Agency;

(5) no on-site release of any hazardous substance or petroleum has taken place which was of sufficient magnitude to contaminate groundwaters;

(6) no more than 100 gallons of either pesticides or organic solvents, or 10,000 gallons of any hazardous substances, or 30,000 gallons of petroleum, will be present at any time; and

(7) notice has been given to the owner of each community water supply well within 1,000 feet of the site.

(c) Upon receipt of a certification pursuant to subsection (b) of this Section the Agency shall, within 90 days, take one of the following actions:

(1) notify the owner of the site in writing that the certification is complete and adequate;

(2) notify the owner of the site in writing that the certification is not adequate, including a statement of the reasons therefor;

(3) notify the owner of the site in writing that a site inspection will be held within 120 days, and that following such inspection but still within the 120 day period further action will be taken pursuant to item (1) or (2) of this subsection; or

(4) notify in writing the owner of the site that pursuant to Section 17.1 a county or municipality is conducting a groundwater protection needs assessment or the Agency is conducting a well site survey which encompasses the site for which certification is being processed, and specify a time period, not to exceed a total of 180 days from the date of the notice, for consideration of the findings from such assessment or survey and by which further action will be taken pursuant to item (1) or (2) of this subsection.

A certification is not adequate if it fails to address each of the conditions required to be met by subsection (b) of this Section, or if the Agency possesses information which reasonably suggests that any statement made in the certification is inaccurate or incomplete. Action under item (1) or (2) of this subsection shall constitute a final determination of the Agency.

(d) When a certification has been provided with respect to which the Agency has made a finding of adequacy or has failed to act in a timely manner pursuant to subsection (c) of this Section, the site shall not be subject to the provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder for the following time periods:

(1) one year, if the Agency has failed to act in a

timely manner pursuant to subsection (c) of this Section, during which time the owner must recertify to continue such status;

(2) three years, if the site is located within a minimum or maximum setback zone, during which time the owner must recertify to continue such status;

(3) five years, if the site is located within a regulated recharge area, during which time the owner must recertify to continue such status; or

(4) 90 days past the time when a change of ownership takes place, during which time the new owner must recertify to continue such status.

(e) During the effective period of a certification, the owner of the site shall maintain compliance with the conditions specified in subsection (b) of this Section. Any failure by the owner to maintain such compliance shall be just cause for decertification by the Agency. Such action may only be taken after the Agency has provided the owner with a written notice which identifies the noncompliance and specifies a 30 day period during which a written response may be provided by the owner. Such response may describe any actions taken by the owner which relate to the conditions of certification. If such response is deficient or untimely, the Agency shall serve notice upon the owner that the site has been decertified and is subject to the applicable provisions of subsection (d) of Section 14.2 or Section 14.4 and regulations adopted thereunder. Such notification shall constitute a final determination of the Agency.

(f) The Agency shall maintain a master listing, indexed by county, of those sites for which certifications are in effect. Upon the establishment of a regional planning committee pursuant to Section 17.2, the Agency shall provide a copy of the pertinent portions of such listing to such committee on a quarterly basis. The Agency shall also make copies of such listing available to units of local government and the public upon request.

(g) The Agency may enter into a written delegation agreement with any county or municipality, which has adopted an ordinance consistent with Section 14.2 or 14.3, to administer the provisions of this Section. Such delegation agreements shall require that the work to be performed thereunder shall be in accordance with criteria established by the Agency, be subject to periodic review by the Agency, and shall include such financial and program auditing by the Agency as may be necessary.

(Source: P.A. 91-357, eff. 7-29-99.)

(415 ILCS 5/14.6) (from Ch. 111 1/2, par. 1014.6)

Sec. 14.6. Agrichemical facilities.

(a) Notwithstanding the provisions of Section 14.4, groundwater protection for storage and related handling of pesticides and fertilizers at a facility for the purpose of commercial application or at a central location for the purpose of distribution to retail sales outlets may be provided by adherence to the provisions of this Section. For any such activity to be subject to this Section, the following action must be taken by an owner or operator:

(1) with respect to agrichemical facilities, as defined by the Illinois Pesticide Act, the Illinois Fertilizer Act and regulations adopted thereunder, file a written notice of intent to be subject to the provisions of this Section with the Department of Agriculture by January 1, 1993, or within 6 months after the date on which a

maximum setback zone is established or a regulated recharge area regulation is adopted that affects such a facility;

(2) with respect to lawn care facilities that are subject to the containment area provisions of the Lawn Care Products Application and Notice Act and its regulations, file a written notice of intent to be subject to the provisions of this Section with the Department of Agriculture by January 1, 1993, or within 6 months after the date on which a maximum setback zone is established or a regulated recharge area regulation is adopted that affects such a facility;

(3) with respect to a central distribution location that is not an agrichemical facility, certify intent to be subject to the provisions of this Section on the appropriate license or renewal application form submitted to the Department of Agriculture; or

(4) with respect to any other affected facility, certify intent to be subject to the provisions of this Section on the appropriate renewal application forms submitted to the Department of Agriculture or other appropriate agency.

An owner or operator of a facility that takes the action described in this subsection shall be subject to the provisions of this Section and shall not be regulated under the provisions of Section 14.4, except as provided in subsection (d) of this Section. The Department of Agriculture or other appropriate agency shall provide copies of the written notices and certifications to the Agency. For the purposes of this subsection, the term "commercial application" shall not include the use of pesticides or fertilizers in a manner incidental to the primary business activity.

(b) The Agency and Department of Agriculture shall cooperatively develop a program for groundwater protection for designated facilities or sites consistent with the activities specified in subsection (a) of this Section. In developing such a program, the Agency and the Department of Agriculture shall consult with affected interests and take into account relevant information. Based on such agreed program, the Department of Agriculture shall adopt appropriate regulatory requirements for the designated facilities or sites and administer a program. At a minimum, the following considerations must be adequately addressed as part of such program:

(1) a facility review process, using available information when appropriate, to determine those sites where groundwater monitoring will be implemented;

(2) requirements for groundwater quality monitoring for sites identified under item (1);

(3) reporting, response, and operating practices for the types of designated facilities; and

(4) requirements for closure or discontinuance of operations.

(c) The Agency may enter into a written agreement with any State agency to operate a cooperative program for groundwater protection for designated facilities or sites consistent with the activities specified in subparagraph (4) of subsection (a) of this Section. Such State agency shall adopt appropriate regulatory requirements for the designated facilities or sites and necessary procedures and practices to administer the program.

(d) The Agency shall ensure that any facility that is subject to this Section is in compliance with applicable provisions as specified in subsection (b) or (c) of this Section. To fulfill this responsibility, the Agency may rely on information provided by another State agency or other

information that is obtained on a direct basis. If a facility is not in compliance with the applicable provisions, or a deficiency in the execution of a program affects such a facility, the Agency may so notify the facility of this condition and shall provide 30 days for a written response to be filed. The response may describe any actions taken by the owner which relate to the condition of noncompliance. If the response is deficient or untimely, the Agency shall serve notice upon the owner that the facility is subject to the applicable provisions of Section 14.4 of this Act and regulations adopted thereunder.

(e) (Blank.)

(f) After January 1, 1994, and before one year after the date on which a maximum setback zone is established or a regulated recharge area regulation is adopted that affects a facility subject to the provisions of this Section, an owner or operator of such a facility may withdraw the notice given under subsection (a) of this Section by filing a written withdrawal statement with the Department of Agriculture. Within 45 days after such filing and after consultation with the Agency, the Department of Agriculture shall provide written confirmation to the owner or operator that the facility is no longer subject to the provisions of this Section and must comply with the applicable provisions of Section 14.4 within 90 days after receipt of the confirmation. The Department of Agriculture shall provide copies of the written confirmations to the Agency.

(g) On or after August 11, 1994, an owner or operator of an agrichemical facility that is subject to the provisions of Section 14.4 and regulations adopted thereunder solely because of the presence of an on-site potable water supply well that is not a non-community water supply may file a written notice with the Department of Agriculture by January 1, 1995 declaring the facility to be subject to the provisions of this Section. When that action is taken, the regulatory requirements of subsection (b) of this Section shall be applicable beginning January 1, 1995. Beginning on January 1, 1995, such facilities shall be subject to either Section 14.4 or this Section depending on the action taken under this subsection. An owner or operator of an agrichemical facility that is subject to this Section because a written notice was filed under this subsection shall do all of the following:

(1) File a facility review report with the Department of Agriculture on or before February 28, 1995 consistent with the regulatory requirements of subsection (b) of this Section.

(2) Implement an approved monitoring program within 120 days of receipt of the Department of Agriculture's determination or a notice to proceed from the Department of Agriculture. The monitoring program shall be consistent with the requirements of subsection (b) of this Section.

(3) Implement applicable operational and management practice requirements and submit a permit application or modification to meet applicable structural provisions consistent with those in subsection (b) of this Section on or before July 1, 1995 and complete construction of applicable structural requirements on or before January 1, 1996.

Notwithstanding the provisions of this subsection, an owner or operator of an agrichemical facility that is subject to the provisions of Section 14.4 and regulations adopted thereunder solely because of the presence of an on-site private potable water supply well may file a written notice with the Department of Agriculture before January 1, 1995 requesting a release from the provisions of Section 14.4 and this Section. Upon receipt of a request for release, the Department of Agriculture shall

conduct a site visit to confirm the private potable use of the on-site well. If private potable use is confirmed, the Department shall provide written notice to the owner or operator of the agrichemical facility that the facility is released from compliance with the provisions of Section 14.4 and this Section. If private potable use is not confirmed, the Department of Agriculture shall provide written notice to the owner or operator that a release cannot be given. No action in this subsection shall be precluded by the on-site non-potable use of water from an on-site private potable water supply well.
(Source: P.A. 92-113, eff. 7-20-01; 92-574, eff. 6-26-02.)

(415 ILCS 5/14.7)

Sec. 14.7. Preservation of community water supplies.

(a) The Agency shall adopt rules governing certain corrosion prevention projects carried out on community water supplies. Those rules shall not apply to buried pipelines including, but not limited to, pipes, mains, and joints. The rules shall exclude routine maintenance activities of community water supplies including, but not limited to, the use of protective coatings applied by the owner's utility personnel during the course of performing routine maintenance activities. Routine maintenance activities shall include, but not be limited to, the painting of fire hydrants; routine over-coat painting of interior and exterior building surfaces such as floors, doors, windows, and ceilings; and routine touch-up and over-coat application of protective coatings typically found on water utility pumps, pipes, tanks, and other water treatment plant appurtenances and utility owned structures. Those rules shall include:

(1) standards for ensuring that community water supplies carry out corrosion prevention and mitigation methods according to corrosion prevention industry standards adopted by the Agency;

(2) requirements that community water supplies use:

(A) protective coatings personnel to carry out corrosion prevention and mitigation methods on exposed water treatment tanks, exposed non-concrete water treatment structures, exposed water treatment pipe galleys; exposed pumps; and generators; the Agency shall not limit to protective coatings personnel any other work relating to prevention and mitigation methods on any other water treatment appurtenances where protective coatings are utilized for corrosion control and prevention to prolong the life of the water utility asset; and

(B) inspectors to ensure that best practices and standards are adhered to on each corrosion prevention project; and

(3) standards to prevent environmental degradation that might occur as a result of carrying out corrosion prevention and mitigation methods including, but not limited to, standards to prevent the improper handling and containment of hazardous materials, especially lead paint, removed from the exterior of a community water supply.

In adopting rules under this subsection (a), the Agency shall obtain input from corrosion industry experts specializing in the training of personnel to carry out corrosion prevention and mitigation methods.

(b) As used in this Section:

"Community water supply" has the meaning ascribed to that term in Section 3.145 of this Act.

"Corrosion" means a naturally occurring phenomenon commonly defined as the deterioration of a metal that results from a

chemical or electrochemical reaction with its environment.

"Corrosion prevention and mitigation methods" means the preparation, application, installation, removal, or general maintenance as necessary of a protective coating system, including any or more of the following:

(A) surface preparation and coating application on the exterior or interior of a community water supply; or

(B) shop painting of structural steel fabricated for installation as part of a community water supply.

"Corrosion prevention project" means carrying out corrosion prevention and mitigation methods. "Corrosion prevention project" does not include clean-up related to surface preparation.

"Protective coatings personnel" means personnel employed or retained by a contractor providing services covered by this Section to carry out corrosion prevention or mitigation methods or inspections.

(c) (Blank).

(d) Each contract procured pursuant to the Illinois Procurement Code for the provision of services covered by this Section (1) shall comply with applicable provisions of the Illinois Procurement Code and (2) shall include provisions for reporting participation by minority persons, as defined by Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; women, as defined by Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; and veterans, as defined by Section 45-57 of the Illinois Procurement Code, in apprenticeship and training programs in which the contractor or his or her subcontractors participate. The requirements of this Section do not apply to an individual licensed under the Professional Engineering Practice Act of 1989 or the Structural Engineering Act of 1989.
(Source: P.A. 100-391, eff. 8-25-17; 101-226, eff. 6-1-20.)

(415 ILCS 5/15) (from Ch. 111 1/2, par. 1015)

Sec. 15. Plans and specifications; demonstration of capability; record retention.

(a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

(b) All new public water supplies established after October 1, 1999 shall demonstrate technical, financial, and managerial capacity as a condition for issuance of a construction or operation permit by the Agency or its designee. The demonstration shall be consistent with the technical, financial, and managerial provisions of the federal Safe Drinking Water Act (P.L. 93-523), as now or hereafter amended. The Agency is authorized to adopt rules in accordance with the Illinois Administrative Procedure Act to implement the purposes of this subsection. Such rules must take into account the need for the facility, facility size, sophistication of treatment of the water supply, and financial requirements needed for operation of the facility.

(c) Except as otherwise provided under Board rules, owners and operators of community water systems must maintain all

records, reports, and other documents related to the operation of the community water system for a minimum of 10 years. Documents required to be maintained under this subsection (c) include, but are not limited to, all billing records and other documents related to the purchase of water from other community water systems. Documents required to be maintained under this subsection (c) must be maintained on the premises of the community water system, or at a convenient location near its premises, and must be made available to the Agency for inspection and copying during normal business hours.
(Source: P.A. 96-603, eff. 8-24-09.)

(415 ILCS 5/16) (from Ch. 111 1/2, par. 1016)

Sec. 16. Plans and specifications submitted pursuant to Section 15 of this Act shall be approved if determined by the Agency to be satisfactory from the standpoint of sanitary quality, mineral quality, and adequacy of the water supply.
(Source: P.A. 76-2429.)

(415 ILCS 5/16.1) (from Ch. 111 1/2, par. 1016.1)

Sec. 16.1. Permit fees.

(a) Except as provided in subsection (f), the Agency shall collect a fee in the amount set forth in subsection (d) from: (1) each applicant for a construction permit under this Title, or regulations adopted hereunder, to install or extend water main; and (2) each person who submits as-built plans under this Title, or regulations adopted hereunder, to install or extend water main.

(b) Except as provided in subsection (c), each applicant or person required to pay a fee under this Section shall submit the fee to the Agency along with the permit application or as-built plans. The Agency shall deny any construction permit application for which a fee is required under this Section that does not contain the appropriate fee. The Agency shall not approve any as-built plans for which a fee is required under this Section that do not contain the appropriate fee.

(c) Each applicant for an emergency construction permit under this Title, or regulations adopted hereunder, to install or extend a water main shall submit the appropriate fee to the Agency within 10 calendar days from the date of issuance of the emergency construction permit.

(d) The amount of the fee is as follows:

(1) $240 if the construction permit application is to install or extend water main that is more than 200 feet, but not more than 1,000 feet in length;

(2) $720 if the construction permit application is to install or extend water main that is more than 1,000 feet but not more than 5,000 feet in length;

(3) $1200 if the construction permit application is to install or extend water main that is more than 5,000 feet in length.

(e) Prior to a final Agency decision on a permit application for which a fee has been paid under this Section, the applicant may propose modifications to the application in accordance with this Act and regulations adopted hereunder without any additional fee becoming due unless the proposed modifications cause the length of water main to increase beyond the length specified in the permit application before the modifications. If the modifications cause such an increase and the increase results in additional fees being due under subsection (d), the applicant shall submit the additional fee to the Agency with the proposed modifications.

(f) No fee shall be due under this Section from (1) any department, agency or unit of State government for installing or

extending a water main; (2) any unit of local government with which the Agency has entered into a written delegation agreement under Section 4 of this Act which allows such unit to issue construction permits under this Title, or regulations adopted hereunder, for installing or extending a water main; or (3) any unit of local government or school district for installing or extending a water main where both of the following conditions are met: (i) the cost of the installation or extension is paid wholly from monies of the unit of local government or school district, State grants or loans, federal grants or loans, or any combination thereof; and (ii) the unit of local government or school district is not given monies, reimbursed or paid, either in whole or in part, by another person (except for State grants or loans or federal grants or loans) for the installation or extension.

(g) The Agency may establish procedures relating to the collection of fees under this Section. The Agency shall not refund any fee paid to it under this Section.

(h) For the purposes of this Section, the term "water main" means any pipe that is to be used for the purpose of distributing potable water which serves or is accessible to more than one property, dwelling or rental unit, and that is exterior to buildings.

(i) Notwithstanding any other provision of this Act, the Agency shall, not later than 45 days following the receipt of both an application for a construction permit and the fee required by this Section, either approve that application and issue a permit or tender to the applicant a written statement setting forth with specificity the reasons for the disapproval of the application and denial of a permit. If there is no final action by the Agency within 45 days after the filing of the application for a permit, the applicant may deem the permit issued.

(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/17) (from Ch. 111 1/2, par. 1017)

Sec. 17. Rules; chlorination requirements.

(a) The Board may adopt regulations governing the location, design, construction, and continuous operation and maintenance of public water supply installations, changes or additions which may affect the continuous sanitary quality, mineral quality, or adequacy of the public water supply, pursuant to Title VII of this Act.

(b) The Agency shall exempt from any mandatory chlorination requirement of the Board any community water supply which meets all of the following conditions:

(1) The population of the community served is not more than 5,000;

(2) Has as its only source of raw water one or more properly constructed wells into confined geologic formations not subject to contamination;

(3) Has no history of persistent or recurring contamination, as indicated by sampling results which show violations of finished water quality requirements, for the most recent five-year period;

(4) Does not provide any raw water treatment other than fluoridation;

(5) Has an active program approved by the Agency to educate water supply consumers on preventing the entry of contaminants into the water system;

(6) Has a certified operator of the proper class, or is an exempt community water supply, under the Public Water Supply Operations Act;

(7) Submits samples for microbiological analysis at

twice the frequency specified in the Board regulations; and

(8) A unit of local government seeking to exempt its public water supply from the chlorination requirement under this subsection (b) on or after September 9, 1983 shall be required to receive the approval of the voters of such local government. The proposition to exempt the community water supply from the mandatory chlorination requirement shall be placed on the ballot if the governing body of the local government adopts an ordinance or resolution directing the clerk of the local government to place such question on the ballot. The clerk shall cause the election officials to place the proposition on the ballot at the next election at which such proposition may be voted upon if a certified copy of the adopted ordinance or resolution is filed in his office at least 90 days before such election. The proposition shall also be placed on the ballot if a petition containing the signatures of at least 10% of the eligible voters residing in the local government is filed with the clerk at least 90 days before the next election at which the proposition may be voted upon. The proposition shall be in substantially the following form:

Shall the community water supply of ..... (specify the unit of local government) be exempt from the mandatory chlorination requirement of the State of Illinois?

YES

NO

If the majority of the voters of the local government voting therein vote in favor of the proposition, the community water supply of that local government shall be exempt from the mandatory chlorination requirement, provided that the other requirements under this subsection (b) are met. If the majority of the vote is against such proposition, the community water supply may not be exempt from the mandatory chlorination requirement.

Agency decisions regarding exemptions under this subsection may be appealed to the Board pursuant to the provisions of Section 40(a) of this Act.

(c) Any supply showing contamination in its distribution system (including finished water storage) may be required to chlorinate until the Agency has determined that the source of contamination has been removed and all traces of contamination in the distribution system have been eliminated. Standby chlorination equipment may be required by the Agency if a supply otherwise exempt from chlorination shows frequent or gross episodes of contamination.

(Source: P.A. 98-78, eff. 7-15-13.)

(415 ILCS 5/17.1) (from Ch. 111 1/2, par. 1017.1)

Sec. 17.1. (a) Every county or municipality which is served by a community water supply well may prepare a groundwater protection needs assessment. The county or municipality shall provide notice to the Agency regarding the commencement of an assessment. Such assessment shall consist of the following at a minimum:

(1) Evaluation of the adequacy of protection afforded to resource groundwater by the minimum setback zone and, if applicable, the maximum setback zone;

(2) Delineation, to the extent practicable, of the recharge area outside of any applicable setback zones but contained within any area over which the county or municipality has jurisdiction or control;

(3) Identification and location of potential primary and potential secondary sources and potential routes within, and if appropriate, in proximity to the delineated recharge area for each such well;

(4) Evaluation of the hazard associated with identified potential primary and potential secondary sources and potential routes contained within the recharge area specified according to subparagraph (a)(2) of this Section, taking into account the characteristics of such potential sources and potential routes, the nature and efficacy of containment measures and devices in use, the attenuative qualities of site soils in relation to the substances involved, the proximity of potential sources and potential routes and the nature, rate of flow, direction of flow and proximity of the uppermost geologic formation containing groundwater utilized by the well;

(5) Evaluation of the extent to which existing local controls provide, either directly or indirectly, some measure of groundwater protection; and

(6) Identification of practicable contingency measures, including provision of alternative drinking water supplies, which could be implemented in the event of contamination of the water supply.

(b) Upon completion of the groundwater protection needs assessment, the county or municipality shall publish, in a newspaper of general circulation within the county or municipality, notification of the completion of such assessment and of the availability of such assessment for public inspection. At a minimum, such assessment shall be available for inspection and copying, at cost, by the general public during regular business hours at the offices of such county or municipality. Information within the groundwater protection needs assessment which is claimed to be confidential, privileged or trade secret information shall be accorded protection by the county or municipality pursuant to the Freedom of Information Act, as amended. A copy of the assessment shall be filed by the county or municipality with the Agency and any applicable regional planning committee within 30 days of completion.

(c) If a county or municipality has not commenced to prepare a groundwater protection needs assessment for a community water supply which is investor owned, then said owner may notify the county or municipality in writing of its intent to prepare such an assessment. The owner may proceed with the preparation of an assessment unless the county or municipality, within 30 days of the receipt of the written notice, responds in writing that an assessment will be undertaken. Upon receipt of such a written response, the owner shall not proceed for a period of 90 days. After this period, the owner may proceed to prepare an assessment if the county or municipality has not commenced such action. The owner shall provide notice to the Agency regarding the commencement of an assessment. An assessment which is prepared by such an owner shall be done in accordance with the provisions of subsection (a) of this Section. Upon completion of the assessment, the owner shall provide copies of such assessment to the county or municipality, any applicable regional planning committee and the Agency within 30 days.

(d) The Agency shall implement a survey program for community water supply well sites. The survey program shall be organized on a priority basis so as to efficiently and effectively address areas of protective need. Each well site survey shall consist of the following at a minimum:

(1) Summary description of the geographic area within a 1,000 foot radius around the wellhead;

(2) Topographic or other map of suitable scale of

each well site denoting the location of the wellhead, the 1,000 foot radius around the wellhead, and the location of potential sources and potential routes of contamination within this zone;

(3) A summary listing of each potential source or potential route of contamination, including the name or identity and address of the facility, and a brief description of the nature of the facility; and

(4) A general geologic profile of the 1,000 foot radius around the wellhead, including depth and age of the well, construction of the casing, formations penetrated by the well and approximate thickness and extent of these formations.

(e) Upon completion of a well site survey, the Agency shall provide the county or municipality, any applicable regional planning committee and, where applicable, the owner and operator of the community water supply well, with a report which summarizes the results of the survey.

(f) Upon receipt of a notice of commencement of a groundwater protection needs assessment from a county or municipality pursuant to subsection (a), or from an owner of an investor owned community water supply pursuant to subsection (c), the Agency may determine that a well site survey is not necessary for that locale. If the county, municipality or other owner does not complete the assessment in a timely manner, then the Agency shall reconsider the need to conduct a survey.

(g) The Agency may issue an advisory of groundwater contamination hazard to a county or municipality which has not prepared a groundwater protection needs assessment and for which the Agency has conducted a well site survey. Such advisory may only be issued where the Agency determines that existing potential primary sources, potential secondary sources or potential routes identified in the survey represent a significant hazard to the public health or the environment. The Agency shall publish notice of such advisory in a newspaper of general circulation within the county or municipality and shall furnish a copy of such advisory to any applicable regional planning committee.

(h) Any county or municipality subject to subsection (a) above, but having a population of less than 25,000 or 5,000 persons, respectively, may request, upon receipt of a well site survey report, the Agency to identify those potential primary sources, potential secondary sources and potential routes which represent a hazard to the continued availability of groundwaters for public use, given the susceptibility of the groundwater recharge area to contamination. Such Agency action may serve in lieu of the groundwater protection needs assessment specified in subsection (a) of this Section. The Agency shall also inform any applicable regional planning committee regarding the findings made pursuant to this subsection.

(i) Upon request, the Agency and the Department of Natural Resources may provide technical assistance to counties or municipalities in conducting groundwater protection needs assessments.

(Source: P.A. 89-445, eff. 2-7-96.)

(415 ILCS 5/17.2) (from Ch. 111 1/2, par. 1017.2)

Sec. 17.2. (a) The Agency shall establish a regional groundwater protection planning program. The Agency, in cooperation with the Department of Natural Resources, shall designate priority groundwater protection planning regions. Such designations shall take into account the location of recharge areas that are identified and mapped by the Department of Natural Resources. Such designations may not be made until at

least 18 months after the effective date of the Illinois Groundwater Protection Act or until the completion of the mapping by the Department of Natural Resources, whichever event occurs first.

(b) The Agency shall establish a regional planning committee for each priority groundwater protection planning region. Such committee shall be appointed by the Director and shall include representatives from the Agency and other State agencies as appropriate, representatives from among the counties and municipalities in the region, representatives from among the owners or operators of public water supplies which use groundwater in the region, and at least 3 members of the general public which have an interest in groundwater protection. From among the non-State agency members, a chairperson shall be selected by a majority vote. Members of a regional planning committee shall serve for a term of 2 years.

(c) Each regional planning committee shall be responsible for the following:

(1) identification of and advocacy for region-specific groundwater protection matters;

(2) monitoring and reporting the progress made within the region regarding implementation of protection for groundwaters;

(3) maintaining a registry of instances where the Agency has issued an advisory of groundwater contamination hazard within the region;

(4) facilitating informational and educational activities relating to groundwater protection within the region; and

(5) recommending to the Agency whether there is a need for regional protection pursuant to Section 17.3. Prior to making any such recommendation, the regional planning committee shall hold at least one public meeting at a location within the region. Such meeting may be held after not less than 30 days notice is provided, and shall provide an opportunity for public comment.

(d) The Agency shall provide the regional planning committee with such supporting services as are reasonable for the performance of its duties with the exception of any review proceeding resulting from a decision made by the Agency pursuant to subsection (b) of Section 17.3.

(Source: P.A. 89-445, eff. 2-7-96.)

(415 ILCS 5/17.3) (from Ch. 111 1/2, par. 1017.3)

Sec. 17.3. (a) The Agency may propose to the Board, pursuant to Section 28, a regulation establishing the boundary for a regulated recharge area if any of the following conditions exist:

(1) the Agency has previously issued one or more advisories within the area;

(2) the Agency determines that a completed groundwater protection needs assessment demonstrates a need for regional protection; or

(3) mapping completed by the Department of Natural Resources identifies a recharge area for which protection is warranted.

(b) The Agency shall propose to the Board, pursuant to Section 28, a regulation establishing the boundary for a regulated recharge area if a regional planning committee files a petition requesting and justifying such action, unless the Agency:

(1) determines that an equivalent proposal is already pending before the Board and so notifies the petitioner within 60 days of the receipt of the petition; or

(2) provides within 120 days a written explanation of why such action is not otherwise warranted.

Such action shall constitute a final determination of the Agency.

(c) At least 60 days prior to the filing of a proposal to establish the boundary for a regulated recharge area, the Agency shall notify in writing each affected county, municipality, township, soil and water conservation district and water district, and shall publish a notice of such intended action in a newspaper of general circulation within the affected area.

(d) In proposing a boundary for a regulated recharge area under this Section the Agency shall identify each community water supply well for which protection up to 2500 feet will be provided by operation of the regulations adopted by the Board under subsection (b) of Section 14.4 relative to existing activities within the proposed regulated recharge area.

(Source: P.A. 89-445, eff. 2-7-96.)

(415 ILCS 5/17.4) (from Ch. 111 1/2, par. 1017.4)

Sec. 17.4. (a) In promulgating a regulation to establish the boundary for a regulated recharge area, the Board shall, in addition to the factors set forth in Title VII of this Act, consider the following:

(1) the adequacy of protection afforded to potable resource groundwater by any applicable setback zones;

(2) applicability of the standards and requirements promulgated pursuant to Section 14.4;

(3) refinements in the groundwater quality standards which may be appropriate for the delineated area;

(4) the extent to which the delineated area may serve as a sole source of supply for public water supplies.

(b) The Board may only promulgate a regulation which establishes the boundary for a regulated recharge area if the Board makes a determination that the boundary of the delineated area is drawn so that the natural geological or geographic features contained therein are shown to be highly susceptible to contamination over a predominant portion of the recharge area.

(c) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act.

(Source: P.A. 85-863.)

(415 ILCS 5/17.5) (from Ch. 111 1/2, par. 1017.5)

Sec. 17.5. In accordance with Section 7.2, the Board shall adopt regulations which are "identical in substance" to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 1412(b), 1414(c), 1417(a), and 1445(a) of the Safe Drinking Water Act (P.L. 93-523), as amended. The provisions and requirements of Title VII of this Act shall not apply to regulations adopted under this Section. Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to regulations adopted under this Section. However, the Board shall provide for notice and public comment before adopted rules are filed with the Secretary of State. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months.

(Source: P.A. 88-45.)

(415 ILCS 5/17.6)

Sec. 17.6. (Repealed).

(Source: P.A. 87-895. Repealed by P.A. 100-103, eff. 8-11-17.)

(415 ILCS 5/17.7) (from Ch. 111 1/2, par. 1017.7)

Sec. 17.7. Community water supply testing fee.

(a) The Agency shall collect an annual nonrefundable testing fee from each community water supply for participating in the laboratory fee program for analytical services to determine compliance with contaminant levels specified in State or federal drinking water regulations. A community water supply may commit to participation in the laboratory fee program. If the community water supply makes such a commitment, it shall commit for a period consistent with the participation requirements established by the Agency and the Community Water Supply Testing Council (Council). If a community water supply elects not to participate, it must annually notify the Agency in writing of its decision not to participate in the laboratory fee program.

(b) The Agency shall determine the fee for participating in the laboratory fee program for analytical services. The Agency may establish multi-year participation requirements for community water supplies and establish fees accordingly. The Agency shall base its annual fee determination upon the actual and anticipated costs for testing under State and federal drinking water regulations and the associated administrative costs of the Agency and the Council.

(c) Community water supplies that choose not to participate in the laboratory fee program or do not pay the fees shall have the duty to analyze all drinking water samples as required by State or federal safe drinking water regulations established after the federal Safe Drinking Water Act Amendments of 1986.

(d) There is hereby created in the State Treasury an interest-bearing special fund to be known as the Community Water Supply Laboratory Fund. All fees collected by the Agency under this Section shall be deposited into this Fund and shall be used for no other purpose except those established in this Section. In addition to any monies appropriated from the General Revenue Fund, monies in the Fund shall be appropriated to the Agency in amounts deemed necessary for laboratory testing of samples from community water supplies, and for the associated administrative expenses of the Agency and the Council.

(e) The Agency is authorized to adopt reasonable and necessary rules for the administration of this Section. The Agency shall submit the proposed rules for review by the Council before submission of the rulemaking for the First Notice under Section 5-40 of the Illinois Administrative Procedure Act.

(f) The Director shall establish a Community Water Supply Testing Council, consisting of 5 persons who are elected municipal officials, 5 persons representing community water supplies, one person representing the engineering profession, one person representing investor-owned utilities, one person representing the Illinois Association of Environmental Laboratories, and 2 persons representing municipalities and community water supplies on a statewide basis, all appointed by the Director. Beginning in 1994, the Director shall appoint the following to the Council: (i) 2 elected municipal officials, 2 community water supply representatives, and 1 investor-owned utility representative, each for a one-year term; (ii) 2 elected municipal officials and 2 community water supply representatives, each for a 2 year term; and (iii) one elected municipal official, one community water supply representative, one person representing the engineering profession, and 2 persons representing municipalities and community water supplies on a statewide basis, each for a 3 year term. As soon as possible after the effective date of this amendatory Act of the 92nd General Assembly, the Director shall appoint one person representing the Illinois Association of Environmental

Laboratories to a term of 3 years. Thereafter, the Director shall appoint successors in each position to 3 year terms. In case of a vacancy, the Director may appoint a successor to fill the remaining term of the vacancy. Members of the Council shall serve until a successor is appointed by the Director. The Council shall select from its members a chairperson and such other officers as it deems necessary. The Council shall meet at the call of the Director or the Chairperson of the Council. The Agency shall provide the Council with such supporting services as the Director and the Chairperson may designate, and members shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties. The Council shall have the following duties:

(1) to hold regular and special meetings at a time and place designated by the Director or the Chairperson of the Council;

(2) to consider appropriate means for long-term financial support of water supply testing, and to make recommendations to the Agency regarding a preferred approach;

(3) to review and evaluate the financial implications of current and future federal requirements for monitoring of public water supplies;

(4) to review and evaluate management and financial audit reports related to the testing program, and to make recommendations regarding the Agency's efforts to implement the fee system and testing provided for by this Section;

(5) to require an external audit as may be deemed necessary by the Council; and

(6) to conduct such other activities as may be deemed appropriate by the Director.

(Source: P.A. 97-220, eff. 7-28-11.)

(415 ILCS 5/17.8)

Sec. 17.8. Environmental laboratory certification assessment.

(a) The Agency shall collect an annual administrative assessment from each laboratory requesting certification for meeting the minimum standards established under the authority of subsection (n) of Section 4. The Agency also shall collect an annual certification assessment for each certification requested, as listed below. Until the Agency and the Environmental Laboratory Certification Committee establish administrative and certification assessment schedules in accordance with the procedures of subsections (c) and (d-5) of this Section, the following assessment schedules shall remain in effect:

(1) For certification to conduct public water supply analyses:

(A) $1,000 per year for inorganic parameters; and

(B) $1,000 per year for organic parameters.

(2) For certification to conduct water pollution analyses:

(A) $1,000 per year for inorganic parameters; and

(B) $1,000 per year for organic parameters.

(3) For certification to conduct analyses of solid or liquid samples for hazardous or other waste parameters:

(A) $1,000 per year for inorganic parameters; and

(B) $1,000 per year for organic parameters.

(4) An administrative assessment of $2,400 per year from each laboratory requesting certification, provided that the administrative assessment shall be $3,900 if the laboratory was not certified at any time during the 6 months immediately preceding its application for certification.

(b) Until the Agency and the Environmental Laboratory Certification Committee establish administrative and certification assessment schedules in accordance with the procedures of subsections (c) and (d-5) of this Section, the following payment schedules shall remain in effect. The administrative and certification assessments shall be paid at the time the laboratory submits an application for certification or renewal of certification. Assessments paid under this Section may not be refunded.

(c) The Agency may establish procedures relating to the certification of laboratories, analyses of samples, development of alternative assessment schedules, assessment schedule dispute resolution, and collection of assessments. No assessment for the certification of environmental laboratories shall be due under this Section from any department, agency, or unit of State government. No assessments shall be due from any municipal government for certification to conduct public water supply analyses. The Agency's cost for certification of laboratories that are exempt from the assessment shall be excluded from the calculation of the alternative assessment schedules.

(d) All moneys collected by the Agency under this Section shall be deposited into the Environmental Laboratory Certification Fund, a special fund hereby created in the State treasury. Subject to appropriation, the Agency shall use the moneys in the Fund to pay expenses incurred in the administration of laboratory certification duties. All interest or other income earned from the investment of the moneys in the Fund shall be deposited into the Fund.

(d-5) The Agency, with the concurrence with the Environmental Laboratory Certification Committee, shall determine the assessment schedules for participation in the environmental laboratory certification program. The Agency, with the concurrence of the Committee, shall base the assessment schedules upon actual and anticipated costs for certification under State and federal programs and the associated costs of the Agency and Committee. If the Committee concurs with the Agency's assessment schedule determination, it shall thereupon take effect.

(e) The Director shall establish an Environmental Laboratory Certification Committee consisting of (i) one person representing accredited county or municipal public water supply laboratories, (ii) one person representing the Metropolitan Water Reclamation District of Greater Chicago, (iii) one person representing accredited sanitary district or waste water treatment plant laboratories, (iv) 3 persons representing accredited environmental commercial laboratories duly incorporated in the State of Illinois and employing 20 or more people, (v) 2 persons representing accredited environmental commercial laboratories duly incorporated in the State of Illinois employing less than 20 people, and (vi) one person representing the Illinois Association of Environmental Laboratories, all appointed by the Director. If no accredited laboratories are available to fill one of the categories under item (iv) or (v) then any laboratory that has applied for accreditation may be eligible to fill that position. Beginning in 2002, the Director shall appoint 3 members of the Committee for a one-year term, 3 members of the Committee for 2-year terms, and 3 members of the Committee for 3-year terms. Thereafter, all terms shall be for 3 years, provided that all appointments made on or before December 31, 2012 shall end on December 31, 2012. Beginning on January 1, 2013, the Director shall appoint all members of the Committee for 6-year terms. In the case of a vacancy, the Director may appoint a successor to fill the remaining term of the vacancy. Members of the Committee shall serve until a successor is appointed by the Director. No

member of the Committee shall serve more than 6 consecutive years. The Committee shall select from its members a Chairperson and any other officers that it deems necessary. The Committee shall meet at the call of the Chairperson or the Director. The Agency shall provide the Committee with any supporting services that the Director and the Chairperson may designate. Members of the Committee shall be reimbursed for ordinary and necessary expenses incurred in the performance of their duties. The Committee shall have the following duties:

(1) To consider any alternative assessment schedules submitted by the Agency pursuant to subsection (c) of this Section;

(2) To review and evaluate the financial implications of current and future State and federal requirements for certification of environmental laboratories;

(3) To review and evaluate management and financial audit reports relating to the certification program and to make recommendations regarding the Agency's efforts to implement alternative assessment schedules;

(4) To consider appropriate means for long-term financial support of the laboratory certification program and to make recommendations to the Agency regarding a preferred approach;

(5) To provide technical review and evaluation of the laboratory certification program;

(6) To hold meetings at times and places designated by the Director or the Chairperson of the Committee; and

(7) To conduct any other activities as may be deemed appropriate by the Director.

(Source: P.A. 97-1081, eff. 8-24-12.)

(415 ILCS 5/17.9)

Sec. 17.9. (Repealed).

(Source: P.A. 96-369, eff. 8-13-09. Repealed internally, eff. 7-1-11)

(415 ILCS 5/17.9A)

Sec. 17.9A. Collection, storage, and transportation of pharmaceuticals by law enforcement agencies.

(a) Notwithstanding any other provision of this Act, to the extent allowed by federal law, a law enforcement agency may collect pharmaceuticals, including but not limited to controlled substances, from residential sources, store them, and transport them to a site or facility permitted by the Agency.

(b) Pharmaceuticals that have been transported to a permitted site or facility by a law enforcement agency under subsection (a) of this Section must be managed in accordance with this Act, rules adopted under this Act, and permits issued under this Act. If those pharmaceuticals are controlled substances, they must also be managed in accordance with federal and State laws and regulations governing controlled substances.

(c) For the purposes of this Section, "law enforcement agency" means an agency of the State or of a unit of local of government which is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws.

(Source: P.A. 97-545, eff. 1-1-12; 98-857, eff. 8-4-14.)

(415 ILCS 5/17.10)

Sec. 17.10. Carcinogenic volatile organic compounds in community water systems.

(a)(1) Findings. The General Assembly finds that carcinogenic volatile organic compounds have been detected in a number of community water systems in this State. The General Assembly further finds that it is in the best interest of the

people of the State of Illinois to require owners and operators of community water systems to remove carcinogenic volatile organic compounds from finished water before their maximum contaminant levels are exceeded.

(2) Purpose. The purpose of this Section is to prevent carcinogenic volatile organic compounds from exceeding their maximum contaminant levels in the finished water of community water systems by requiring owners and operators of community water systems to take appropriate action when carcinogenic volatile organic compounds are detected in finished water.

(b) For purposes of this Section:

(1) "Carcinogen" means carcinogen as defined in Section 58.2 of this Act.

(2) "Community water system", "finished water", "maximum contaminant level", "method detection limit", and "volatile organic compound" shall have the meanings ascribed to them in rules adopted by the Board at Part 611 of Title 35 of the Illinois Administrative Code.

(c) If a carcinogenic volatile organic compound is detected in the finished water of a community water system at a concentration that equals or exceeds 50 percent of the carcinogenic volatile organic compound's maximum contaminant level and the Agency issues a notice under subdivision (a)(2)(B) of Section 25d-3 of this Act based on the presence of the carcinogenic volatile organic compound, the owner or operator of the community water system shall, within 45 days after the date the Agency issues the notice under subdivision (a)(2)(B) of Section 25d-3 of this Act, submit to the Agency a response plan designed to (i) prevent an exceedence of the maximum contaminant level in the finished water and (ii) reduce the concentration of the carcinogenic volatile organic compound so that it does not exceed the applicable method detection limit in the finished water. The response plan shall also include periodic sampling designed to measure and verify the effectiveness of the response plan.

(1) Upon Agency approval of the plan, with or without modifications, the owner or operator of the community water system shall implement the plan. In approving, modifying, or denying a plan required under this Section, the Agency shall take into account the technical feasibility and economic reasonableness of the plan and any modification to the plan. The owner or operator shall submit status reports on the plan's implementation in accordance with a schedule approved by the Agency. Upon completion of the plan the owner or operator shall submit to the Agency for review and approval a response completion report.

(2) Any action by the Agency to disapprove or modify a plan or report required under this Section shall be subject to appeal to the Board in accordance with the procedures of Section 40 of this Act.

(d)(1) No person required to submit a response plan under subsection (c) of this Section shall fail to submit the plan in accordance with the requirements of subsection (c).

(2) No person required to implement a response plan under subdivision (c)(1) of this Section shall fail to implement the plan in accordance with the requirements of subdivision (c)(1).

(3) No person required to submit a status report or a response completion report under subdivision (c)(1) of this Section shall fail to submit the report in accordance with the requirements of subdivision (c)(1).

(Source: P.A. 96-1366, eff. 7-28-10.)

(415 ILCS 5/17.11)

Sec. 17.11. (Repealed).

(Source: P.A. 99-922, eff. 1-17-17. Repealed by P.A. 102-613, eff. 1-1-22.)

(415 ILCS 5/17.12)

Sec. 17.12. Lead service line replacement and notification.

(a) The purpose of this Act is to: (1) require the owners and operators of community water supplies to develop, implement, and maintain a comprehensive water service line material inventory and a comprehensive lead service line replacement plan, provide notice to occupants of potentially affected buildings before any construction or repair work on water mains or lead service lines, and request access to potentially affected buildings before replacing lead service lines; and (2) prohibit partial lead service line replacements, except as authorized within this Section.

(b) The General Assembly finds and declares that:

(1) There is no safe level of exposure to heavy metal lead, as found by the United States Environmental Protection Agency and the Centers for Disease Control and Prevention.

(2) Lead service lines can convey this harmful substance to the drinking water supply.

(3) According to the Illinois Environmental Protection Agency's 2018 Service Line Material Inventory, the State of Illinois is estimated to have over 680,000 lead-based service lines still in operation.

(4) The true number of lead service lines is not fully known because Illinois lacks an adequate inventory of lead service lines.

(5) For the general health, safety and welfare of its residents, all lead service lines in Illinois should be disconnected from the drinking water supply, and the State's drinking water supply.

(c) In this Section:

"Advisory Board" means the Lead Service Line Replacement Advisory Board created under subsection (x).

"Community water supply" has the meaning ascribed to it in Section 3.145 of this Act.

"Department" means the Department of Public Health.

"Emergency repair" means any unscheduled water main, water service, or water valve repair or replacement that results from failure or accident.

"Fund" means the Lead Service Line Replacement Fund created under subsection (bb).

"Lead service line" means a service line made of lead or service line connected to a lead pigtail, lead gooseneck, or other lead fitting.

"Material inventory" means a water service line material inventory developed by a community water supply under this Act.

"Non-community water supply" has the meaning ascribed to it in Section 3.145 of the Environmental Protection Act.

"NSF/ANSI Standard" means a water treatment standard developed by NSF International.

"Partial lead service line replacement" means replacement of only a portion of a lead service line.

"Potentially affected building" means any building that is provided water service through a service line that is either a lead service line or a suspected lead service line.

"Public water supply" has the meaning ascribed to it in Section 3.365 of this Act.

"Service line" means the piping, tubing, and necessary appurtenances acting as a conduit from the water main or source of potable water supply to the building plumbing at the first shut-off valve or 18 inches inside the building, whichever is

shorter.

"Suspected lead service line" means a service line that a community water supply finds more likely than not to be made of lead after completing the requirements under paragraphs (2) through (5) of subsection (h).

"Small system" means a community water supply that regularly serves water to 3,300 or fewer persons.

(d) An owner or operator of a community water supply shall:

(1) develop an initial material inventory by April 15, 2022 and electronically submit by April 15, 2023 an updated material inventory electronically to the Agency; and

(2) deliver a complete material inventory to the Agency no later than April 15, 2024, or such time as required by federal law, whichever is sooner. The complete inventory shall report the composition of all service lines in the community water supply's distribution system.

(e) The Agency shall review and approve the final material inventory submitted to it under subsection (d).

(f) If a community water supply does not submit a complete inventory to the Agency by April 15, 2024 under paragraph (2) of subsection (d), the community water supply may apply for an extension to the Agency no less than 3 months prior to the due date. The Agency shall develop criteria for granting material inventory extensions. When considering requests for extension, the Agency shall, at a minimum, consider:

(1) the number of service connections in a water supply; and

(2) the number of service lines of an unknown material composition.

(g) A material inventory prepared for a community water supply under subsection (d) shall identify:

(1) the total number of service lines connected to the community water supply's distribution system;

(2) the materials of construction of each service line connected to the community water supply's distribution system;

(3) the number of suspected lead service lines that were newly identified in the material inventory for the community water supply after the community water supply last submitted a service line inventory to the Agency; and

(4) the number of suspected or known lead service lines that were replaced after the community water supply last submitted a service line inventory to the Agency, and the material of the service line that replaced each lead service line.

When identifying the materials of construction under paragraph (2) of this subsection, the owner or operator of the community water supply shall to the best of the owner's or operator's ability identify the type of construction material used on the customer's side of the curb box, meter, or other line of demarcation and the community water supply's side of the curb box, meter, or other line of demarcation.

(h) In completing a material inventory under subsection (d), the owner or operator of a community water supply shall:

(1) prioritize inspections of high-risk areas identified by the community water supply and inspections of high-risk facilities, such as preschools, day care centers, day care homes, group day care homes, parks, playgrounds, hospitals, and clinics, and confirm service line materials in those areas and at those facilities;

(2) review historical documentation, such as construction logs or cards, as-built drawings, purchase orders, and subdivision plans, to determine service line material construction;

(3) when conducting distribution system maintenance, visually inspect service lines and document materials of construction;

(4) identify any time period when the service lines being connected to its distribution system were primarily lead service lines, if such a time period is known or suspected; and

(5) discuss service line repair and installation with its employees, contractors, plumbers, other workers who worked on service lines connected to its distribution system, or all of the above.

(i) The owner or operator of each community water supply shall maintain records of persons who refuse to grant access to the interior of a building for purposes of identifying the materials of construction of a service line. If a community water supply has been denied access on the property or to the interior of a building for that reason, then the community water supply shall attempt to identify the service line as a suspected lead service line, unless documentation is provided showing otherwise.

(j) If a community water supply identifies a lead service line connected to a building, the owner or operator of the community water supply shall attempt to notify the owner of the building and all occupants of the building of the existence of the lead service line within 15 days after identifying the lead service line, or as soon as is reasonably possible thereafter. Individual written notice shall be given according to the provisions of subsection (jj).

(k) An owner or operator of a community water supply has no duty to include in the material inventory required under subsection (d) information about service lines that are physically disconnected from a water main in its distribution system.

(l) The owner or operator of each community water supply shall post on its website a copy of the most recently submitted material inventory or alternatively may request that the Agency post a copy of that material inventory on the Agency's website.

(m) Nothing in this Section shall be construed to require service lines to be unearthed for the sole purpose of inventorying.

(n) When an owner or operator of a community water supply awards a contract under this Section, the owner or operator shall make a good faith effort to use contractors and vendors owned by minority persons, women, and persons with a disability, as those terms are defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, for not less than 20% of the total contracts, provided that:

(1) contracts representing at least 11% of the total projects shall be awarded to minority-owned businesses, as defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act;

(2) contracts representing at least 7% of the total projects shall be awarded to women-owned businesses, as defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act; and

(3) contracts representing at least 2% of the total projects shall be awarded to businesses owned by persons with a disability.

Owners or operators of a community water supply are encouraged to divide projects, whenever economically feasible, into contracts of smaller size that ensure small business contractors or vendors shall have the ability to qualify in the applicable bidding process, when determining the ability to

deliver on a given contract based on scope and size, as a responsible and responsive bidder.

When a contractor or vendor submits a bid or letter of intent in response to a request for proposal or other bid submission, the contractor or vendor shall include with its responsive documents a utilization plan that shall address how compliance with applicable good faith requirements set forth in this subsection shall be addressed.

Under this subsection, "good faith effort" means a community water supply has taken all necessary steps to comply with the goals of this subsection by complying with the following:

(1) Soliciting through reasonable and available means the interest of a business, as defined in Section 2 of the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, that have the capability to perform the work of the contract. The community water supply must solicit this interest within sufficient time to allow certified businesses to respond.

(2) Providing interested certified businesses with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

(3) Meeting in good faith with interested certified businesses that have submitted bids.

(4) Effectively using the services of the State, minority or women community organizations, minority or women contractor groups, local, State, and federal minority or women business assistance offices, and other organizations to provide assistance in the recruitment and placement of certified businesses.

(5) Making efforts to use appropriate forums for purposes of advertising subcontracting opportunities suitable for certified businesses.

The diversity goals defined in this subsection can be met through direct award to diverse contractors and through the use of diverse subcontractors and diverse vendors to contracts.

(o) An owner or operator of a community water supply shall collect data necessary to ensure compliance with subsection (n) no less than semi-annually and shall include progress toward compliance of subsection (n) in the owner or operator's report required under subsection (t-5). The report must include data on vendor and employee diversity, including data on the owner's or operator's implementation of subsection (n).

(p) Every owner or operator of a community water supply that has known or suspected lead service lines shall:

(1) create a plan to:

(A) replace each lead service line connected to its distribution system; and

(B) replace each galvanized service line connected to its distribution system, if the galvanized service line is or was connected downstream to lead piping; and

(2) electronically submit, by April 15, 2024 its initial lead service line replacement plan to the Agency;

(3) electronically submit by April 15 of each year after 2024 until April 15, 2027 an updated lead service line replacement plan to the Agency for review; the updated replacement plan shall account for changes in the number of lead service lines or unknown service lines in the material inventory described in subsection (d);

(4) electronically submit by April 15, 2027 a complete and final replacement plan to the Agency for approval; the complete and final replacement plan shall account for all known and suspected lead service lines

documented in the final material inventory described under paragraph (3) of subsection (d); and

(5) post on its website a copy of the plan most recently submitted to the Agency or may request that the Agency post a copy of that plan on the Agency's website.

(q) Each plan required under paragraph (1) of subsection (p) shall include the following:

(1) the name and identification number of the community water supply;

(2) the total number of service lines connected to the distribution system of the community water supply;

(3) the total number of suspected lead service lines connected to the distribution system of the community water supply;

(4) the total number of known lead service lines connected to the distribution system of the community water supply;

(5) the total number of lead service lines connected to the distribution system of the community water supply that have been replaced each year beginning in 2020;

(6) a proposed lead service line replacement schedule that includes one-year, 5-year, 10-year, 15-year, 20-year, 25-year, and 30-year goals;

(7) an analysis of costs and financing options for replacing the lead service lines connected to the community water supply's distribution system, which shall include, but shall not be limited to:

(A) a detailed accounting of costs associated with replacing lead service lines and galvanized lines that are or were connected downstream to lead piping;

(B) measures to address affordability and prevent service shut-offs for customers or ratepayers; and

(C) consideration of different scenarios for structuring payments between the utility and its customers over time; and

(8) a plan for prioritizing high-risk facilities, such as preschools, day care centers, day care homes, group day care homes, parks, playgrounds, hospitals, and clinics, as well as high-risk areas identified by the community water supply;

(9) a map of the areas where lead service lines are expected to be found and the sequence with which those areas will be inventoried and lead service lines replaced;

(10) measures for how the community water supply will inform the public of the plan and provide opportunity for public comment; and

(11) measures to encourage diversity in hiring in the workforce required to implement the plan as identified under subsection (n).

(r) The Agency shall review final plans submitted to it under subsection (p). The Agency shall approve a final plan if the final plan includes all of the elements set forth under subsection (q) and the Agency determines that:

(1) the proposed lead service line replacement schedule set forth in the plan aligns with the timeline requirements set forth under subsection (v);

(2) the plan prioritizes the replacement of lead service lines that provide water service to high-risk facilities, such as preschools, day care centers, day care homes, group day care homes, parks, playgrounds, hospitals, and clinics, and high-risk areas identified by the community water supply;

(3) the plan includes analysis of cost and financing options; and

(4) the plan provides documentation of public review.

(s) An owner or operator of a community water supply has no duty to include in the plans required under subsection (p) information about service lines that are physically disconnected from a water main in its distribution system.

(t) If a community water supply does not deliver a complete plan to the Agency by April 15, 2027, the community water supply may apply to the Agency for an extension no less than 3 months prior to the due date. The Agency shall develop criteria for granting plan extensions. When considering requests for extension, the Agency shall, at a minimum, consider:

(1) the number of service connections in a water supply; and

(2) the number of service lines of an unknown material composition.

(t-5) After the Agency has approved the final replacement plan described in subsection (p), the owner or operator of a community water supply shall submit a report detailing progress toward plan goals to the Agency for its review. The report shall be submitted annually for the first 10 years, and every 3 years thereafter until all lead service lines have been replaced. Reports under this subsection shall be published in the same manner described in subsection (l). The report shall include at least the following information as it pertains to the preceding reporting period:

(1) The number of lead service lines replaced and the average cost of lead service line replacement.

(2) Progress toward meeting hiring requirements as described in subsection (n) and subsection (o).

(3) The percent of customers electing a waiver offered, as described in subsections (ii) and (jj), among those customers receiving a request or notification to perform a lead service line replacement.

(4) The method or methods used by the community water supply to finance lead service line replacement.

(u) Notwithstanding any other provision of law, in order to provide for costs associated with lead service line remediation and replacement, the corporate authorities of a municipality may, by ordinance or resolution by the corporate authorities, exercise authority provided in Section 27-5 et seq. of the Property Tax Code and Sections 8-3-1, 8-11-1, 8-11-5, 8-11-6, 9-1-1 et seq., 9-3-1 et seq., 9-4-1 et seq., 11-131-1, and 11-150-1 of the Illinois Municipal Code. Taxes levied for this purpose shall be in addition to taxes for general purposes authorized under Section 8-3-1 of the Illinois Municipal Code and shall be included in the taxing district's aggregate extension for the purposes of Division 5 of Article 18 of the Property Tax Code.

(v) Every owner or operator of a community water supply shall replace all known lead service lines, subject to the requirements of subsection (ff), according to the following replacement rates and timelines to be calculated from the date of submission of the final replacement plan to the Agency:

(1) A community water supply reporting 1,200 or fewer lead service lines in its final inventory and replacement plan shall replace all lead service lines, at an annual rate of no less than 7% of the amount described in the final inventory, with a timeline of up to 15 years for completion.

(2) A community water supply reporting more than 1,200 but fewer than 5,000 lead service lines in its final inventory and replacement plan shall replace all lead service lines, at an annual rate of no less than 6% of the amount described in the final inventory, with a timeline of up to 17 years for completion.

(3) A community water supply reporting more than

4,999 but fewer than 10,000 lead service lines in its final inventory and replacement plan shall replace all lead service lines, at an annual rate of no less than 5% of the amount described in the final inventory, with a timeline of up to 20 years for completion.

(4) A community water supply reporting more than 9,999 but fewer than 99,999 lead service lines in its final inventory and replacement plan shall replace all lead service lines, at an annual rate of no less than 3% of the amount described in the final inventory, with a timeline of up to 34 years for completion.

(5) A community water supply reporting more than 99,999 lead service lines in its final inventory and replacement plan shall replace all lead service lines, at an annual rate of no less than 2% of the amount described in the final inventory, with a timeline of up to 50 years for completion.

(w) A community water supply may apply to the Agency for an extension to the replacement timelines described in paragraphs (1) through (5) of subsection (v). The Agency shall develop criteria for granting replacement timeline extensions. When considering requests for timeline extensions, the Agency shall, at a minimum, consider:

(1) the number of service connections in a water supply; and

(2) unusual circumstances creating hardship for a community.

The Agency may grant one extension of additional time equal to not more than 20% of the original replacement timeline, except in situations of extreme hardship in which the Agency may consider a second additional extension equal to not more than 10% of the original replacement timeline.

Replacement rates and timelines shall be calculated from the date of submission of the final plan to the Agency.

(x) The Lead Service Line Replacement Advisory Board is created within the Agency. The Advisory Board shall convene within 120 days after January 1, 2022 (the effective date of Public Act 102-613).

The Advisory Board shall consist of at least 28 voting members, as follows:

(1) the Director of the Agency, or his or her designee, who shall serve as chairperson;

(2) the Director of Revenue, or his or her designee;

(3) the Director of Public Health, or his or her designee;

(4) fifteen members appointed by the Agency as follows:

(A) one member representing a statewide organization of municipalities as authorized by Section 1-8-1 of the Illinois Municipal Code;

(B) two members who are mayors representing municipalities located in any county south of the southernmost county represented by one of the 10 largest municipalities in Illinois by population, or their respective designees;

(C) two members who are representatives from public health advocacy groups;

(D) two members who are representatives from publicly-owned water utilities;

(E) one member who is a representative from a public utility as defined under Section 3-105 of the Public Utilities Act that provides water service in the State of Illinois;

(F) one member who is a research professional

employed at an Illinois academic institution and specializing in water infrastructure research;

(G) two members who are representatives from nonprofit civic organizations;

(H) one member who is a representative from a statewide organization representing environmental organizations;

(I) two members who are representatives from organized labor; and

(J) one member representing an environmental justice organization; and

(5) ten members who are the mayors of the 10 largest municipalities in Illinois by population, or their respective designees.

No less than 10 of the 28 voting members shall be persons of color, and no less than 3 shall represent communities defined or self-identified as environmental justice communities.

Advisory Board members shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties from funds appropriated for that purpose. The Agency shall provide administrative support to the Advisory Board.

The Advisory Board shall meet no less than once every 6 months.

(y) The Advisory Board shall have, at a minimum, the following duties:

(1) advising the Agency on best practices in lead service line replacement;

(2) reviewing the progress of community water supplies toward lead service line replacement goals;

(3) advising the Agency on other matters related to the administration of the provisions of this Section;

(4) advising the Agency on the integration of existing lead service line replacement plans with any statewide plan; and

(5) providing technical support and practical expertise in general.

(z) Within 18 months after January 1, 2022 (the effective date of Public Act 102-613), the Advisory Board shall deliver a report of its recommendations to the Governor and the General Assembly concerning opportunities for dedicated, long-term revenue options for funding lead service line replacement. In submitting recommendations, the Advisory Board shall consider, at a minimum, the following:

(1) the sufficiency of various revenue sources to adequately fund replacement of all lead service lines in Illinois;

(2) the financial burden, if any, on households falling below 150% of the federal poverty limit;

(3) revenue options that guarantee low-income households are protected from rate increases;

(4) an assessment of the ability of community water supplies to assess and collect revenue;

(5) variations in financial resources among individual households within a service area; and

(6) the protection of low-income households from rate increases.

(aa) Within 10 years after January 1, 2022 (the effective date of Public Act 102-613), the Advisory Board shall prepare and deliver a report to the Governor and General Assembly concerning the status of all lead service line replacement within the State.

(bb) The Lead Service Line Replacement Fund is created as a

special fund in the State treasury to be used by the Agency for the purposes provided under this Section. The Fund shall be used exclusively to finance and administer programs and activities specified under this Section and listed under this subsection.

The objective of the Fund is to finance activities associated with identifying and replacing lead service lines, build Agency capacity to oversee the provisions of this Section, and provide related assistance for the activities listed under this subsection.

The Agency shall be responsible for the administration of the Fund and shall allocate moneys on the basis of priorities established by the Agency through administrative rule. On July 1, 2022 and on July 1 of each year thereafter, the Agency shall determine the available amount of resources in the Fund that can be allocated to the activities identified under this Section and shall allocate the moneys accordingly.

Notwithstanding any other law to the contrary, the Lead Service Line Replacement Fund is not subject to sweeps, administrative charge-backs, or any other fiscal maneuver that would in any way transfer any amounts from the Lead Service Line Replacement Fund into any other fund of the State.

(cc) Within one year after January 1, 2022 (the effective date of Public Act 102-613), the Agency shall design rules for a program for the purpose of administering lead service line replacement funds. The rules must, at minimum, contain:

(1) the process by which community water supplies may apply for funding; and

(2) the criteria for determining unit of local government eligibility and prioritization for funding, including the prevalence of low-income households, as measured by median household income, the prevalence of lead service lines, and the prevalence of water samples that demonstrate elevated levels of lead.

(dd) Funding under subsection (cc) shall be available for costs directly attributable to the planning, design, or construction directly related to the replacement of lead service lines and restoration of property.

Funding shall not be used for the general operating expenses of a municipality or community water supply.

(ee) An owner or operator of any community water supply receiving grant funding under subsection (cc) shall bear the entire expense of full lead service line replacement for all lead service lines in the scope of the grant.

(ff) When replacing a lead service line, the owner or operator of the community water supply shall replace the service line in its entirety, including, but not limited to, any portion of the service line (i) running on private property and (ii) within the building's plumbing at the first shut-off valve. Partial lead service line replacements are expressly prohibited. Exceptions shall be made under the following circumstances:

(1) In the event of an emergency repair that affects a lead service line or a suspected lead service line, a community water supply must contact the building owner to begin the process of replacing the entire service line. If the building owner is not able to be contacted or the building owner or occupant refuses to grant access and permission to replace the entire service line at the time of the emergency repair, then the community water supply may perform a partial lead service line replacement. Where an emergency repair on a service line constructed of lead or galvanized steel pipe results in a partial service line replacement, the water supply responsible for commencing the repair shall perform the following:

(A) Notify the building's owner or operator and

the resident or residents served by the lead service line in writing that a repair has been completed. The notification shall include, at a minimum:

(i) a warning that the work may result in sediment, possibly containing lead, in the buildings water supply system;

(ii) information concerning practices for preventing the consumption of any lead in drinking water, including a recommendation to flush water distribution pipe during and after the completion of the repair or replacement work and to clean faucet aerator screens; and

(iii) information regarding the dangers of lead to young children and pregnant women.

(B) Provide filters for at least one fixture supplying potable water for consumption. The filter must be certified by an accredited third-party certification body to NSF/ANSI 53 and NSF/ANSI 42 for the reduction of lead and particulate. The filter must be provided until such time that the remaining portions of the service line have been replaced with a material approved by the Department or a waiver has been issued under subsection (ii).

(C) Replace the remaining portion of the lead service line within 30 days of the repair, or 120 days in the event of weather or other circumstances beyond reasonable control that prohibits construction. If a complete lead service line replacement cannot be made within the required period, the community water supply responsible for commencing the repair shall notify the Department in writing, at a minimum, of the following within 24 hours of the repair:

(i) an explanation of why it is not feasible to replace the remaining portion of the lead service line within the allotted time; and

(ii) a timeline for when the remaining portion of the lead service line will be replaced.

(D) If complete repair of a lead service line cannot be completed due to denial by the property owner, the community water supply commencing the repair shall request the affected property owner to sign a waiver developed by the Department. If a property owner of a nonresidential building or residence operating as rental properties denies a complete lead service line replacement, the property owner shall be responsible for installing and maintaining point-of-use filters certified by an accredited third-party certification body to NSF/ANSI 53 and NSF/ANSI 42 for the reduction of lead and particulate at all fixtures intended to supply water for the purposes of drinking, food preparation, or making baby formula. The filters shall continue to be supplied by the property owner until such time that the property owner has affected the remaining portions of the lead service line to be replaced.

(E) Document any remaining lead service line, including a portion on the private side of the property, in the community water supply's distribution system materials inventory required under subsection (d).

For the purposes of this paragraph (1), written notice shall be provided in the method and according to the provisions of subsection (jj).

(2) Lead service lines that are physically disconnected from the distribution system are exempt from this subsection.

(gg) Except as provided in subsection (hh), on and after January 1, 2022, when the owner or operator of a community water supply replaces a water main, the community water supply shall identify all lead service lines connected to the water main and shall replace the lead service lines by:

(1) identifying the material or materials of each lead service line connected to the water main, including, but not limited to, any portion of the service line (i) running on private property and (ii) within the building plumbing at the first shut-off valve or 18 inches inside the building, whichever is shorter;

(2) in conjunction with replacement of the water main, replacing any and all portions of each lead service line connected to the water main that are composed of lead; and

(3) if a property owner or customer refuses to grant access to the property, following prescribed notice provisions as outlined in subsection (ff).

If an owner of a potentially affected building intends to replace a portion of a lead service line or a galvanized service line and the galvanized service line is or was connected downstream to lead piping, then the owner of the potentially affected building shall provide the owner or operator of the community water supply with notice at least 45 days before commencing the work. In the case of an emergency repair, the owner of the potentially affected building must provide filters for each kitchen area that are certified by an accredited third-party certification body to NSF/ANSI 53 and NSF/ANSI 42 for the reduction of lead and particulate. If the owner of the potentially affected building notifies the owner or operator of the community water supply that replacement of a portion of the lead service line after the emergency repair is completed, then the owner or operator of the community water supply shall replace the remainder of the lead service line within 30 days after completion of the emergency repair. A community water supply may take up to 120 days if necessary due to weather conditions. If a replacement takes longer than 30 days, filters provided by the owner of the potentially affected building must be replaced in accordance with the manufacturer's recommendations. Partial lead service line replacements by the owners of potentially affected buildings are otherwise prohibited.

(hh) For municipalities with a population in excess of 1,000,000 inhabitants, the requirements of subsection (gg) shall commence on January 1, 2023.

(ii) At least 45 days before conducting planned lead service line replacement, the owner or operator of a community water supply shall, by mail, attempt to contact the owner of the potentially affected building serviced by the lead service line to request access to the building and permission to replace the lead service line in accordance with the lead service line replacement plan. If the owner of the potentially affected building does not respond to the request within 15 days after the request is sent, the owner or operator of the community water supply shall attempt to post the request on the entrance of the potentially affected building.

If the owner or operator of a community water supply is unable to obtain approval to access and replace a lead service line, the owner or operator of the community water supply shall request that the owner of the potentially affected building sign a waiver. The waiver shall be developed by the Department and should be made available in the owner's language. If the owner of the potentially affected building refuses to sign the waiver or fails to respond to the community water supply after the

community water supply has complied with this subsection, then the community water supply shall notify the Department in writing within 15 working days.

(jj) When replacing a lead service line or repairing or replacing water mains with lead service lines or partial lead service lines attached to them, the owner or operator of a community water supply shall provide the owner of each potentially affected building that is serviced by the affected lead service lines or partial lead service lines, as well as the occupants of those buildings, with an individual written notice. The notice shall be delivered by mail or posted at the primary entranceway of the building. The notice may, in addition, be electronically mailed. Written notice shall include, at a minimum, the following:

(1) a warning that the work may result in sediment, possibly containing lead from the service line, in the building's water;

(2) information concerning the best practices for preventing exposure to or risk of consumption of lead in drinking water, including a recommendation to flush water lines during and after the completion of the repair or replacement work and to clean faucet aerator screens; and

(3) information regarding the dangers of lead exposure to young children and pregnant women.

When the individual written notice described in the first paragraph of this subsection is required as a result of planned work other than the repair or replacement of a water meter, the owner or operator of the community water supply shall provide the notice not less than 14 days before work begins. When the individual written notice described in the first paragraph of this subsection is required as a result of emergency repairs other than the repair or replacement of a water meter, the owner or operator of the community water supply shall provide the notice at the time the work is initiated. When the individual written notice described in the first paragraph of this subsection is required as a result of the repair or replacement of a water meter, the owner or operator of the community water supply shall provide the notice at the time the work is initiated.

The notifications required under this subsection must contain the following statement in Spanish, Polish, Chinese, Tagalog, Arabic, Korean, German, Urdu, and Gujarati: "This notice contains important information about your water service and may affect your rights. We encourage you to have this notice translated in full into a language you understand and before you make any decisions that may be required under this notice."

An owner or operator of a community water supply that is required under this subsection to provide an individual written notice to the owner and occupant of a potentially affected building that is a multi-dwelling building may satisfy that requirement and the requirements of this subsection regarding notification to non-English speaking customers by posting the required notice on the primary entranceway of the building and at the location where the occupant's mail is delivered as reasonably as possible.

When this subsection would require the owner or operator of a community water supply to provide an individual written notice to the entire community served by the community water supply or would require the owner or operator of a community water supply to provide individual written notices as a result of emergency repairs or when the community water supply that is required to comply with this subsection is a small system, the owner or operator of the community water supply may provide the required notice through local media outlets, social media, or other

similar means in lieu of providing the individual written notices otherwise required under this subsection.

No notifications are required under this subsection for work performed on water mains that are used to transmit treated water between community water supplies and properties that have no service connections.

(kk) No community water supply that sells water to any wholesale or retail consecutive community water supply may pass on any costs associated with compliance with this Section to consecutive systems.

(ll) To the extent allowed by law, when a community water supply replaces or installs a lead service line in a public right-of-way or enters into an agreement with a private contractor for replacement or installation of a lead service line, the community water supply shall be held harmless for all damage to property when replacing or installing the lead service line. If dangers are encountered that prevent the replacement of the lead service line, the community water supply shall notify the Department within 15 working days of why the replacement of the lead service line could not be accomplished.

(mm) The Agency may propose to the Board, and the Board may adopt, any rules necessary to implement and administer this Section. The Department may adopt rules necessary to address lead service lines attached to non-community water supplies.

(nn) Notwithstanding any other provision in this Section, no requirement in this Section shall be construed as being less stringent than existing applicable federal requirements.

(oo) All lead service line replacements financed in whole or in part with funds obtained under this Section shall be considered public works for purposes of the Prevailing Wage Act. (Source: P.A. 102-613, eff. 1-1-22; 102-813, eff. 5-13-22.)

(415 ILCS 5/18) (from Ch. 111 1/2, par. 1018)

Sec. 18. Prohibitions; plugging requirements.

(a) No person shall:

(1) Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or

(2) Violate regulations or standards adopted by the Agency pursuant to Section 15(b) of this Act or by the Board under this Act; or

(3) Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit.

(b) Borings, water monitoring wells, and wells subject to this Act shall, at a minimum, be abandoned and plugged in accordance with the requirements of Sections 16 and 19 of "An Act in relation to oil, gas, coal and other surface and underground resources and to repeal an Act herein named", filed July 29, 1941, as amended, and such rules as are promulgated thereunder. Nothing herein shall preclude the Board from adopting plugging and abandonment requirements which are more stringent than the rules of the Department of Natural Resources where necessary to protect the public health and environment. (Source: P.A. 89-445, eff. 2-7-96; 90-773, eff. 8-14-98.)

(415 ILCS 5/18.1)

Sec. 18.1. Public Notice.

(a) If any of the actions listed in paragraph (1) or (2) of this subsection (a) occur in relation to the ownership or operation of a community water system, the Agency shall, within 2 days after the action, provide public notice of the action by issuing a press release and posting the press release on the

Agency's website:

(1) The Agency refers a matter for enforcement under Section 43 of this Act.

(2) The Agency issues a seal order under subsection (a) of Section 34 of this Act.

(b) Within 5 days after the occurrence of any action that is listed in paragraph (1) or (2) of subsection (a) of this Section and that is related to the ownership or operation of a community water system, the Agency must provide notice of the action to the owner and the operator of the community water system and the owners and operators of all connected community water systems. The notice must be printed on Agency letterhead and describe the action being taken and the basis for the action. Within 5 business days after receiving such notice from the Agency under this subsection (b), the owner or operator of the community water system and the owners or operators of all connected community water systems must send, to all residents and owners of premises connected to the affected community water system or portion thereof designated by the Agency: (i) a copy of the notice by first-class mail or by e-mail; or (ii) notification, in a form approved by the Agency, via first-class postcard, text message, or telephone; except that notices to institutional residents, including, but not limited to, residents of school dormitories, nursing homes, and assisted care facilities, may be made to the owners and operators of those institutions, and the owners or operators of those institutions shall notify their residents in the same manner as prescribed in this subsection for owners and operators of community water systems. If the manner for notice selected by the owner or operator of the community water system does not include a written copy of the notice provided by the Agency, the owner or operator shall include a written copy of the notice provided by the Agency in the next water bill sent to the residents and owners of the premises; provided, however, if the water bill is sent on a postcard, no written copy of the notice provided by the Agency is required if the postcard includes the Internet address for the notice posted on the Agency's website. The front of the envelope or postcard in which any such notice is sent to residents and owners of premises connected to the community water system shall carry the following text in at least 18 point font: PUBLIC HEALTH NOTICE - READ IMMEDIATELY. For a postcard, text message, or telephonic communication, the Agency shall specify the minimum information that the owner or operator must include in such methods of notice. Within 7 days after the owner or operator of the community water system sends the notices to all residents and owners of premises connected to the affected community water system, the owner or operator shall provide the Agency with proof that the notices have been sent.

(Source: P.A. 96-603, eff. 8-24-09.)

(415 ILCS 5/19) (from Ch. 111 1/2, par. 1019)

Sec. 19. Owners or official custodians of public water supplies shall submit such samples of water for analysis and such reports of operation pertaining to the sanitary quality, mineral quality, or adequacy of such supplies as may be requested by the Agency. Such samples and reports shall be submitted within 15 days after demand by the Agency.

(Source: P.A. 76-2429.)

(415 ILCS 5/Tit. IV-A heading)

TITLE IV-A: WATER POLLUTION CONTROL AND PUBLIC WATER SUPPLIES

(415 ILCS 5/19.1) (from Ch. 111 1/2, par. 1019.1)

Sec. 19.1. Legislative findings. The General Assembly finds:

(a) that local government units require assistance in financing the construction of water treatment works and projects in order to comply with the State's program of environmental protection and federally mandated requirements;

(b) that the federal Water Quality Act of 1987 provides an important source of grant awards to the State for providing assistance to local government units through the Water Pollution Control Loan Program;

(c) that local government units and privately owned community water supplies require assistance in financing the construction of their public water supplies to comply with State and federal drinking water laws and regulations;

(d) that the federal Safe Drinking Water Act ("SDWA"), P.L. 93-523, as now or hereafter amended, provides an important source of capitalization grant awards to the State to provide assistance to local government units and privately owned community water supplies through the Public Water Supply Loan Program;

(e) that violations of State and federal drinking water standards threaten the public interest, safety, and welfare, which demands that the Illinois Environmental Protection Agency expeditiously adopt emergency rules to administer the Public Water Supply Loan Program;

(f) that the General Assembly agrees with the conclusions and recommendations of the "Report to the Illinois General Assembly on the Issue of Expanding Public Water Supply Loan Eligibility to Privately Owned Community Water Supplies", dated August 1998, including the stated access to the Public Water Supply Loan Program by the privately owned public water supplies so that the long term integrity and viability of the corpus of the Fund will be assured;

(g) that the American Recovery and Reinvestment Act of 2009 provides a source of capitalization grant awards to the State to provide loans and additional subsidization, including, but not limited to, forgiveness of principal, negative interest loans, and grants, to local government units through the Water Pollution Control Loan Program and to local government units and privately owned community water supplies through the Public Water Supply Loan Program;

(h) that expanding eligibility to include publicly owned municipal storm water projects eligible for financing as treatment works, as defined under Section 212 of the Federal Water Pollution Control Act, will provide the Agency with the statutory authority to use moneys in the Water Pollution Control Loan Program to provide financial assistance for eligible projects, including those that encourage green infrastructure, that manage and treat storm water, and that maintain and restore natural hydrology by infiltrating, evapotranspiring, and capturing and using storm water;

(i) that in planning projects for which financing will be sought from the Water Pollution Control Loan Program, municipalities may benefit from efforts to consider a project's lifetime costs; the availability of long-term funding for the construction, operation, maintenance, and replacement of the project; the resilience of the project to the effects of climate change; the project's ability to increase water efficiency; the capacity of the project to restore natural hydrology or to preserve or restore

landscape features; the cost-effectiveness of the project; and the overall environmental innovativeness of the project; and

(j) that projects implementing a management program established under Section 319 of the Federal Water Pollution Control Act may benefit from the creation of a linked deposit program that would make loans available at or below market interest rates through private lenders.

(Source: P.A. 98-782, eff. 7-23-14.)

(415 ILCS 5/19.2) (from Ch. 111 1/2, par. 1019.2)

Sec. 19.2. As used in this Title, unless the context clearly requires otherwise:

(a) "Agency" means the Illinois Environmental Protection Agency.

(b) "Fund" means the Water Revolving Fund created pursuant to this Title, consisting of the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program.

(c) "Loan" means a loan made from the Water Pollution Control Loan Program or the Public Water Supply Loan Program to an eligible applicant as a result of a contractual agreement between the Agency and such applicant.

(d) "Construction" means any one or more of the following which is undertaken for a public purpose: preliminary planning to determine the feasibility of the treatment works or public water supply, engineering, architectural, legal, fiscal or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement or extension of treatment works or public water supplies, or the inspection or supervision of any of the foregoing items. "Construction" also includes implementation of source water quality protection measures and establishment and implementation of wellhead protection programs in accordance with Section 1452(k)(1) of the federal Safe Drinking Water Act.

(e) "Intended use plan" means a plan which includes a description of the short and long term goals and objectives of the Water Pollution Control Loan Program and the Public Water Supply Loan Program, project categories, discharge requirements, terms of financial assistance and the loan applicants to be served.

(f) "Treatment works" means treatment works, as defined in Section 212 of the Federal Water Pollution Control Act, including, but not limited to, the following: any devices and systems owned by a local government unit and used in the storage, treatment, recycling, and reclamation of sewerage or industrial wastes of a liquid nature, including intercepting sewers, outfall sewers, sewage collection systems, pumping power and other equipment, and appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; any works, including site acquisition of the land that will be an integral part of the treatment process for wastewater facilities; and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems as those terms are defined in the Federal Water Pollution Control Act.

(g) "Local government unit" means a county, municipality, township, municipal or county sewerage or utility authority,

sanitary district, public water district, improvement authority or any other political subdivision whose primary purpose is to construct, operate and maintain wastewater treatment facilities, including storm water treatment systems, or public water supply facilities or both.

(h) "Privately owned community water supply" means:

(1) an investor-owned water utility, if under Illinois Commerce Commission regulation and operating as a separate and distinct water utility;

(2) a not-for-profit water corporation, if operating specifically as a water utility; and

(3) a mutually owned or cooperatively owned community water system, if operating as a separate water utility.

(Source: P.A. 98-782, eff. 7-23-14.)

(415 ILCS 5/19.3) (from Ch. 111 1/2, par. 1019.3)

Sec. 19.3. Water Revolving Fund.

(a) There is hereby created within the State Treasury a Water Revolving Fund, consisting of 3 interest-bearing special programs to be known as the Water Pollution Control Loan Program, the Public Water Supply Loan Program, and the Loan Support Program, which shall be used and administered by the Agency.

(b) The Water Pollution Control Loan Program shall be used and administered by the Agency to provide assistance for the following purposes:

(1) to accept and retain funds from grant awards, appropriations, transfers, and payments of interest and principal;

(2) to make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit to finance the construction of treatments works, including storm water treatment systems that are treatment works, and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;

(2.5) with respect to funds provided under the American Recovery and Reinvestment Act of 2009:

(A) to make direct loans at or below market interest rates to any eligible local government unit and to provide additional subsidization to any eligible local government unit, including, but not limited to, forgiveness of principal, negative interest rates, and grants;

(B) to make direct loans at or below market interest rates to any eligible local government unit to buy or refinance debt obligations for treatment works incurred on or after October 1, 2008; and

(C) to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for treatment works incurred on or after October 1, 2008;

(3) to make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit to buy or refinance debt obligations for costs incurred after March 7, 1985, for the construction of treatment works, including storm water treatment systems that are treatment works, and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;

(3.5) to make loans, including, but not limited to,

loans through a linked deposit program, at or below market interest rates for the implementation of a management program established under Section 319 of the Federal Water Pollution Control Act, as amended;

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

(5) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited in the Fund;

(6) to finance the reasonable costs incurred by the Agency in the administration of the Fund;

(7) to transfer funds to the Public Water Supply Loan Program; and

(8) notwithstanding any other provision of this subsection (b), to provide, in accordance with rules adopted under this Title, any other financial assistance that may be provided under Section 603 of the Federal Water Pollution Control Act for any other projects or activities eligible for assistance under that Section or federal rules adopted to implement that Section.

(c) The Loan Support Program shall be used and administered by the Agency for the following purposes:

(1) to accept and retain funds from grant awards and appropriations;

(2) to finance the reasonable costs incurred by the Agency in the administration of the Fund, including activities under Title III of this Act, including the administration of the State construction grant program;

(3) to transfer funds to the Water Pollution Control Loan Program and the Public Water Supply Loan Program;

(4) to accept and retain a portion of the loan repayments;

(5) to finance the development of the low interest loan programs for water pollution control and public water supply projects;

(6) to finance the reasonable costs incurred by the Agency to provide technical assistance for public water supplies; and

(7) to finance the reasonable costs incurred by the Agency for public water system supervision programs, to administer or provide for technical assistance through source water protection programs, to develop and implement a capacity development strategy, to delineate and assess source water protection areas, and for an operator certification program in accordance with Section 1452 of the federal Safe Drinking Water Act.

(d) The Public Water Supply Loan Program shall be used and administered by the Agency to provide assistance to local government units and privately owned community water supplies for public water supplies for the following public purposes:

(1) to accept and retain funds from grant awards, appropriations, transfers, and payments of interest and principal;

(2) to make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit or to any eligible privately owned community water supply to finance the construction of water supplies and projects that fulfill federal State Revolving Fund grant requirements for a green project reserve;

(2.5) with respect to funds provided under the American Recovery and Reinvestment Act of 2009:

(A) to make direct loans at or below market interest rates to any eligible local government unit or to any eligible privately owned community water supply, and to provide additional subsidization to any eligible local government unit or to any eligible privately owned community water supply, including, but not limited to, forgiveness of principal, negative interest rates, and grants;

(B) to buy or refinance the debt obligation of a local government unit for costs incurred on or after October 1, 2008; and

(C) to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants for a local government unit for costs incurred on or after October 1, 2008;

(3) to make direct loans at or below market interest rates and to provide additional subsidization, including, but not limited to, forgiveness of principal, negative interest rates, and grants, to any eligible local government unit or to any eligible privately owned community water supply to buy or refinance debt obligations for costs incurred on or after July 17, 1997, for the construction of water supplies and projects that fulfill federal State Revolving Fund requirements for a green project reserve;

(4) to guarantee local obligations where such action would improve credit market access or reduce interest rates;

(5) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of such bonds will be deposited into the Fund;

(6) to transfer funds to the Water Pollution Control Loan Program; and

(7) notwithstanding any other provision of this subsection (d), to provide to local government units and privately owned community water supplies any other financial assistance that may be provided under Section 1452 of the federal Safe Drinking Water Act for any expenditures eligible for assistance under that Section or federal rules adopted to implement that Section.

(e) The Agency is designated as the administering agency of the Fund. The Agency shall submit to the Regional Administrator of the United States Environmental Protection Agency an intended use plan which outlines the proposed use of funds available to the State. The Agency shall take all actions necessary to secure to the State the benefits of the federal Water Pollution Control Act and the federal Safe Drinking Water Act, as now or hereafter amended.

(f) The Agency shall have the power to enter into intergovernmental agreements with the federal government or the State, or any instrumentality thereof, for purposes of capitalizing the Water Revolving Fund. Moneys on deposit in the Water Revolving Fund may be used for the creation of reserve funds or pledged funds that secure the obligations of repayment of loans made pursuant to this Section. For the purpose of obtaining capital for deposit into the Water Revolving Fund, the Agency may also enter into agreements with financial institutions and other persons for the purpose of selling loans and developing a secondary market for such loans. The Agency shall have the power to create and establish such reserve funds and accounts as may be necessary or desirable to accomplish its

purposes under this subsection and to allocate its available moneys into such funds and accounts. Investment earnings on moneys held in the Water Revolving Fund, including any reserve fund or pledged fund, shall be deposited into the Water Revolving Fund.

(g) Beginning on the effective date of this amendatory Act of the 101st General Assembly, and running for a period of 5 years after that date, the Agency shall prioritize within its annual intended use plan the usage of a portion of the Agency's capitalization grant for federally authorized set-aside activities. The prioritization is for the purpose of supporting disadvantaged communities and utilities throughout Illinois in building their capacity for sustainable and equitable water management. This may include, but is not limited to, assistance for water rate studies, preliminary engineering or other facility planning, training activities, asset management plans, assistance with identification and replacement of lead service lines, and studies of efficiency measures through utility regionalization or other collaborative intergovernmental approaches.

(Source: P.A. 101-143, eff. 1-1-20.)

(415 ILCS 5/19.4) (from Ch. 111 1/2, par. 1019.4)

Sec. 19.4. Regulations; priorities.

(a) The Agency shall have the authority to promulgate regulations for the administration of this Title, including, but not limited to, rules setting forth procedures and criteria concerning loan applications and the issuance of loans. For loans to units of local government, the regulations shall include, but need not be limited to, the following elements:

(1) loan application requirements;

(2) determination of credit worthiness of the loan applicant;

(3) special loan terms, as necessary, for securing the repayment of the loan;

(4) assurance of payment;

(5) interest rates;

(6) loan support rates;

(7) impact on user charges;

(8) eligibility of proposed construction;

(9) priority of needs;

(10) special loan terms for disadvantaged communities;

(11) maximum limits on annual distributions of funds to applicants or groups of applicants;

(12) penalties for noncompliance with loan requirements and conditions, including stop-work orders, termination, and recovery of loan funds; and

(13) indemnification of the State of Illinois and the Agency by the loan recipient.

(b) The Agency shall have the authority to promulgate regulations to set forth procedures and criteria concerning loan applications for loan recipients other than units of local government. In addition to all of the elements required for units of local government under subsection (a), the regulations shall include, but need not be limited to, the following elements:

(1) types of security required for the loan;

(2) types of collateral, as necessary, that can be pledged for the loan; and

(3) staged access to fund privately owned community water supplies.

(c) Rules adopted under this Title shall also include, but shall not be limited to, criteria for prioritizing the issuance

of loans under this Title according to applicant need. Priority in making loans from the Public Water Supply Loan Program must first be given to local government units and privately owned community water supplies that need to make capital improvements to protect human health and to achieve compliance with the State and federal primary drinking water standards adopted pursuant to this Act and the federal Safe Drinking Water Act, as now and hereafter amended. Rules for prioritizing loans from the Water Pollution Control Loan Program may include, but shall not be limited to, criteria designed to encourage green infrastructure, water efficiency, environmentally innovative projects, and nutrient pollution removal.

(d) The Agency shall have the authority to promulgate regulations to set forth procedures and criteria concerning loan applications for funds provided under the American Recovery and Reinvestment Act of 2009. In addition, due to time constraints in the American Recovery and Reinvestment Act of 2009, the Agency shall adopt emergency rules as necessary to allow the timely administration of funds provided under the American Recovery and Reinvestment Act of 2009. Emergency rules adopted under this subsection (d) shall be adopted in accordance with Section 5-45 of the Illinois Administrative Procedure Act.

(e) The Agency may adopt rules to create a linked deposit loan program through which loans made pursuant to paragraph (3.5) of subsection (b) of Section 19.3 may be made through private lenders. Rules adopted under this subsection (e) shall include, but shall not be limited to, provisions requiring private lenders, prior to disbursing loan proceeds through the linked deposit loan program, to verify that the loan recipients have been approved by the Agency for financing under paragraph (3.5) of subsection (b) of Section 19.3.
(Source: P.A. 98-782, eff. 7-23-14.)

(415 ILCS 5/19.5) (from Ch. 111 1/2, par. 1019.5)
Sec. 19.5. Loans; repayment.

(a) The Agency shall have the authority to make loans pursuant to the regulations promulgated under Section 19.4.

(b) Loans made from the Fund shall provide for:

(1) a schedule of disbursement of proceeds;

(2) a fixed rate that includes interest and loan support based upon priority, but the loan support rate shall not exceed one-half of the fixed rate established for each loan;

(3) a schedule of repayment;

(4) initiation of principal repayments within one year after the project is operational; and

(5) a confession of judgment upon default.

(c) The Agency may amend existing loans to include a loan support rate only if the overall cost to the loan recipient is not increased.

(d) A local government unit shall secure the payment of its obligations to the Fund by a dedicated source of repayment, including revenues derived from the imposition of rates, fees and charges. Other loan applicants shall secure the payment of their obligations by appropriate security and collateral pursuant to regulations promulgated under Section 19.4.
(Source: P.A. 91-36, eff. 6-15-99; 91-52, eff. 6-30-99; 91-501, eff. 8-13-99; 92-16, eff. 6-28-01.)

(415 ILCS 5/19.6) (from Ch. 111 1/2, par. 1019.6)
Sec. 19.6. Delinquent loan repayment.

(a) In the event that a timely payment is not made by a loan recipient according to the loan schedule of repayment, the loan recipient shall notify the Agency in writing within 15 days

after the payment due date. The notification shall include a statement of the reasons the payment was not timely tendered, the circumstances under which the late payments will be satisfied, and binding commitments to assure future payments. After receipt of this notification, the Agency shall confirm in writing the acceptability of the plan or take action in accordance with subsection (b) of this Section.

(b) In the event that a loan recipient fails to comply with subsection (a) of this Section, the Agency shall promptly issue a notice of delinquency to the loan recipient, which shall require a written response within 15 days. The notice of delinquency shall require that the loan recipient revise its rates, fees and charges to meet its obligations pursuant to subsection (d) of Section 19.5 or take other specified actions as may be appropriate to remedy the delinquency and to assure future payments.

(c) In the event that the loan recipient fails to timely or adequately respond to a notice of delinquency, or fails to meet its obligations made pursuant to subsections (a) and (b) of this Section, the Agency shall pursue the collection of the amounts past due, the outstanding loan balance and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 or by any other reasonable means as may be provided by law, including the taking of title by foreclosure or otherwise to any project or other property pledged, mortgaged, encumbered, or otherwise available as security or collateral.
(Source: P.A. 91-36, eff. 6-15-99; 91-52, eff. 6-30-99; 91-501, eff. 8-13-99; 92-16, eff. 6-28-01.)

(415 ILCS 5/19.7) (from Ch. 111 1/2, par. 1019.7)
Sec. 19.7. (Repealed).
(Source: P.A. 90-372, eff. 7-1-98. Repealed internally, eff. 7-1-98.)

(415 ILCS 5/19.8) (from Ch. 111 1/2, par. 1019.8)
Sec. 19.8. Advisory committees. The Director of the Agency shall appoint committees to advise the Agency concerning the financial structure of the Programs. The committees shall consist of representatives from appropriate State agencies, the financial community, engineering societies and other interested parties. The committees shall meet periodically and members shall be reimbursed for their ordinary and necessary expenses incurred in the performance of their committee duties.
(Source: P.A. 90-121, eff. 7-17-97; 91-36, eff. 6-15-99; 91-52, eff. 6-30-99; 91-501, eff. 8-13-99.)

(415 ILCS 5/19.9) (from Ch. 111 1/2, par. 1019.9)
Sec. 19.9. This Title shall be liberally construed so as to effect its purpose.
(Source: P.A. 91-52, eff. 6-30-99.)

(415 ILCS 5/19.10)
Sec. 19.10. Re-enactment of Title IV-A; findings; purpose; validation.

(a) The General Assembly finds and declares that:

(1) Title IV-A (consisting of Sections 19.1 through 19.9) was first added to the Environmental Protection Act by Article III of Public Act 85-1135, effective September 1, 1988. In its original form, Title IV-A created the Water Pollution Control Revolving Fund and authorized the Illinois Environmental Protection Agency to establish a program for providing units of local government with low-cost loans to be used to construct wastewater treatment works. The loans are paid from the Revolving Fund, which consists primarily

of a combination of federal grant money, State matching money, and money that has been repaid on past loans.

(2) In 1995, Title IV-A was amended by Public Act 89-27, effective January 1, 1997, which created the Loan Support Program and made other changes. The Loan Support Program provides financing for certain administrative costs of the Agency. It specifically includes the costs of developing a loan program for public water supply projects.

(3) Title IV-A was amended by Public Act 90-121, effective July 17, 1997, which changed the name of the Water Pollution Control Revolving Fund to the Water Revolving Fund and created the Public Water Supply Loan Program. Under this program, the Agency is authorized to make low-interest loans to units of local government for the construction of public water supply facilities.

(4) Title IV-A has also been amended by Public Act 86-671, effective September 1, 1989; P.A. 86-820, effective September 7, 1989; and P.A. 90-372, effective July 1, 1998.

(5) Article III, Section 6, of Public Act 85-1135 amended the Build Illinois Bond Act. Among other changes to that Act, P.A. 85-1135 authorized the deposit of up to $70,000,000 into the Water Pollution Control Revolving Fund to be used for the Title IV-A loan program.

(6) Article III of Public Act 85-1135 also added Section 5.237 to the State Finance Act. This Section added the Water Pollution Control Revolving Fund to the list of special funds in the State Treasury. The Section was renumbered as Section 5.238 by a revisory bill, Public Act 85-1440, effective February 1, 1989. Although the name of the Fund was changed by Public Act 90-121, that Act did not make the corresponding change in Section 5.238.

(7) Over the 10 years that it has administered Title IV-A programs, the Agency has entered into loan agreements with hundreds of units of local government and provided hundreds of millions of dollars of financial assistance for water pollution control projects. There are currently many active Title IV-A loans in the disbursement phase and many more that are in the process of being repaid. The Agency continues to receive many new applications each year.

(8) Public Act 85-1135, which created Title IV-A, also contained provisions relating to tax reform and State bonds.

(9) On August 26, 1998, the Cook County Circuit Court entered an order in the case of Oak Park Arms Associates v. Whitley (No. 92 L 51045), in which it found that Public Act 85-1135 violates the single subject clause of the Illinois Constitution (Article IV, Section 8(d)). As of the time this amendatory Act of 1999 was prepared, the order declaring P.A. 85-1135 invalid has been vacated but the case is subject to appeal.

(10) The projects funded under Title IV-A affect the vital areas of wastewater and sewage disposal and drinking water supply and are important for the continued health, safety, and welfare of the people of this State.

(b) It is the purpose of this amendatory Act of 1999 (Public Act 91-52) to prevent or minimize any disruption to the programs administered under Title IV-A that may result from challenges to the constitutional validity of Public Act 85-1135.

(c) This amendatory Act of 1999 (P.A. 91-52) re-enacts Title IV-A of the Environmental Protection Act as it has been amended. This re-enactment is intended to ensure the continuation of the programs administered under that Title and, if necessary, to recreate them. The material in Sections 19.1 through 19.9 is shown as existing text (i.e., without underscoring) because, as

of the time this amendatory Act of 1999 was prepared, the order declaring P.A. 85-1135 invalid has been vacated. Section 19.7 has been omitted because it was repealed by Public Act 90-372, effective July 1, 1998.

Section 4.1 is added to the Build Illinois Bond Act to re-authorize the deposit of funds into the Water Pollution Control Revolving Fund.

Section 5.238 of the State Finance Act is both re-enacted and amended to reflect the current name of the Water Revolving Fund.

(d) The re-enactment of Title IV-A of the Environmental Protection Act by this amendatory Act of 1999 (P.A. 91-52) is intended to remove any question as to the validity or content of Title IV-A; it is not intended to supersede any other Public Act that amends the text of a Section as set forth in this amendatory Act. This re-enactment is not intended, and shall not be construed, to imply that Public Act 85-1135 is invalid or to limit or impair any legal argument concerning (1) whether the Agency has express or implied authority to administer loan programs in the absence of Title IV-A, or (2) whether the provisions of Title IV-A were substantially re-enacted by P.A. 89-27 or 90-121.

(e) All otherwise lawful actions taken before June 30, 1999 (the effective date of P.A. 91-52) by any employee, officer, agency, or unit of State or local government or by any other person or entity, acting in reliance on or pursuant to Title IV-A of the Environmental Protection Act, as set forth in Public Act 85-1135 or as subsequently amended, are hereby validated.

(f) All otherwise lawful obligations arising out of loan agreements entered into before June 30, 1999 (the effective date of P.A. 91-52) by the State or by any employee, officer, agency, or unit of State or local government, acting in reliance on or pursuant to Title IV-A of the Environmental Protection Act, as set forth in Public Act 85-1135 or as subsequently amended, are hereby validated and affirmed.

(g) All otherwise lawful deposits into the Water Pollution Control Revolving Fund made before June 30, 1999 (the effective date of P.A. 91-52) in accordance with Section 4 of the Build Illinois Bond Act, as set forth in Public Act 85-1135 or as subsequently amended, and the use of those deposits for the purposes of Title IV-A of the Environmental Protection Act, are hereby validated.

(h) This amendatory Act of 1999 (P.A. 91-52) applies, without limitation, to actions pending on or after the effective date of this amendatory Act.

(Source: P.A. 91-52, eff. 6-30-99; 92-574, eff. 6-26-02.)

(415 ILCS 5/19.11)

Sec. 19.11. Public water supply disruption; notification.

(a) In this Section:

"Disruption event" means any:

(1) change to a disinfection technique, practice, or technology, including each instance of any change in the concentration of any disinfectant in the water of a public water supply that results in residual concentrations of the disinfectant in the water either exceeding 50% or falling below 20% of the monthly average concentration of disinfectant reported to the Agency in a public water distribution entity's most recent monthly submission of Daily Operating Reports;

(2) planned or unplanned work on or damage to a water main;

(3) change in a treatment application or source of water that results in an altered finished water quality;

(4) event that results in a public water supply's operating pressure falling below 20 PSI; or

(5) condition that results in the issuance of a boil water order.

"Health care facility" means a facility, hospital, or establishment licensed or organized under the Ambulatory Surgical Treatment Center Act, the University of Illinois Hospital Act, the Hospital Licensing Act, the Nursing Home Care Act, the Assisted Living and Shared Housing Act, or the Community Living Facilities Licensing Act.

"Health care facility list" means a list enumerating health care facilities and their designees that are served by a public water supply and maintained by a public water distribution entity.

"Public water distribution entity" means any of the following entities that are responsible for the direct supervision of a public water supply: a municipality, a private corporation, an individual private owner, or a regularly organized body governed by a constitution and by-laws requiring regular election of officers.

"Public water supply" has the same meaning as defined in Section 3.365.

"State agencies" means the Illinois Environmental Protection Agency and the Illinois Department of Public Health.

"Water supply operator" means any individual trained in the treatment or distribution of water who has practical, working knowledge of the chemical, biological, and physical sciences essential to the practical mechanics of water treatment or distribution and who is capable of conducting and maintaining the water treatment or distribution processes of a public water supply in a manner that will provide safe, potable water for human consumption.

(b) A public water distribution entity, through its designated employees or contractors, shall notify its water supply operator and all affected health care facilities on the public water supply's health care facility list not less than 14 days before any known, planned, or anticipated disruption event. An anticipated disruption event includes for purposes of this subsection any disruption event that could or should be reasonably anticipated by a public water distribution entity.

(c) A public water distribution entity, through its designated employees or contractors, shall notify its water supply operator and all affected health care facilities that are served by the public water supply and affected by any unplanned disruption event in the public water supply's water distribution system. The notification required under this subsection shall be provided within 2 hours after the public water distribution entity becomes aware of the unplanned disruption event.

(d) A health care facility shall designate an email address to receive electronic notifications from the public water distribution entity concerning planned or unplanned disruption events. The email account shall be accessible to the health care facility's designated water management plan administrator and other responsible administrative personnel.

(e) Any planned or unplanned disruption event notification sent to a health care facility under this Section shall also be sent to the State agencies via email to the email addresses designated by the State agencies within 5 business days. The State agencies shall establish, maintain, and retain a list of notifications received pursuant to this subsection.

The notice required under this Section shall include, but shall not be limited to, the following:

(1) a detailed description of the disruption event;

(2) the date, time, and location of the disruption

event;

(3) the expected time needed to resolve the disruption event; and

(4) a list of the health care facilities notified by the public water distribution entity.

Beginning one year after the effective date of this amendatory Act of the 102nd General Assembly, the State agencies shall make available upon request a list of disruption events, in an electronic format, sorted by the year and month of each occurrence.

(Source: P.A. 102-960, eff. 5-27-22.)

(415 ILCS 5/Tit. V heading)

TITLE V: LAND POLLUTION AND REFUSE DISPOSAL

(415 ILCS 5/20) (from Ch. 111 1/2, par. 1020)

Sec. 20. (a) The General Assembly finds:

(1) that economic and population growth and new methods of manufacture, packaging, and marketing, without the parallel growth of facilities enabling and ensuring the recycling, reuse and conservation of natural resources and solid waste, have resulted in a rising tide of scrap and waste materials of all kinds;

(2) that excessive quantities of refuse and inefficient and improper methods of refuse disposal result in scenic blight, cause serious hazards to public health and safety, create public nuisances, divert land from more productive uses, depress the value of nearby property, offend the senses, and otherwise interfere with community life and development;

(3) that the failure to salvage and reuse scrap and refuse results in the waste and depletion of our natural resources and contributes to the degradation of our environment;

(4) that hazardous waste presents, in addition to the problems associated with non-hazardous waste, special dangers to health and requires a greater degree of regulation than does non-hazardous waste;

(5) that Subtitle C of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, provides for comprehensive regulation of the treatment, storage, disposal, transportation and generation of hazardous waste;

(6) that it would be inappropriate for the State of Illinois to adopt a hazardous waste management program that is less stringent than or conflicts with federal law;

(7) that Subtitle C of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, provides that the United States Environmental Protection Agency shall implement the hazardous waste management program authorized therein unless (a) the State is authorized by and under its law to establish and administer its own hazardous waste management program, and (b) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency finds that the State hazardous waste program is equivalent to the federal program;

(8) that it is in the interest of the people of the State of Illinois to authorize such a hazardous waste management program and secure federal approval thereof, and thereby to avoid the existence of duplicative, overlapping or conflicting state and federal programs;

(9) that the federal requirements for the securing of

such State hazardous waste management program approval, as set forth in Subtitle C of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and in regulations promulgated by the Administrator of the United States Environmental Protection Agency pursuant thereto are complex and detailed, and the General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of such federal Act or all regulations which may be established thereunder;

(10) that the handling, storage and disposal of hazardous substances and petroleum pose a danger of exposing citizens, property, natural resources and the environment to substantial risk of harm or degradation, that the Agency is authorized by this Act to use public funds to respond to and correct releases of hazardous substances and petroleum, that by doing such the value of property is enhanced or preserved, that persons should not receive a financial benefit at the expense of public funds when the Agency performs a cleanup, and that establishing environmental reclamation liens on property subject to response or corrective action will help assure that public funds are recompensed;

(11) that Subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, provides for comprehensive regulation of the disposal of solid waste;

(12) that it would be inappropriate for the State of Illinois to adopt a solid waste management program that is less stringent than or conflicts with federal law;

(13) that Subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, provides that the United States Environmental Protection Agency shall implement the solid waste management program authorized in that Act unless (i) the State is authorized by and under its law to establish and administer its own solid waste management program, and (ii) pursuant to such federal Act, the Administrator of the United States Environmental Protection Agency finds that the State solid waste program is equivalent to the federal program;

(14) that it is in the interest of the people of the State of Illinois to authorize such a solid waste management program and secure federal approval of the program, and thereby avoid the existence of duplicative, overlapping or conflicting State and federal programs;

(15) that the federal requirements for the securing of State solid waste management program approval, as set forth in Subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and in regulations promulgated by the Administrator of the United States Environmental Protection Agency under that Act are complex and detailed, and the General Assembly cannot conveniently or advantageously set forth in this Act all the requirements of the federal Act or all regulations which may be established under the federal Act.

(b) It is the purpose of this Title to prevent the pollution or misuse of land, to promote the conservation of natural resources and minimize environmental damage by reducing the difficulty of disposal of wastes and encouraging and effecting the recycling and reuse of waste materials, and upgrading waste collection, treatment, storage, and disposal practices; and to authorize, empower, and direct the Board to adopt such regulations and the Agency to adopt such procedures as will enable the State to secure federal approval of the State hazardous waste and solid waste management programs pursuant to the provisions of subtitles C and D of the Resource Conservation

and Recovery Act of 1976 (P.L. 94-580), as amended, and federal regulations pursuant thereto.

(c) It is in the public interest to encourage the recycling and reuse of materials such as paper and paperboard and that the Board and the Agency in their planning and in the adoption, interpretation, and enforcement of regulations and standards shall encourage such recycling and reuse to the extent consistent with federal requirements.

(d) The General Assembly finds:

(1) that an increase in the hazardous waste disposal fee is necessary to provide increased funding for hazardous waste cleanup activities;

(2) that there are wastes currently being treated, stored or disposed of on-site which, because of changing federal regulations or other factors, may be disposed of off-site;

(3) that State policy and programs should be developed to assist local governments and private industry in seeking solutions to hazardous waste management problems;

(4) that there are wastes which may have reduced environmental threat when disposed of in monofills because they are non-putrescible, homogeneous, do not contain free liquids, or for other reasons;

(5) that both permitted or interim status on-site and off-site hazardous waste disposal facilities are covered by financial responsibility requirements to assure funding removal or remedial actions;

(6) that the disposal of wastes in monofills receiving only the same type of waste or compatible materials may facilitate future recovery of materials when it becomes technically feasible;

(7) that for these and other reasons there are limitations on the amount of hazardous waste treatment and disposal fees on various activities under current law, and that a similar limitation is appropriate for generators disposing in monofills.

(e) The General Assembly finds that:

(1) It is the policy of the State of Illinois, as expressed in the Environmental Protection Act, the Illinois Solid Waste Management Act, the Solid Waste Planning and Recycling Act and other laws, to collect information about the disposal of waste at landfills and incinerators in Illinois.

(2) Some disposal facilities in Illinois are quickly using up scarce waste disposal capacity because of the importation of waste from outside the State.

(3) In order to evaluate current waste handling capacity and future trends in waste handling, the State of Illinois needs to collect information on the quantities of waste being brought into the State for disposal.

(4) By collecting data relating to the movement of solid waste into Illinois, the State of Illinois will be able to more effectively assign resources to educate persons about, and assure compliance with, Illinois disposal restrictions, and will be able to more effectively plan for future waste management needs.

(Source: P.A. 87-484; 88-496.)

(415 ILCS 5/20.1) (from Ch. 111 1/2, par. 1020.1)

Sec. 20.1. (a) The Agency shall conduct a survey and prepare and publish a list of sites in the State where hazardous waste has been deposited, treated, or stored.

(b) The Agency shall monitor hazardous waste processing, use, handling, storage, and disposal practices in the State, and

shall determined existing and expected rates of production of hazardous waste.

(c) The Agency shall compile and make available to the public an annual report identifying the types and quantities of hazardous waste generated, stored, treated or disposed of within this State and containing the other information required to be collected under this Section.

(Source: P.A. 83-906.)

(415 ILCS 5/21) (from Ch. 111 1/2, par. 1021)

Sec. 21. Prohibited acts. No person shall:

(a) Cause or allow the open dumping of any waste.

(b) Abandon, dump, or deposit any waste upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.

(c) Abandon any vehicle in violation of the "Abandoned Vehicles Amendment to the Illinois Vehicle Code", as enacted by the 76th General Assembly.

(d) Conduct any waste-storage, waste-treatment, or waste-disposal operation:

(1) without a permit granted by the Agency or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; provided, however, that, except for municipal solid waste landfill units that receive waste on or after October 9, 1993, and CCR surface impoundments, no permit shall be required for (i) any person conducting a waste-storage, waste-treatment, or waste-disposal operation for wastes generated by such person's own activities which are stored, treated, or disposed within the site where such wastes are generated, (ii) until one year after the effective date of rules adopted by the Board under subsection (n) of Section 22.38, a facility located in a county with a population over 700,000 as of January 1, 2000, operated and located in accordance with Section 22.38 of this Act, and used exclusively for the transfer, storage, or treatment of general construction or demolition debris, provided that the facility was receiving construction or demolition debris on August 24, 2009 (the effective date of Public Act 96-611), or (iii) any person conducting a waste transfer, storage, treatment, or disposal operation, including, but not limited to, a waste transfer or waste composting operation, under a mass animal mortality event plan created by the Department of Agriculture;

(2) in violation of any regulations or standards adopted by the Board under this Act;

(3) which receives waste after August 31, 1988, does not have a permit issued by the Agency, and is (i) a landfill used exclusively for the disposal of waste generated at the site, (ii) a surface impoundment receiving special waste not listed in an NPDES permit, (iii) a waste pile in which the total volume of waste is greater than 100 cubic yards or the waste is stored for over one year, or (iv) a land treatment facility receiving special waste generated at the site; without giving notice of the operation to the Agency by January 1, 1989, or 30 days after the date on which the operation commences, whichever is later, and every 3 years thereafter. The form for such notification shall be specified by the Agency, and shall be limited to information regarding: the name and address of

the location of the operation; the type of operation; the types and amounts of waste stored, treated or disposed of on an annual basis; the remaining capacity of the operation; and the remaining expected life of the operation.

Item (3) of this subsection (d) shall not apply to any person engaged in agricultural activity who is disposing of a substance that constitutes solid waste, if the substance was acquired for use by that person on his own property, and the substance is disposed of on his own property in accordance with regulations or standards adopted by the Board.

This subsection (d) shall not apply to hazardous waste.

(e) Dispose, treat, store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

(f) Conduct any hazardous waste-storage, hazardous waste-treatment or hazardous waste-disposal operation:

(1) without a RCRA permit for the site issued by the Agency under subsection (d) of Section 39 of this Act, or in violation of any condition imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations and standards adopted thereunder; or

(2) in violation of any regulations or standards adopted by the Board under this Act; or

(3) in violation of any RCRA permit filing requirement established under standards adopted by the Board under this Act; or

(4) in violation of any order adopted by the Board under this Act.

Notwithstanding the above, no RCRA permit shall be required under this subsection or subsection (d) of Section 39 of this Act for any person engaged in agricultural activity who is disposing of a substance which has been identified as a hazardous waste, and which has been designated by Board regulations as being subject to this exception, if the substance was acquired for use by that person on his own property and the substance is disposed of on his own property in accordance with regulations or standards adopted by the Board.

(g) Conduct any hazardous waste-transportation operation:

(1) without registering with and obtaining a special waste hauling permit from the Agency in accordance with the regulations adopted by the Board under this Act; or

(2) in violation of any regulations or standards adopted by the Board under this Act.

(h) Conduct any hazardous waste-recycling or hazardous waste-reclamation or hazardous waste-reuse operation in violation of any regulations, standards or permit requirements adopted by the Board under this Act.

(i) Conduct any process or engage in any act which produces hazardous waste in violation of any regulations or standards adopted by the Board under subsections (a) and (c) of Section 22.4 of this Act.

(j) Conduct any special waste-transportation operation in violation of any regulations, standards or permit requirements adopted by the Board under this Act. However, sludge from a water or sewage treatment plant owned and operated by a unit of local government which (1) is subject to a sludge management plan approved by the Agency or a permit granted by the Agency, and (2) has been tested and determined not to be a hazardous waste as required by applicable State and federal laws and regulations, may be transported in this State without a special

waste hauling permit, and the preparation and carrying of a manifest shall not be required for such sludge under the rules of the Pollution Control Board. The unit of local government which operates the treatment plant producing such sludge shall file an annual report with the Agency identifying the volume of such sludge transported during the reporting period, the hauler of the sludge, and the disposal sites to which it was transported. This subsection (j) shall not apply to hazardous waste.

(k) Fail or refuse to pay any fee imposed under this Act.

(l) Locate a hazardous waste disposal site above an active or inactive shaft or tunneled mine or within 2 miles of an active fault in the earth's crust. In counties of population less than 225,000 no hazardous waste disposal site shall be located (1) within 1 1/2 miles of the corporate limits as defined on June 30, 1978, of any municipality without the approval of the governing body of the municipality in an official action; or (2) within 1000 feet of an existing private well or the existing source of a public water supply measured from the boundary of the actual active permitted site and excluding existing private wells on the property of the permit applicant. The provisions of this subsection do not apply to publicly owned sewage works or the disposal or utilization of sludge from publicly owned sewage works.

(m) Transfer interest in any land which has been used as a hazardous waste disposal site without written notification to the Agency of the transfer and to the transferee of the conditions imposed by the Agency upon its use under subsection (g) of Section 39.

(n) Use any land which has been used as a hazardous waste disposal site except in compliance with conditions imposed by the Agency under subsection (g) of Section 39.

(o) Conduct a sanitary landfill operation which is required to have a permit under subsection (d) of this Section, in a manner which results in any of the following conditions:

(1) refuse in standing or flowing waters;

(2) leachate flows entering waters of the State;

(3) leachate flows exiting the landfill confines (as determined by the boundaries established for the landfill by a permit issued by the Agency);

(4) open burning of refuse in violation of Section 9 of this Act;

(5) uncovered refuse remaining from any previous operating day or at the conclusion of any operating day, unless authorized by permit;

(6) failure to provide final cover within time limits established by Board regulations;

(7) acceptance of wastes without necessary permits;

(8) scavenging as defined by Board regulations;

(9) deposition of refuse in any unpermitted portion of the landfill;

(10) acceptance of a special waste without a required manifest;

(11) failure to submit reports required by permits or Board regulations;

(12) failure to collect and contain litter from the site by the end of each operating day;

(13) failure to submit any cost estimate for the site or any performance bond or other security for the site as required by this Act or Board rules.

The prohibitions specified in this subsection (o) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit

the power of the Board to establish regulations or standards applicable to sanitary landfills.

(p) In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

(1) litter;

(2) scavenging;

(3) open burning;

(4) deposition of waste in standing or flowing waters;

(5) proliferation of disease vectors;

(6) standing or flowing liquid discharge from the dump site;

(7) deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.160(b) of this Act.

The prohibitions specified in this subsection (p) shall be enforceable by the Agency either by administrative citation under Section 31.1 of this Act or as otherwise provided by this Act. The specific prohibitions in this subsection do not limit the power of the Board to establish regulations or standards applicable to open dumping.

(q) Conduct a landscape waste composting operation without an Agency permit, provided, however, that no permit shall be required for any person:

(1) conducting a landscape waste composting operation for landscape wastes generated by such person's own activities which are stored, treated, or disposed of within the site where such wastes are generated; or

(1.5) conducting a landscape waste composting operation that (i) has no more than 25 cubic yards of landscape waste, composting additives, composting material, or end-product compost on-site at any one time and (ii) is not engaging in commercial activity; or

(2) applying landscape waste or composted landscape waste at agronomic rates; or

(2.5) operating a landscape waste composting facility at a site having 10 or more occupied non-farm residences within 1/2 mile of its boundaries, if the facility meets all of the following criteria:

(A) the composting facility is operated by the farmer on property on which the composting material is utilized, and the composting facility constitutes no more than 2% of the site's total acreage;

(A-5) any composting additives that the composting facility accepts and uses at the facility are necessary to provide proper conditions for composting and do not exceed 10% of the total composting material at the facility at any one time;

(B) the property on which the composting facility is located, and any associated property on which the compost is used, is principally and diligently devoted to the production of agricultural crops and is not owned, leased, or otherwise controlled by any waste hauler or generator of nonagricultural compost materials, and the operator of the composting facility is not an employee, partner, shareholder, or in any way connected with or controlled by any such waste hauler or generator;

(C) all compost generated by the composting facility is applied at agronomic rates and used as mulch, fertilizer, or soil conditioner on land actually farmed by the person operating the composting facility,

and the finished compost is not stored at the composting site for a period longer than 18 months prior to its application as mulch, fertilizer, or soil conditioner;

(D) no fee is charged for the acceptance of materials to be composted at the facility; and

(E) the owner or operator, by January 1, 2014 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, registers the site with the Agency, (ii) reports to the Agency on the volume of composting material received and used at the site; (iii) certifies to the Agency that the site complies with the requirements set forth in subparagraphs (A), (A-5), (B), (C), and (D) of this paragraph (2.5); and (iv) certifies to the Agency that all composting material was placed more than 200 feet from the nearest potable water supply well, was placed outside the boundary of the 10-year floodplain or on a part of the site that is floodproofed, was placed at least 1/4 mile from the nearest residence (other than a residence located on the same property as the facility) or a lesser distance from the nearest residence (other than a residence located on the same property as the facility) if the municipality in which the facility is located has by ordinance approved a lesser distance than 1/4 mile, and was placed more than 5 feet above the water table; any ordinance approving a residential setback of less than 1/4 mile that is used to meet the requirements of this subparagraph (E) of paragraph (2.5) of this subsection must specifically reference this paragraph; or

(3) operating a landscape waste composting facility on a farm, if the facility meets all of the following criteria:

(A) the composting facility is operated by the farmer on property on which the composting material is utilized, and the composting facility constitutes no more than 2% of the property's total acreage, except that the Board may allow a higher percentage for individual sites where the owner or operator has demonstrated to the Board that the site's soil characteristics or crop needs require a higher rate;

(A-1) the composting facility accepts from other agricultural operations for composting with landscape waste no materials other than uncontaminated and source-separated (i) crop residue and other agricultural plant residue generated from the production and harvesting of crops and other customary farm practices, including, but not limited to, stalks, leaves, seed pods, husks, bagasse, and roots and (ii) plant-derived animal bedding, such as straw or sawdust, that is free of manure and was not made from painted or treated wood;

(A-2) any composting additives that the composting facility accepts and uses at the facility are necessary to provide proper conditions for composting and do not exceed 10% of the total composting material at the facility at any one time;

(B) the property on which the composting facility is located, and any associated property on which the compost is used, is principally and diligently devoted to the production of agricultural crops and is not owned, leased or otherwise controlled by any waste hauler or generator of nonagricultural compost materials, and the operator of the composting facility is not an employee, partner, shareholder, or in any way

connected with or controlled by any such waste hauler or generator;

(C) all compost generated by the composting facility is applied at agronomic rates and used as mulch, fertilizer or soil conditioner on land actually farmed by the person operating the composting facility, and the finished compost is not stored at the composting site for a period longer than 18 months prior to its application as mulch, fertilizer, or soil conditioner;

(D) the owner or operator, by January 1 of each year, (i) registers the site with the Agency, (ii) reports to the Agency on the volume of composting material received and used at the site, (iii) certifies to the Agency that the site complies with the requirements set forth in subparagraphs (A), (A-1), (A-2), (B), and (C) of this paragraph (q)(3), and (iv) certifies to the Agency that all composting material:

(I) was placed more than 200 feet from the nearest potable water supply well;

(II) was placed outside the boundary of the 10-year floodplain or on a part of the site that is floodproofed;

(III) was placed either (aa) at least 1/4 mile from the nearest residence (other than a residence located on the same property as the facility) and there are not more than 10 occupied non-farm residences within 1/2 mile of the boundaries of the site on the date of application or (bb) a lesser distance from the nearest residence (other than a residence located on the same property as the facility) provided that the municipality or county in which the facility is located has by ordinance approved a lesser distance than 1/4 mile and there are not more than 10 occupied non-farm residences within 1/2 mile of the boundaries of the site on the date of application; and

(IV) was placed more than 5 feet above the water table.

Any ordinance approving a residential setback of less than 1/4 mile that is used to meet the requirements of this subparagraph (D) must specifically reference this subparagraph.

For the purposes of this subsection (q), "agronomic rates" means the application of not more than 20 tons per acre per year, except that the Board may allow a higher rate for individual sites where the owner or operator has demonstrated to the Board that the site's soil characteristics or crop needs require a higher rate.

(r) Cause or allow the storage or disposal of coal combustion waste unless:

(1) such waste is stored or disposed of at a site or facility for which a permit has been obtained or is not otherwise required under subsection (d) of this Section; or

(2) such waste is stored or disposed of as a part of the design and reclamation of a site or facility which is an abandoned mine site in accordance with the Abandoned Mined Lands and Water Reclamation Act; or

(3) such waste is stored or disposed of at a site or facility which is operating under NPDES and Subtitle D permits issued by the Agency pursuant to regulations adopted by the Board for mine-related water pollution and permits issued pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation

adopted by the State of Illinois pursuant thereto, and the owner or operator of the facility agrees to accept the waste; and either:

(i) such waste is stored or disposed of in accordance with requirements applicable to refuse disposal under regulations adopted by the Board for mine-related water pollution and pursuant to NPDES and Subtitle D permits issued by the Agency under such regulations; or

(ii) the owner or operator of the facility demonstrates all of the following to the Agency, and the facility is operated in accordance with the demonstration as approved by the Agency: (1) the disposal area will be covered in a manner that will support continuous vegetation, (2) the facility will be adequately protected from wind and water erosion, (3) the pH will be maintained so as to prevent excessive leaching of metal ions, and (4) adequate containment or other measures will be provided to protect surface water and groundwater from contamination at levels prohibited by this Act, the Illinois Groundwater Protection Act, or regulations adopted pursuant thereto.

Notwithstanding any other provision of this Title, the disposal of coal combustion waste pursuant to item (2) or (3) of this subdivision (r) shall be exempt from the other provisions of this Title V, and notwithstanding the provisions of Title X of this Act, the Agency is authorized to grant experimental permits which include provision for the disposal of wastes from the combustion of coal and other materials pursuant to items (2) and (3) of this subdivision (r).

(s) After April 1, 1989, offer for transportation, transport, deliver, receive or accept special waste for which a manifest is required, unless the manifest indicates that the fee required under Section 22.8 of this Act has been paid.

(t) Cause or allow a lateral expansion of a municipal solid waste landfill unit on or after October 9, 1993, without a permit modification, granted by the Agency, that authorizes the lateral expansion.

(u) Conduct any vegetable by-product treatment, storage, disposal or transportation operation in violation of any regulation, standards or permit requirements adopted by the Board under this Act. However, no permit shall be required under this Title V for the land application of vegetable by-products conducted pursuant to Agency permit issued under Title III of this Act to the generator of the vegetable by-products. In addition, vegetable by-products may be transported in this State without a special waste hauling permit, and without the preparation and carrying of a manifest.

(v) (Blank).

(w) Conduct any generation, transportation, or recycling of construction or demolition debris, clean or general, or uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads that is not commingled with any waste, without the maintenance of documentation identifying the hauler, generator, place of origin of the debris or soil, the weight or volume of the debris or soil, and the location, owner, and operator of the facility where the debris or soil was transferred, disposed, recycled, or treated. This documentation must be maintained by the generator, transporter, or recycler for 3 years. This subsection (w) shall not apply to (1) a permitted pollution control facility that transfers or accepts construction or demolition debris, clean or general, or uncontaminated soil for final disposal, recycling, or treatment, (2) a public utility (as that term is defined in

the Public Utilities Act) or a municipal utility, (3) the Illinois Department of Transportation, or (4) a municipality or a county highway department, with the exception of any municipality or county highway department located within a county having a population of over 3,000,000 inhabitants or located in a county that is contiguous to a county having a population of over 3,000,000 inhabitants; but it shall apply to an entity that contracts with a public utility, a municipal utility, the Illinois Department of Transportation, or a municipality or a county highway department. The terms "generation" and "recycling", as used in this subsection, do not apply to clean construction or demolition debris when (i) used as fill material below grade outside of a setback zone if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, (ii) solely broken concrete without protruding metal bars is used for erosion control, or (iii) milled asphalt or crushed concrete is used as aggregate in construction of the shoulder of a roadway. The terms "generation" and "recycling", as used in this subsection, do not apply to uncontaminated soil that is not commingled with any waste when (i) used as fill material below grade or contoured to grade, or (ii) used at the site of generation.
(Source: P.A. 101-171, eff. 7-30-19; 102-216, eff. 1-1-22; 102-310, eff. 8-6-21; 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

(415 ILCS 5/21.1) (from Ch. 111 1/2, par. 1021.1)

Sec. 21.1. (a) Except as provided in subsection (a.5), no person other than the State of Illinois, its agencies and institutions, or a unit of local government shall own or operate a MSWLF unit or other waste disposal operation on or after March 1, 1985, which requires a permit under subsection (d) of Section 21 of this Act, unless such person has posted with the Agency a performance bond or other security for the purpose of insuring closure of the site and post-closure care in accordance with this Act and regulations adopted thereunder.

(a.5) On and after the effective date established by the United States Environmental Protection Agency for MSWLF units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, no person, other than the State of Illinois, its agencies and institutions, shall own or operate a MSWLF unit that requires a permit under subsection (d) of Section 21 of this Act, unless that person has posted with the Agency a performance bond or other security for the purposes of:

(1) insuring closure of the site and post-closure care in accordance with this Act and its rules; and

(2) insuring completion of a corrective action remedy when required by Board rules adopted under Section 22.40 of this Act or when required by Section 22.41 of this Act.

The performance bond or other security requirement set forth in this Section may be fulfilled by closure or post-closure insurance, or both, issued by an insurer licensed to transact the business of insurance by the Department of Insurance or at a minimum the insurer must be licensed to transact the business of insurance or approved to provide insurance as an excess or surplus lines insurer by the insurance department in one or more states.

(b) On or before January 1, 1985, the Board shall adopt regulations to promote the purposes of this Section. Without limiting the generality of this authority, such regulations may, among other things, prescribe the type and amount of the performance bonds or other securities required under subsections (a) and (a.5) of this Section, and the conditions under which the State is entitled to collect monies from such performance

bonds or other securities. The bond amount shall be directly related to the design and volume of the site. The cost estimate for the post-closure care of a MSWLF unit shall be calculated using a 30 year post-closure care period or such other period as may be approved by the Agency under Board or federal rules. On and after the effective date established by the United States Environmental Protection Agency for MSWLF units to provide financial assurance under Subtitle D of the Resource Conservation and Recovery Act, closure, post-closure care, and corrective action cost estimates for MSWLF units shall be in current dollars.

(c) There is hereby created within the State Treasury a special fund to be known as the "Landfill Closure and Post-Closure Fund". Any monies forfeited to the State of Illinois from any performance bond or other security required under this Section shall be placed in the "Landfill Closure and Post-Closure Fund" and shall, upon approval by the Governor and the Director, be used by and under the direction of the Agency for the purposes for which such performance bond or other security was issued. The Landfill Closure and Post-Closure Fund is not subject to the provisions of subsection (c) of Section 5 of the State Finance Act.

(d) The Agency is authorized to enter into such contracts and agreements as it may deem necessary to carry out the purposes of this Section. Neither the State, nor the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any action taken under this Section.

(e) The Agency shall have the authority to approve or disapprove any performance bond or other security posted pursuant to subsection (a) or (a.5) of this Section. Any person whose performance bond or other security is disapproved by the Agency may contest the disapproval as a permit denial appeal pursuant to Section 40 of this Act.

(f) The Agency may establish such procedures as it may deem necessary for the purpose of implementing and executing its responsibilities under this Section.

(g) Nothing in this Section shall bar a cause of action by the State for any other penalty or relief provided by this Act or any other law.

(Source: P.A. 97-887, eff. 8-2-12.)

(415 ILCS 5/21.2) (from Ch. 111 1/2, par. 1021.2)

Sec. 21.2. (a) After June 30, 1988, no person may sell or offer for sale at retail in this State any metal beverage container acquired by the seller or retailer after that date which is designed and constructed in such a manner that a part of the container is detachable in opening the container without the aid of a can opener, unless the part comprises substantially all of one of the ends of the metal beverage container.

(b) For purposes of this Section:

(1) "Beverage" means beer or other malt beverages, mineral water, soda water or carbonated soft drinks, in liquid form and intended for human consumption.

(2) "Metal beverage container" means any can or other container which is composed exclusively or predominantly of metal or metallic alloys (except those sold to interstate common carriers for use in passenger service) and which contains or did contain a beverage.

(c) Any person who violates this Section is guilty of a business offense and shall be subject to a fine of $500 for the first such violation. Any person who violates this Section a second or subsequent time shall be guilty of a business offense

and shall be subject to a fine of $2,000.
(Source: P.A. 100-51, eff. 1-1-18.)

(415 ILCS 5/21.3) (from Ch. 111 1/2, par. 1021.3)

Sec. 21.3. Environmental reclamation lien.

(a) All costs and damages for which a person is liable to the State of Illinois under Section 22.2, 22.15a, 55.3, or 57.12 shall constitute an environmental reclamation lien in favor of the State of Illinois upon all real property and rights to such property which:

(1) belong to such person; and

(2) are subject to or affected by a removal or remedial action under Section 22.2 or investigation, preventive action, corrective action, or enforcement action under Section 22.15a, 55.3, or 57.12.

(b) An environmental reclamation lien shall continue until the liability for the costs and damages, or a judgment against the person arising out of such liability, is satisfied.

(c) An environmental reclamation lien shall be effective upon the filing by the Agency of a Notice of Environmental Reclamation Lien with the recorder or the registrar of titles of the county in which the real property lies. The Agency shall not file an environmental reclamation lien, and no such lien shall be valid, unless the Agency has sent notice pursuant to subsection (q) of Section 4, subsection (c) of Section 22.15a, subsection (d) of Section 55.3, or subsection (c) of Section 57.12 of this Act to owners of the real property. Nothing in this Section shall be construed to give the Agency's lien a preference over the rights of any bona fide purchaser or mortgagee or other lienholder (not including the United States when holding an unfiled lien) arising prior to the filing of a notice of environmental reclamation lien in the office of the recorder or registrar of titles of the county in which the property subject to the lien is located. For purposes of this Section, the term "bona fide" shall not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the liable person mentioned in the notice of lien who executed such chattel or real property mortgage or the document evidencing such credit transaction. Such lien shall be inferior to the lien of general taxes, special assessments and special taxes heretofore or hereafter levied by any political subdivision of this State.

(d) The environmental reclamation lien shall not exceed the amount of expenditures as itemized on the Affidavit of Expenditures attached to and filed with the Notice of Environmental Reclamation Lien. The Affidavit of Expenditures may be amended if additional costs or damages are incurred.

(e) Upon filing of the Notice of Environmental Reclamation Lien a copy with attachments shall be served upon the owners of the real property. Notice of such service shall be served on all lienholders of record as of the date of filing.

(f) (Blank).

(g) In addition to any other remedy provided by the laws of this State, the Agency may foreclose in the circuit court an environmental reclamation lien on real property for any costs or damages imposed under Section 22.2, 22.15a, 55.3, or 57.12 to the same extent and in the same manner as in the enforcement of other liens. The process, practice and procedure for such foreclosure shall be the same as provided in Article XV of the Code of Civil Procedure. Nothing in this Section shall affect the right of the State of Illinois to bring an action against any person to recover all costs and damages for which such person is liable under Section 22.2, 22.15a, 55.3, or 57.12.

(h) Any liability to the State under Section 22.2, 22.15a, 55.3, or 57.12 shall constitute a debt to the State. Interest on such debt shall begin to accrue at a rate of 12% per annum from the date of the filing of the Notice of Environmental Reclamation Lien under paragraph (c). Accrued interest shall be included as a cost incurred by the State of Illinois under Section 22.2, 22.15a, 55.3, or 57.12.

(i) "Environmental reclamation lien" means a lien established under this Section.

(Source: P.A. 94-272, eff. 7-19-05.)

(415 ILCS 5/21.4) (from Ch. 111 1/2, par. 1021.4)

Sec. 21.4. (a) The Agency is hereby authorized to acquire the fee or any lesser interest, including easements, in real property where necessary or appropriate:

(1) to protect human health or the environment; or

(2) to respond to the release or substantial threat of a release of any hazardous substance or petroleum into the environment; or

(3) as part of a proceeding to foreclose or enforce liens or interests under Section 21.3.

(b) The Agency is authorized to retain for public use or to convey, deed, assign or otherwise transfer all or any portion of the interest in real property acquired pursuant to subsection (a) and may place restrictions upon the use of the property after transfer as are necessary or appropriate:

(1) to protect present or future human health or the environment; or

(2) to respond to the release or substantial threat of a release of any hazardous substance or petroleum into the environment.

(c) Any monies received by the State of Illinois pursuant to paragraph (b) of this Section shall be deposited in the Hazardous Waste Fund.

(Source: P.A. 86-820.)

(415 ILCS 5/21.5) (from Ch. 111 1/2, par. 1021.5)

Sec. 21.5. Toxic packaging reduction.

(a) For the purposes of this Section, the following terms have the meanings ascribed to them in this subsection:

"Distributor" means any person, firm, or corporation that takes title to goods purchased for resale.

"Package" means a container providing a direct means of marketing, protecting, or handling a product, and includes a product unit package, an intermediate package, or a shipping container as defined by ASTM D996. "Package" shall also include such unsealed consumer product receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

"Packaging component" means any individual assembled part of a package including, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, coatings, closure, ink, and labeling; except that coatings shall not include a thin tin layer applied to base steel or sheet steel during manufacturing of the steel or package.

(b) Beginning July 1, 1994, no package or packaging component may be offered for sale or promotional purposes in this State, by its manufacturer or distributor, if the package itself or any packaging component includes any ink, dye, pigment, adhesive, stabilizer, or other additive that contains lead, cadmium, mercury or hexavalent chromium that has been

intentionally introduced during manufacturing or distribution.

(c) Beginning July 1, 1994, no product may be offered for sale or for promotional purposes in this State by its manufacturer or distributor in Illinois in a package that includes, in the package itself or in any of its packaging components, any ink, dye, pigment, adhesive, stabilizer, or other additive that contains lead, cadmium, mercury or hexavalent chromium that has been intentionally introduced during manufacturing or distribution.

(d) No package or packaging component, and no product in a package, may be offered for sale or promotional purposes in this State if the sum of the concentration levels of lead, cadmium, mercury, or hexavalent chromium present in the package or packaging component, but not intentionally introduced by the manufacturer or distributor, exceeds the following limits:

(1) 600 parts per million by weight (0.06%) beginning July 1, 1994.

(2) 250 parts per million by weight (0.025%) beginning July 1, 1995.

(3) 100 parts per million by weight (0.01%) beginning July 1, 1996.

(e) The following packages and packaging components are not subject to this Section:

(1) Those packages or packaging components with a code indicating a date of manufacture before July 1, 1994.

(2) Those packages or packaging components for which an exemption has been granted by the Agency under subsection (f).

(3) Until July 1, 1998, packages and packaging components that would not exceed the maximum contaminant levels set forth in subsection (d) of this Section but for the addition of post consumer materials.

(4) Those packages or packaging components used to contain wine or distilled spirits that have been bottled before July 1, 1994.

(5) Packaging components, including but not limited to strapping, seals, fasteners, and other industrial packaging components intended to protect, secure, close, unitize or provide pilferage protection for any product destined for commercial use.

(6) Those packages used in transporting, protecting, safe handling or functioning of radiographic film.

(f) The Agency may grant an exemption from the requirements of this Section for a package or packaging component to which lead, cadmium, mercury, or hexavalent chromium has been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or because there is not a feasible alternative. These exemptions shall be granted, upon application of the manufacturer of the package or packaging component, for a period of 2 years and are renewable for periods of 2 years. If the Agency denies a request for exemption, or fails to take final action on a request within 180 days, the applicant may seek review from the Board in the same manner as in the case of a permit denial. Any other party to the Agency proceeding may seek review in the manner provided in subsection (c) of Section 40.

For the purposes of this subsection, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

The Agency may enter into reciprocal agreements with other states that have adopted similar restrictions on toxic packaging and may accept exemptions to those restrictions granted by such states. Prior to taking such action, the Agency shall provide

for public notice in the Environmental Register and for a 30-day comment period.

(g) Beginning July 1, 1994, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this Section shall be furnished by its manufacturer or supplier to its distributor, or shall be maintained by the manufacturer in Illinois if the manufacturer is also the distributor. If compliance is achieved only under the exemption provided in subdivision (e)(2) or (e)(3), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. The certificate can be for the entire class, type, or category of packaging or a particular product regulated under this Act, and a certificate need not be provided or maintained for each individual package, packaging component, or packaging for a product. The manufacturer or distributor in Illinois shall retain the certificate of compliance for as long as the package or packaging component is in use. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component. Certificates of compliance, or copies thereof, shall be furnished to the Agency upon its request and to members of the public in accordance with subsection (i).

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

(h) (Blank.)

(i) Any request from a member of the public for any certificate of compliance from the manufacturer or supplier of a package or packaging component shall be:

(1) made in writing and transmitted by registered mail with a copy provided to the Agency;

(2) specific as to the package or packaging component information requested; and

(3) responded to by the manufacturer or supplier within 60 days.

(j) The provisions of this Section shall not apply to any glass or ceramic product used as packaging that is intended to be reusable or refillable, and where the lead and cadmium from the product do not exceed the Toxicity Characteristic Leachability Procedures of leachability of lead and cadmium as set forth by the U.S. Environmental Protection Agency.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/21.6) (from Ch. 111 1/2, par. 1021.6)

Sec. 21.6. Materials disposal ban.

(a) Beginning July 1, 1996, no person may knowingly mix liquid used oil with any municipal waste that is intended for collection and disposal at a landfill.

(b) Beginning July 1, 1996, no owner or operator of a sanitary landfill shall accept for final disposal liquid used oil that is discernible in the course of prudent business operation.

(c) For purposes of this Section, "liquid used oil" does not include used oil filters, rags, absorbent material used to collect spilled oil or other materials incidentally contaminated with used oil, or empty containers which previously contained virgin oil, re-refined oil, or used oil.

(d) (Blank).

(Source: P.A. 100-621, eff. 7-20-18.)

(415 ILCS 5/21.7)

Sec. 21.7. Landfills.

(a) The purpose of this Section is to enact legislative recommendations provided by the Mahomet Aquifer Protection Task Force, established under Public Act 100-403. The Task Force identified capped but unregulated or underregulated landfills that overlie the Mahomet Aquifer as potentially hazardous to valuable groundwater resources. These unregulated or underregulated landfills generally began accepting waste for disposal sometime prior to 1973.

(b) The Agency shall prioritize unregulated or underregulated landfills that overlie the Mahomet Aquifer for inspection. The following factors shall be considered:

(1) the presence of, and depth to, any aquifer with potential potable use;

(2) whether the landfill has an engineered liner system;

(3) whether the landfill has an active groundwater monitoring system;

(4) whether waste disposal occurred within the 100-year floodplain; and

(5) landfills within the setback zone of any potable water supply well.

(c) Subject to appropriation, the Agency shall use existing information available from State and federal agencies, such as the Prairie Research Institute, the Department of Natural Resources, the Illinois Emergency Management Agency, the Federal Emergency Management Agency, and the Natural Resources Conservation Service, to identify unknown, unregulated, or underregulated waste disposal sites that overlie the Mahomet Aquifer that may pose a threat to surface water or groundwater resources.

(d) Subject to appropriation, for those landfills prioritized for response action following inspection and investigation, the Agency shall use its own data, along with data from municipalities, counties, solid waste management associations, companies, corporations, and individuals, to archive information about the landfills, including their ownership, operational details, and waste disposal history.

(Source: P.A. 101-573, eff. 1-1-20; 102-558, eff. 8-20-21.)

(415 ILCS 5/22) (from Ch. 111 1/2, par. 1022)

Sec. 22. In accord with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Title. Without limiting the generality of this authority, such regulations may among other things prescribe the following:

(a) Standards for the location, design, construction, sanitation, operation, maintenance, and discontinuance of the operation of refuse collection and disposal, storage and treatment sites and facilities and resource conservation and recovery sites and facilities;

(b) Standards for the dumping of any refuse, and standards for the handling, storing, processing, transporting and disposal of any hazardous waste;

(c) Requirements and standards for the keeping of records and the reporting and retaining of data collected by generators, processors, storers, transporters, handlers, treaters, and disposers of special or hazardous waste;

(d) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their source, the collection of samples and the collection, reporting and retention of data resulting from such monitoring;

(e) Alert and abatement standards relative to land pollution emergencies constituting an acute danger to health or to the

environment;

(f) Requirements and standards for adequate and proper care and maintenance of, closure of, and post-closure monitoring, maintenance and use of hazardous waste disposal sites;

(g) Requirements to prohibit the disposal of certain hazardous wastes in sanitary landfills where, after regulatory proceedings held in conformance with Title VII of this Act, it is determined by the Board that the long term impacts to public health and the environment are such that land burial should not be allowed and where an economically reasonable, technically feasible and environmentally sound alternative is available for processing, recycling, fixation or neutralization of such wastes. The agency shall participate in all such proceedings. No such prohibition may become effective unless a specific alternative technology meeting the criteria of this subsection is identified by the Board. Nothing in this subsection shall prohibit the land burial of any hazardous waste which is the subject of review under this subsection until such time as a final prohibition order is issued by the Board.

(Source: P.A. 83-425.)

(415 ILCS 5/22.01) (from Ch. 111 1/2, par. 1022.01)

Sec. 22.01. Manifests for nonhazardous special waste. When manifests are required by the Board for the shipment of nonhazardous special waste, the manifests shall consist of forms prescribed by the Agency. The forms must comply with the requirements of this Section and may be purchased from a third party. Generators of nonhazardous special waste and facilities accepting nonhazardous special waste are not required to submit copies of nonhazardous special waste manifests to the Agency; provided, however, that generators of nonhazardous special waste containing polychlorinated biphenyls and facilities accepting nonhazardous special waste containing polychlorinated biphenyls shall submit copies of nonhazardous special waste manifests to the Agency for shipments of waste containing polychlorinated biphenyls. Copies of each manifest shall be retained for 3 years by generators and facilities, and shall be available for inspection and copying by the Agency. The Agency may adopt such procedures for the distribution of copies of manifests as it deems necessary. Nothing in this Section shall preclude the Agency from collecting fees under Section 22.8 (g) of this Act. Generators of nonhazardous special waste shall not be required to file reports with the Agency regarding the shipment of nonhazardous special waste within the State of Illinois; provided, however, that the Board may require generators of nonhazardous special waste to file annual reports with the Agency regarding the shipment of nonhazardous special waste out-of-state. Commencing February 1, 1992, and annually thereafter, facilities accepting nonhazardous special waste shall file a report with the Agency, specifying the quantities and disposition of nonhazardous special waste accepted for treatment, storage or disposal during the previous calendar year.

Nothing in this Section shall be interpreted or construed to prohibit any company treating, storing or disposing of nonhazardous special wastes from requiring manifests to be submitted to it for such wastes. This Section does not apply to potentially infectious medical waste.

(Source: P.A. 101-145, eff. 7-26-19.)

(415 ILCS 5/22.02)

Sec. 22.02. Manifests for hazardous waste. Except to the extent required by federal law, generators and transporters of hazardous waste and facilities accepting hazardous waste are not

required to submit copies of hazardous waste manifests to the Agency. Nothing in this Section precludes the Agency from collecting fees under subsection (g) of Section 22.8 of this Act.

(Source: P.A. 99-55, eff. 7-16-15.)

(415 ILCS 5/22.2) (from Ch. 111 1/2, par. 1022.2)

Sec. 22.2. Hazardous waste; fees; liability.

(a) There are hereby created within the State Treasury 2 special funds to be known respectively as the "Hazardous Waste Fund" and the "Hazardous Waste Research Fund", constituted from the fees collected pursuant to this Section. In addition to the fees collected under this Section, the Hazardous Waste Fund shall include other moneys made available from any source for deposit into the Fund.

(b)(1) On and after January 1, 1989, the Agency shall collect from the owner or operator of each of the following sites a fee in the amount of:

(A) 9 cents per gallon or $18.18 per cubic yard, if the hazardous waste disposal site is located off the site where such waste was produced. The maximum amount payable under this subdivision (A) with respect to the hazardous waste generated by a single generator and deposited in monofills is $30,000 per year. If, as a result of the use of multiple monofills, waste fees in excess of the maximum are assessed with respect to a single waste generator, the generator may apply to the Agency for a credit.

(B) 9 cents or $18.18 per cubic yard, if the hazardous waste disposal site is located on the site where such waste was produced, provided however the maximum amount of fees payable under this paragraph (B) is $30,000 per year for each such hazardous waste disposal site.

(C) If the hazardous waste disposal site is an underground injection well, $6,000 per year if not more than 10,000,000 gallons per year are injected, $15,000 per year if more than 10,000,000 gallons but not more than 50,000,000 gallons per year are injected, and $27,000 per year if more than 50,000,000 gallons per year are injected.

(D) 3 cents per gallon or $6.06 per cubic yard of hazardous waste received for treatment at a hazardous waste treatment site, if the hazardous waste treatment site is located off the site where such waste was produced and if such hazardous waste treatment site is owned, controlled and operated by a person other than the generator of such waste. After treatment at such hazardous waste treatment site, the waste shall not be subject to any other fee imposed by this subsection (b). For purposes of this subsection (b), the term "treatment" is defined as in Section 3.505 but shall not include recycling, reclamation or reuse.

(2) The General Assembly shall annually appropriate to the Fund such amounts as it deems necessary to fulfill the purposes of this Act.

(3) The Agency shall have the authority to accept, receive, and administer on behalf of the State any moneys made available to the State from any source for the purposes of the Hazardous Waste Fund set forth in subsection (d) of this Section.

(4) Of the amount collected as fees provided for in this Section, the Agency shall manage the use of such funds to assure that sufficient funds are available for match

towards federal expenditures for response action at sites which are listed on the National Priorities List; provided, however, that this shall not apply to additional monies appropriated to the Fund by the General Assembly, nor shall it apply in the event that the Director finds that revenues in the Hazardous Waste Fund must be used to address conditions which create or may create an immediate danger to the environment or public health or to the welfare of the people of the State of Illinois.

(5) Notwithstanding the other provisions of this subsection (b), sludge from a publicly-owned sewage works generated in Illinois, coal mining wastes and refuse generated in Illinois, bottom boiler ash, flyash and flue gas desulphurization sludge from public utility electric generating facilities located in Illinois, and bottom boiler ash and flyash from all incinerators which process solely municipal waste shall not be subject to the fee.

(6) For the purposes of this subsection (b), "monofill" means a facility, or a unit at a facility, that accepts only wastes bearing the same USEPA hazardous waste identification number, or compatible wastes as determined by the Agency.

(c) The Agency shall establish procedures, not later than January 1, 1984, relating to the collection of the fees authorized by this Section. Such procedures shall include, but not be limited to: (1) necessary records identifying the quantities of hazardous waste received or disposed; (2) the form and submission of reports to accompany the payment of fees to the Agency; and (3) the time and manner of payment of fees to the Agency, which payments shall be not more often than quarterly.

(d) Beginning July 1, 1996, the Agency shall deposit all such receipts in the State Treasury to the credit of the Hazardous Waste Fund, except as provided in subsection (e) of this Section. All monies in the Hazardous Waste Fund shall be used by the Agency for the following purposes:

(1) Taking whatever preventive or corrective action is necessary or appropriate, in circumstances certified by the Director, including but not limited to removal or remedial action whenever there is a release or substantial threat of a release of a hazardous substance or pesticide; provided, the Agency shall expend no more than $1,000,000 on any single incident without appropriation by the General Assembly.

(2) To meet any requirements which must be met by the State in order to obtain federal funds pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (P.L. 96-510).

(3) In an amount up to 30% of the amount collected as fees provided for in this Section, for use by the Agency to conduct groundwater protection activities, including providing grants to appropriate units of local government which are addressing protection of underground waters pursuant to the provisions of this Act.

(4) To fund the development and implementation of the model pesticide collection program under Section 19.1 of the Illinois Pesticide Act.

(5) To the extent the Agency has received and deposited monies in the Fund other than fees collected under subsection (b) of this Section, to pay for the cost of Agency employees for services provided in reviewing the performance of response actions pursuant to Title XVII of this Act.

(6) In an amount up to 15% of the fees collected

annually under subsection (b) of this Section, for use by the Agency for administration of the provisions of this Section.

(e) The Agency shall deposit 10% of all receipts collected under subsection (b) of this Section, but not to exceed $200,000 per year, in the State Treasury to the credit of the Hazardous Waste Research Fund established by this Act. Pursuant to appropriation, all monies in such Fund shall be used by the University of Illinois for the purposes set forth in this subsection.

The University of Illinois may enter into contracts with business, industrial, university, governmental or other qualified individuals or organizations to assist in the research and development intended to recycle, reduce the volume of, separate, detoxify or reduce the hazardous properties of hazardous wastes in Illinois. Monies in the Fund may also be used by the University of Illinois for technical studies, monitoring activities, and educational and research activities which are related to the protection of underground waters. Monies in the Hazardous Waste Research Fund may be used to administer the Illinois Health and Hazardous Substances Registry Act. Monies in the Hazardous Waste Research Fund shall not be used for any sanitary landfill or the acquisition or construction of any facility. This does not preclude the purchase of equipment for the purpose of public demonstration projects. The University of Illinois shall adopt guidelines for cost sharing, selecting, and administering projects under this subsection.

(f) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (j) of this Section, the following persons shall be liable for all costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of a release or substantial threat of a release of a hazardous substance or pesticide:

(1) the owner and operator of a facility or vessel from which there is a release or substantial threat of release of a hazardous substance or pesticide;

(2) any person who at the time of disposal, transport, storage or treatment of a hazardous substance or pesticide owned or operated the facility or vessel used for such disposal, transport, treatment or storage from which there was a release or substantial threat of a release of any such hazardous substance or pesticide;

(3) any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous substances or pesticides owned, controlled or possessed by such person at a facility owned or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous substances or pesticides; and

(4) any person who accepts or accepted any hazardous substances or pesticides for transport to disposal, storage or treatment facilities or sites from which there is a release or a substantial threat of a release of a hazardous substance or pesticide.

Any monies received by the State of Illinois pursuant to this subsection (f) shall be deposited in the State Treasury to the credit of the Hazardous Waste Fund.

In accordance with the other provisions of this Section, costs of removal or remedial action incurred by a unit of local government may be recovered in an action before the Board brought by the unit of local government under subsection (i) of

this Section. Any monies so recovered shall be paid to the unit of local government.

(g)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or facility or from any person who may be liable for a release or substantial threat of a release under this Section, to any other person the liability imposed under this Section. Nothing in this Section shall bar any agreement to insure, hold harmless or indemnify a party to such agreements for any liability under this Section.

(2) Nothing in this Section, including the provisions of paragraph (g)(1) of this Section, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(h) For purposes of this Section:

(1) The term "facility" means:

(A) any building, structure, installation, equipment, pipe or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(B) any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(2) The term "owner or operator" means:

(A) any person owning or operating a vessel or facility;

(B) in the case of an abandoned facility, any person owning or operating the abandoned facility or any person who owned, operated, or otherwise controlled activities at the abandoned facility immediately prior to such abandonment;

(C) in the case of a land trust as defined in Section 2 of the Land Trustee as Creditor Act, the person owning the beneficial interest in the land trust;

(D) in the case of a fiduciary (other than a land trustee), the estate, trust estate, or other interest in property held in a fiduciary capacity, and not the fiduciary. For the purposes of this Section, "fiduciary" means a trustee, executor, administrator, guardian, receiver, conservator or other person holding a facility or vessel in a fiduciary capacity;

(E) in the case of a "financial institution", meaning the Illinois Housing Development Authority and that term as defined in Section 2 of the Illinois Banking Act, that has acquired ownership, operation, management, or control of a vessel or facility through foreclosure or under the terms of a security interest held by the financial institution or under the terms of an extension of credit made by the financial institution, the financial institution only if the financial institution takes possession of the vessel or facility and the financial institution exercises actual, direct, and continual or recurrent managerial control in the operation of the vessel or facility that causes a release or substantial threat of a release of a hazardous substance or pesticide resulting in removal or remedial action;

(F) In the case of an owner of residential

property, the owner if the owner is a person other than an individual, or if the owner is an individual who owns more than 10 dwelling units in Illinois, or if the owner, or an agent, representative, contractor, or employee of the owner, has caused, contributed to, or allowed the release or threatened release of a hazardous substance or pesticide. The term "residential property" means single family residences of one to 4 dwelling units, including accessory land, buildings, or improvements incidental to those dwellings that are exclusively used for the residential use. For purposes of this subparagraph (F), the term "individual" means a natural person, and shall not include corporations, partnerships, trusts, or other non-natural persons.

(G) In the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of State or local government, any person who owned, operated, or otherwise controlled activities at the facility immediately beforehand.

(H) The term "owner or operator" does not include a unit of State or local government which acquired ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign. The exclusion provided under this paragraph shall not apply to any State or local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility, and such a State or local government shall be subject to the provisions of this Act in the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including liability under Section 22.2(f).

(i) The costs and damages provided for in this Section may be imposed by the Board in an action brought before the Board in accordance with Title VIII of this Act, except that Section 33(c) of this Act shall not apply to any such action.

(j)(1) There shall be no liability under this Section for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous substance and the damages resulting therefrom were caused solely by:

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) There shall be no liability under this Section for any release permitted by State or federal law.

(3) There shall be no liability under this Section for

damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with this Section or the National Contingency Plan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P.L. 96-510) or at the direction of an on-scene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance or a substantial threat thereof. This subsection shall not preclude liability for damages as the result of gross negligence or intentional misconduct on the part of such person. For the purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(4) There shall be no liability under this Section for any person (including, but not limited to, an owner of residential property who applies a pesticide to the residential property or who has another person apply a pesticide to the residential property) for response costs or damages as the result of the storage, handling and use, or recommendation for storage, handling and use, of a pesticide consistent with:

(A) its directions for storage, handling and use as stated in its label or labeling;

(B) its warnings and cautions as stated in its label or labeling; and

(C) the uses for which it is registered under the Federal Insecticide, Fungicide and Rodenticide Act and the Illinois Pesticide Act.

(4.5) There shall be no liability under subdivision (f)(1) of this Section for response costs or damages as the result of a release of a pesticide from an agrichemical facility site if the Agency has received notice from the Department of Agriculture pursuant to Section 19.3 of the Illinois Pesticide Act, the owner or operator of the agrichemical facility is proceeding with a corrective action plan under the Agrichemical Facility Response Action Program implemented under that Section, and the Agency has provided a written endorsement of a corrective action plan.

(4.6) There shall be no liability under subdivision (f)(1) of this Section for response costs or damages as the result of a substantial threat of a release of a pesticide from an agrichemical facility site if the Agency has received notice from the Department of Agriculture pursuant to Section 19.3 of the Illinois Pesticide Act and the owner or operator of the agrichemical facility is proceeding with a corrective action plan under the Agrichemical Facility Response Action Program implemented under that Section.

(5) Nothing in this subsection (j) shall affect or modify in any way the obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance.

(6)(A) The term "contractual relationship", for the purpose of this subsection includes, but is not limited to, land contracts, deeds or other instruments transferring title or possession, unless the real property on which the facility concerned is located was acquired by the defendant after the disposal or placement of the hazardous substance on, in, or at the facility, and one or more of the circumstances described in clause (i), (ii), or (iii) of this paragraph is also established by the defendant by a preponderance of the evidence:

(i) At the time the defendant acquired the facility

the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the facility.

(ii) The defendant is a government entity which acquired the facility by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The defendant acquired the facility by inheritance or bequest.

In addition to establishing the foregoing, the defendant must establish that he has satisfied the requirements of subparagraph (C) of paragraph (1) of this subsection (j).

(B) To establish the defendant had no reason to know, as provided in clause (i) of subparagraph (A) of this paragraph, the defendant must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence, the court shall take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(C) Nothing in this paragraph (6) or in subparagraph (C) of paragraph (1) of this subsection shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this Act. Notwithstanding this paragraph (6), if the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the defendant owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such defendant shall be treated as liable under subsection (f) of this Section and no defense under subparagraph (C) of paragraph (1) of this subsection shall be available to such defendant.

(D) Nothing in this paragraph (6) shall affect the liability under this Act of a defendant who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(E)(i) Except as provided in clause (ii) of this subparagraph (E), a defendant who has acquired real property shall have established a rebuttable presumption against all State claims and a conclusive presumption against all private party claims that the defendant has made all appropriate inquiry within the meaning of subdivision (6)(B) of this subsection (j) if the defendant proves that immediately prior to or at the time of the acquisition:

(I) the defendant obtained a Phase I Environmental Audit of the real property that meets or exceeds the requirements of this subparagraph (E), and the Phase I Environmental Audit did not disclose the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from the real property; or

(II) the defendant obtained a Phase II Environmental Audit of the real property that meets or exceeds the requirements of this subparagraph (E), and the Phase II Environmental Audit did not disclose the presence or likely presence of a release or a substantial threat of a release

of a hazardous substance or pesticide at, on, to, or from the real property.

(ii) No presumption shall be created under clause (i) of this subparagraph (E), and a defendant shall be precluded from demonstrating that the defendant has made all appropriate inquiry within the meaning of subdivision (6)(B) of this subsection (j), if:

(I) the defendant fails to obtain all Environmental Audits required under this subparagraph (E) or any such Environmental Audit fails to meet or exceed the requirements of this subparagraph (E);

(II) a Phase I Environmental Audit discloses the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from real property, and the defendant fails to obtain a Phase II Environmental Audit;

(III) a Phase II Environmental Audit discloses the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from the real property;

(IV) the defendant fails to maintain a written compilation and explanatory summary report of the information reviewed in the course of each Environmental Audit under this subparagraph (E); or

(V) there is any evidence of fraud, material concealment, or material misrepresentation by the defendant of environmental conditions or of related information discovered during the course of an Environmental Audit.

(iii) For purposes of this subparagraph (E), the term "environmental professional" means an individual (other than a practicing attorney) who, through academic training, occupational experience, and reputation (such as engineers, industrial hygienists, or geologists) can objectively conduct one or more aspects of an Environmental Audit and who either:

(I) maintains at the time of the Environmental Audit and for at least one year thereafter at least $500,000 of environmental consultants' professional liability insurance coverage issued by an insurance company licensed to do business in Illinois; or

(II) is an Illinois licensed professional engineer or a Certified Industrial Hygienist certified by the American Board of Industrial Hygiene.

An environmental professional may employ persons who are not environmental professionals to assist in the preparation of an Environmental Audit if such persons are under the direct supervision and control of the environmental professional.

(iv) For purposes of this subparagraph (E), the term "real property" means any interest in any parcel of land, and includes, but is not limited to, buildings, fixtures, and improvements.

(v) For purposes of this subparagraph (E), the term "Phase I Environmental Audit" means an investigation of real property, conducted by environmental professionals, to discover the presence or likely presence of a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from real property, and whether a release or a substantial threat of a release of a hazardous substance or pesticide has occurred or may occur at, on, to, or from the real property. Until such time as the United States Environmental Protection Agency establishes standards for making appropriate inquiry into the previous ownership and uses of the facility pursuant to 42 U.S.C. Sec. 9601(35)(B)(ii), the investigation shall comply with the procedures of the American Society for Testing and Materials, including the document known as Standard E1527-97,

entitled "Standard Procedures for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process". Upon their adoption, the standards promulgated by USEPA pursuant to 42 U.S.C. Sec. 9601(35)(B)(ii) shall govern the performance of Phase I Environmental Audits. In addition to the above requirements, the Phase I Environmental Audit shall include a review of recorded land title records for the purpose of determining whether the real property is subject to an environmental land use restriction such as a No Further Remediation Letter, Environmental Land Use Control, or Highway Authority Agreement.

(vi) For purposes of subparagraph (E), the term "Phase II Environmental Audit" means an investigation of real property, conducted by environmental professionals, subsequent to a Phase I Environmental Audit. If the Phase I Environmental Audit discloses the presence or likely presence of a hazardous substance or a pesticide or a release or a substantial threat of a release of a hazardous substance or pesticide:

(I) In or to soil, the defendant, as part of the Phase II Environmental Audit, shall perform a series of soil borings sufficient to determine whether there is a presence or likely presence of a hazardous substance or pesticide and whether there is or has been a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from the real property.

(II) In or to groundwater, the defendant, as part of the Phase II Environmental Audit, shall: review information regarding local geology, water well locations, and locations of waters of the State as may be obtained from State, federal, and local government records, including but not limited to the United States Geological Survey, the State Geological Survey of the University of Illinois, and the State Water Survey of the University of Illinois; and perform groundwater monitoring sufficient to determine whether there is a presence or likely presence of a hazardous substance or pesticide, and whether there is or has been a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from the real property.

(III) On or to media other than soil or groundwater, the defendant, as part of the Phase II Environmental Audit, shall perform an investigation sufficient to determine whether there is a presence or likely presence of a hazardous substance or pesticide, and whether there is or has been a release or a substantial threat of a release of a hazardous substance or pesticide at, on, to, or from the real property.

(vii) The findings of each Environmental Audit prepared under this subparagraph (E) shall be set forth in a written audit report. Each audit report shall contain an affirmation by the defendant and by each environmental professional who prepared the Environmental Audit that the facts stated in the report are true and are made under a penalty of perjury as defined in Section 32-2 of the Criminal Code of 2012. It is perjury for any person to sign an audit report that contains a false material statement that the person does not believe to be true.

(viii) The Agency is not required to review, approve, or certify the results of any Environmental Audit. The performance of an Environmental Audit shall in no way entitle a defendant to a presumption of Agency approval or certification of the results of the Environmental Audit.

The presence or absence of a disclosure document prepared under the Responsible Property Transfer Act of 1988 shall not be

a defense under this Act and shall not satisfy the requirements of subdivision (6)(A) of this subsection (j).

(7) No person shall be liable under this Section for response costs or damages as the result of a pesticide release if the Agency has found that a pesticide release occurred based on a Health Advisory issued by the U.S. Environmental Protection Agency or an action level developed by the Agency, unless the Agency notified the manufacturer of the pesticide and provided an opportunity of not less than 30 days for the manufacturer to comment on the technical and scientific justification supporting the Health Advisory or action level.

(8) No person shall be liable under this Section for response costs or damages as the result of a pesticide release that occurs in the course of a farm pesticide collection program operated under Section 19.1 of the Illinois Pesticide Act, unless the release results from gross negligence or intentional misconduct.

(k) If any person who is liable for a release or substantial threat of release of a hazardous substance or pesticide fails without sufficient cause to provide removal or remedial action upon or in accordance with a notice and request by the Agency or upon or in accordance with any order of the Board or any court, such person may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount of any costs incurred by the State of Illinois as a result of such failure to take such removal or remedial action. The punitive damages imposed by the Board shall be in addition to any costs recovered from such person pursuant to this Section and in addition to any other penalty or relief provided by this Act or any other law.

Any monies received by the State pursuant to this subsection (k) shall be deposited in the Hazardous Waste Fund.

(l) Beginning January 1, 1988, and prior to January 1, 2013, the Agency shall annually collect a $250 fee for each Special Waste Hauling Permit Application and, in addition, shall collect a fee of $20 for each waste hauling vehicle identified in the annual permit application and for each vehicle which is added to the permit during the annual period. Beginning January 1, 2013, the Agency shall issue 3-year Special Waste Hauling Permits instead of annual Special Waste Hauling Permits and shall collect a $750 fee for each Special Waste Hauling Permit Application. In addition, beginning January 1, 2013, the Agency shall collect a fee of $60 for each waste hauling vehicle identified in the permit application and for each vehicle that is added to the permit during the 3-year period. The Agency shall deposit 85% of such fees collected under this subsection in the State Treasury to the credit of the Hazardous Waste Research Fund; and shall deposit the remaining 15% of such fees collected in the State Treasury to the credit of the Environmental Protection Permit and Inspection Fund. The majority of such receipts which are deposited in the Hazardous Waste Research Fund pursuant to this subsection shall be used by the University of Illinois for activities which relate to the protection of underground waters.

(l-5) (Blank).

(m) (Blank).

(n) (Blank).

(Source: P.A. 97-220, eff. 7-28-11; 97-1081, eff. 8-24-12; 97-1150, eff. 1-25-13; 98-78, eff. 7-15-13; 98-756, eff. 7-16-14.)

(415 ILCS 5/22.2a) (from Ch. 111 1/2, par. 1022.2a)

Sec. 22.2a. (a) Whenever practicable and in the public interest, the State of Illinois shall reach a final settlement with a potentially responsible party in an administrative action

brought before the Board or a civil action brought before a court to establish liability and recover response costs under Section 22.2 if such settlement involves only a minor portion of the response costs at the facility concerned and, in the judgment of the State of Illinois, the conditions in either of the following subparagraphs (1) or (2) are met:

(1) Both (i) the amount of the hazardous substances contributed by that party to the facility, and (ii) the toxic or other hazardous effects of the substances contributed by that party to the facility, are minimal in comparison to the other hazardous substances at the facility.

(2) The potentially responsible party (i) is the owner of the real property on or in which the facility is located; (ii) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; (iii) did not contribute to the release or threat of release of a hazardous substance at the facility through any action or omission; and (iv) did not purchase the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(b) The State of Illinois may provide a covenant not to sue with respect to the facility concerned to any party who has entered into a settlement under this Section unless such a covenant would be inconsistent with the public interest.

A party which has resolved its liability to the State through a settlement under this Section shall not be liable for claims for contribution regarding matters addressed in the settlement. Such a settlement does not discharge any of the other potentially responsible parties unless its terms so provide, but it shall reduce the total potential liability of the other potentially responsible parties by the amount of the settlement.

(c) Nothing in this Section shall be construed to affect the authority of the State to reach other settlements with other potentially responsible parties.

(Source: P.A. 86-679.)

(415 ILCS 5/22.2b)

Sec. 22.2b. Limit of liability for prospective purchasers of real property.

(a) The State of Illinois may grant a release of liability that provides that a person is not potentially liable under subsection (f) of Section 22.2 of this Act as a result of a release or a threatened release of a hazardous substance or pesticide if:

(1) the person performs the response actions to remove or remedy all releases or threatened releases of a hazardous substance or pesticide at an identified area or at identified areas of the property in accordance with a response action plan approved by the Agency under this Section;

(2) the person did not cause, allow, or contribute to the release or threatened release of a hazardous substance or pesticide through any act or omission;

(3) the person requests, in writing, that the Agency provide review and evaluation services and the Agency agrees to provide the review and evaluation services; and

(4) the person is not otherwise liable under subsection (f) of Section 22.2 under, and complies with, regulations adopted by the Agency under subsection (e).

(b) The Agency may approve a response action plan under this Section, including but not limited to a response action plan that does not require the removal or remedy of all releases or

threatened releases of hazardous substances or pesticides, if the person described under subsection (a) proves:

(1) the response action will prevent or mitigate immediate and significant risk of harm to human life and health and the environment;

(2) activities at the property will not cause, allow, contribute to, or aggravate the release or threatened release of a hazardous substance or pesticide;

(3) due consideration has been given to the effect that activities at the property will have on the health of those persons likely to be present at the property;

(4) irrevocable access to the property is given to the State of Illinois and its authorized representatives;

(5) the person is financially capable of performing the proposed response action; and

(6) the person complies with regulations adopted by the Agency under subsection (e).

(c) The limit of liability granted by the State of Illinois under this Section does not apply to any person:

(1) Who is potentially liable under subsection (f) of Section 22.2 of this Act for any costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of the release or substantial threat of a release of a hazardous substance or pesticide that was the subject of the response action plan approved by the Agency under this Section.

(2) Who agrees to perform the response action contained in a response action plan approved by the Agency under this Section and fails to perform in accordance with the approved response action plan.

(3) Whose willful and wanton conduct contributes to a release or threatened release of a hazardous substance or pesticide.

(4) Whose negligent conduct contributes to a release or threatened release of a hazardous substance or pesticide.

(5) Who is seeking a construction or development permit for a new municipal waste incinerator or other new waste-to-energy facility.

(d) If a release or threatened release of a hazardous substance or pesticide occurs within the area identified in the response action plan approved by the Agency under this Section and such release or threatened release is not specifically identified in the response action plan, for any person to whom this Section applies, the numeric cleanup level established by the Agency in the response action plan shall also apply to the release or threatened release not specifically identified in the response action plan if the response action plan has a numeric cleanup level for the hazardous substance or pesticide released or threatened to be released. Nothing in this subsection (d) shall limit the authority of the Agency to require, for any person to whom this Section does not apply, a numeric cleanup level that differs from the numeric cleanup level established in the response action plan approved by the Agency under this Section.

(e) The Agency may adopt regulations relating to this Section. The regulations may include, but are not limited to, both of the following:

(1) Requirements and procedures for a response action plan.

(2) Additional requirements that a person must meet in order not to be liable under subsection (f) of Section 22.2.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.2c)

Sec. 22.2c. Adjacent site remediation; injunction. If remediation of real property contaminated by hazardous substances or petroleum products cannot be reasonably accomplished without entering onto land adjoining the site from which those substances were released, and if the owner of the adjoining land refuses to permit entry onto the adjoining land for the purpose of effecting remediation, then the owner or operator of the site may bring an action to compel the owner of the adjoining land to permit immediate entry for purposes relating to the remediation of the site, the adjoining land, and any other real property that may be contaminated with the hazardous substances or petroleum products. The court shall prescribe the conditions of the entry and shall determine the amount of damages, if any, to be paid to the owner of the adjoining land as compensation for the entry. The court may require the owner or operator who is seeking entry to give bond to the owner of the adjoining land to secure performance and payment.

(Source: P.A. 89-164, eff. 7-19-95.)

(415 ILCS 5/22.2d)

Sec. 22.2d. Authority of Director to issue orders.

(a) The purpose of this Section is to allow the Director to quickly and effectively respond to a release or substantial threat of a release of a hazardous substance, pesticide, or petroleum for which the Agency is required to give notice under Section 25d-3(a) of this Act by authorizing the Director to issue orders, unilaterally or on consent, requiring appropriate response actions and by providing for the exclusive administrative and judicial review of these orders. This Section is also intended to allow persons subject to an order under this Section to recover the costs of complying with the order if it is overturned or if they remediate the share of a release or threat of a release for which a bankrupt or insolvent party is liable under this Act.

(b) In addition to any other action taken by federal, State, or local government, for any release or substantial threat of release for which the Agency is required to give notice under Section 25d-3(a) of this Act, the Director may issue to any person who is potentially liable under this Act for the release or substantial threat of release any order that may be necessary to protect the public health and welfare and the environment.

(1) Any order issued under this Section shall require response actions consistent with the federal regulations and amendments thereto promulgated by the United States Environmental Protection Agency to implement Section 105 of CERCLA, as amended, except that the remediation objectives for response actions ordered under this Section shall be determined in accordance with the risk-based remediation objectives adopted by the Board under Title XVII of this Act.

(2) Before the Director issues any order under this Section, the Agency shall send a Special Notice Letter to all persons identified by the Agency as potentially liable under this Act for the release or threat of release. This Special Notice Letter to the recipients shall include at a minimum the following information:

(A) that the Agency believes the recipient may be liable under the Act for responding to the release or threat of a release;

(B) the reasons why the Agency believes the recipient may be liable under the Act for the release or threat of a release; and

(C) the period of time, not less than 30 days from the date of issuance of the Special Notice Letter, during which the Agency is ready to negotiate with the recipient regarding their response to the release or threat of a release.

(3) To encourage the prompt negotiation of a settlement agreement or an order on consent with a recipient of a Special Notice Letter required under this Section, the Director shall not issue any unilateral order under this Section to the recipient during the 30 days immediately following the date of issuance of the Special Notice Letter.

(c) (1) The recipient of a unilateral order issued by the Director under this Section may petition the Board for a hearing on the order within 35 days after being served with the order. The Board shall take final action on the petition within 60 days after the date the petition is filed with the Board unless all parties to the proceeding agree to the extension. If necessary to expedite the hearing and decision, the Board may hold special meetings of the Board and may provide for alternative public notice of the hearing and meeting, other than as otherwise required by law. In any hearing on the order the Agency shall have the burden of proof to establish that the petitioner is liable under this Act for the release or threat of release and that the actions required by the order are consistent with the requirements of subsection (b)(1) of this Section. The Board shall sustain the order if the petitioner is liable under this Act for the release or threat of release and to the extent the actions ordered are consistent with the requirements of subsection (b)(1) of this Section and are not otherwise unreasonable under the circumstances.

(A) The order issued by the Agency shall remain in full force and effect pending the Board's final action on the petition for review of the order, provided that the Board may grant a stay of all or a portion of the order if it finds that (i) there is a substantial likelihood that the petitioner is not liable under this Act for the release or threat of release or (ii) there is a substantial likelihood that the actions required by the order are not consistent with the requirements of subsection (b)(1) of this Section and that the harm to the public from a stay of the order will be outweighed by the harm to the petitioner if a stay is not granted. Any stay granted by the Board under this subsection (c)(1)(A) shall expire upon the Board's issuance of its final action on the petition for review of the order.

(B) If the Board finds that the petitioner is not liable under this Act for the release or threat of release it may authorize the payment of (i) all reasonable response costs incurred by the petitioner to comply with the order if it finds the petitioner's actions were consistent with the requirements of subsection (b)(1) of this Section and (ii) the petitioner's reasonable and appropriate costs, fees, and expenses incurred in petitioning the Board for review of the order, including, but not limited to, reasonable attorneys' fees and expenses.

(2) Any party to a Board hearing under this subsection (c) may obtain judicial review, by filing a petition for review within 35 days from the date that a copy of the Board's final action sought to be reviewed was served upon the party affected by the final Board action complained of, under the provisions of the Administrative Review Law and the rules adopted pursuant thereto, except that the review shall be afforded in the appellate court for the district in which the cause of action arose and not in the circuit court. The appellate court shall retain jurisdiction during the pendency of any further action

conducted by the Board under an order by the appellate court. The appellate court shall have jurisdiction to review all issues of law and fact presented upon appeal.

(A) The order issued by the Agency shall remain in full force and effect pending the appellate court's ruling on the order, provided that the appellate court may grant a stay of all or a portion of the order if it finds that (i) there is a substantial likelihood that the petitioner is not liable under this Act for the release or threat of release or (ii) there is a substantial likelihood that the actions required by the order are not consistent with the requirements of subsection (b)(1) of this Section and that the harm to the public from a stay of the order will be outweighed by the harm to the petitioner if a stay is not granted. Any stay granted by the appellate court under this subsection (c)(2)(A) shall expire upon the issuance of the appellate court's ruling on the appeal of the Board's final action.

(B) If the appellate court finds that the petitioner is not liable under this Act for the release or threat of release it may authorize the payment of (i) all reasonable response costs incurred by the petitioner to comply with the order if it finds that the petitioner's actions were consistent with the requirements of subsection (b)(1) of this Section and (ii) the petitioner's reasonable and appropriate costs, fees, and expenses incurred in petitioning the Appellate Court for review of the order, including, but not limited to, reasonable attorneys' fees and expenses.

(d) Any person who receives and complies with the terms of any order issued under this Section may, within 60 days after completion of the required action, petition the Director for reimbursement for the reasonable costs of that action, plus interest, subject to all of the following terms and conditions:

(1) The interest payable under this subsection accrues on the amounts expended from the date of expenditure to the date of payment of reimbursement at the rate set forth in Section 3-2 of the Uniform Penalty and Interest Act.

(2) If the Director refuses to grant all or part of a petition made under this subsection, the petitioner may, within 35 days after receipt of the refusal, file a petition with the Board seeking reimbursement.

(3) To obtain reimbursement, the petitioner must establish, by a preponderance of the evidence, that:

(A) the only costs for which the petitioner seeks reimbursement are costs incurred by the petitioner in remediating the share of a release or threat of a release for which a bankrupt or insolvent party is liable under this Act, the costs of the share are a fair and accurate apportionment among the persons potentially liable under this Act for the release or threat of a release, and the bankrupt or insolvent party failed to pay the costs of the share; and

(B) the petitioner's response actions were consistent with the federal regulations and amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Section 105 of CERCLA, as amended, except that the remediation objectives for response actions shall be determined in accordance with the risk-based remediation objectives adopted by the Board under Title XVII of this Act; and

(C) the costs for which the petitioner seeks

reimbursement are reasonable in light of the action required by the relevant order.

(4) Reimbursement awarded by the Board under item (3) of subsection (d) may include appropriate costs, fees, and other expenses incurred in petitioning the Director or Board for reimbursement under subsection (d), including, but not limited to, reasonable fees and expenses of attorneys.

(5) Costs paid to a petitioner under a policy of insurance, another written agreement, or a court order are not eligible for payment under this subsection (d). A petitioner who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent that such payment covers costs for which payment was received under this subsection (d). Any monies received by the State under this item (5) shall be deposited into the Hazardous Waste Fund.

(e) Except as otherwise provided in subsection (c) of this Section, no court nor the Board has jurisdiction to review any order issued under this Section or any administrative or judicial action related to the order.

(f) Except as provided in subsection (g) of this Section, any person may seek contribution from any other person who is liable for the costs of response actions under this Section. In resolving contribution claims, the Board or court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate.

(g) A person who has complied with an order under this Section and has resolved their liability under this Act with respect to the release or threat of a release shall not be liable for claims for contribution relating to the release or threat of a release.

(h) The provisions of Section 58.9 of this Act do not apply to any action taken under this Section.

(i) This Section does not apply to releases or threats of releases from underground storage tanks subject to Title XVI of this Act. Orders issued by the Agency in response to such releases or threats of releases shall be issued under Section 57.12(d) of this Act instead of this Section, and the costs of complying with said orders shall be reimbursed in accordance with Title XVI of this Act instead of this Section.

(j) Any person who, without sufficient cause, willfully violates or fails or refuses to comply with any order issued under this Section is in violation of this Act.

(k) The Agency may adopt rules as necessary for the implementation of this Section.

(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/22.3) (from Ch. 111 1/2, par. 1022.3)

Sec. 22.3. The owner and operator of a hazardous waste disposal site shall, without limitation, be responsible for the site for a period of 20 years after closure of the site, or such longer period of time as required by the federal Resource Conservation and Recovery Act of 1976, P.L. 94-580, or regulations issued thereunder, or by Board regulation adopted pursuant to subsection 22(a) or (f) of this Act. The owner and operator shall monitor such site for gas migration, drainage problems, erosion, settling, ground and surface water pollution and other environmental and safety problems which occur, and shall take whatever remedial action is necessary to solve any such problems which occur at the site during the period of responsibility. Notwithstanding the provisions of this Section, nothing contained herein shall be construed to limit any duties or liabilities imposed on an owner or operator of a solid waste disposal site pursuant to this Act or regulations thereunder or

arising by operation of law.
(Source: P.A. 81-856.)

(415 ILCS 5/22.3a)

Sec. 22.3a. Expedited review of hazardous waste corrective action.

(a) It is the intent of this Section to promote an expedited RCRA hazardous waste corrective action review process.

(b) The owner or operator of a hazardous waste facility performing corrective action pursuant to the federal Resource Conservation and Recovery Act of 1976 or regulations issued thereunder, or analogous State law or regulations, may request from the Agency an expedited review of that corrective action. Within a reasonable time, the Agency shall respond in writing, indicating whether the Agency will perform expedited review.

(c) An owner or operator approved by the Agency for an expedited review under this Section shall pay to the Agency all reasonable costs the Agency incurs in its review of the owner's or operator's corrective action activities (including but not limited to investigations, monitoring, and cleanup of releases of hazardous waste or hazardous constituents). Prior to any Agency review, the owner or operator shall make an advance partial payment to the Agency for anticipated review costs in an amount acceptable to the Agency, but not to exceed $5,000 or one-half of the total anticipated costs of the Agency, whichever is less. All amounts paid to the Agency pursuant to this Section shall be deposited into the Environmental Protection Permit and Inspection Fund.

(d) The Agency's expedited review under this Section shall include, but need not be limited to: review of the owner's or operator's corrective action plans, reports, documents, and associated field activities; issuance of corrective action decision documents; and issuance of letters certifying the completion of corrective action activities or discrete portions thereof.

(e) The Agency may cease its expedited review under this Section if an owner or operator fails to pay the Agency's review costs when due.

(f) An owner or operator approved by the Agency for an expedited review under this Section may withdraw its request for an expedited review at any time by providing the Agency with written notification of its withdrawal; but the owner or operator shall be responsible to pay all expedited review costs incurred by the Agency through the date of withdrawal.
(Source: P.A. 93-260, eff. 7-22-03.)

(415 ILCS 5/22.4) (from Ch. 111 1/2, par. 1022.4)

Sec. 22.4. Hazardous waste; underground storage tanks; regulations.

(a) In accordance with Section 7.2, the Board shall adopt regulations which are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 3001, 3002, 3003, 3004, and 3005, of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580). The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months. The provisions and requirements of Title VII of this Act shall not apply to rules adopted under this subsection. Section 5-35 of the Illinois Administrative Procedure Act relating to procedures for rulemaking shall not apply to rules adopted under this subsection.

(b) The Board may adopt regulations relating to a State

hazardous waste management program that are not inconsistent with and at least as stringent as the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), or regulations adopted thereunder. Regulations adopted pursuant to this subsection shall be adopted in accordance with the provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act.

(c) Notwithstanding subsection (a) of this Section, the Board may adopt additional regulations identifying the characteristics of hazardous waste and additional regulations listing hazardous waste. In adopting such regulations, the Board shall take into account the toxicity, persistence, and degradability in nature, the potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. The regulations may be revised from time to time as may be appropriate. Regulations adopted pursuant to this subsection shall be adopted in accordance with the provisions and requirements of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act.

(d) (1) In accordance with Section 7.2, after the adoption of regulations by the United States Environmental Protection Agency to implement Section 9003 of Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), or any amendments to such regulations, the Board shall adopt regulations relating to corrective action at underground storage tanks that are identical in substance to such federal regulations.

(2) The rulemaking provisions of Title VII of this Act and of Section 5-35 of the Illinois Administrative Procedure Act shall not apply to regulations or amendments adopted pursuant to this subsection (d).

(3) For purposes of adopting regulations or amendments thereto under this subsection (d), corrective action shall not include requirements providing for design, construction, installation, general operation, release detection, release reporting, release determination investigation, release confirmation, out-of-service systems and their closure or financial responsibility.

(4) By January 1, 1992, the Board shall amend its rules pertaining to underground storage tanks adopted under paragraph (1) of this subsection to make those rules applicable to any heating oil underground storage tank.

(Source: P.A. 87-323; 87-1088; 88-45.)

(415 ILCS 5/22.5) (from Ch. 111 1/2, par. 1022.5)

Sec. 22.5. By July 1, 1984, the Board shall adopt standards for the certification of personnel to operate refuse disposal facilities or sites. Such standards shall provide for, but shall not be limited to, an evaluation of the prospective operator's prior experience in waste management operations. The Board may provide for denial of certification if the prospective operator or any employee or officer of the prospective operator has a history of

(i) repeated violations of federal, State or local laws, regulations, standards, or ordinances regarding the operation of refuse disposal facilities or sites;

(ii) conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court; or

(iii) proof of gross carelessness or incompetence in handling, storing, processing, transporting or disposing of any

hazardous waste.
(Source: P.A. 83-1362.)

(415 ILCS 5/22.6) (from Ch. 111 1/2, par. 1022.6)

Sec. 22.6. (a) Commencing July 1, 1984, no person shall cause, threaten or allow the disposal in any landfill of any liquid hazardous waste unless specific authorization is obtained from the Agency by the generator and the landfill owner and operator for the land disposal of that specific waste stream.

(b) The Board shall have the authority to adopt regulations which prohibit or set limitations on the type, amount and form of liquid hazardous wastes that may be disposed of in landfills based on the availability of technically feasible and economically reasonable alternatives to land disposal.

(c) The Agency may grant specific authorization for the land disposal of liquid hazardous wastes only after the generator has reasonably demonstrated that, considering current technological feasibility and economic reasonableness, the hazardous waste cannot be reasonably solidified, stabilized, or recycled for reuse, nor incinerated or chemically, physically or biologically treated so as to neutralize the hazardous waste and render it nonhazardous, and that land disposal is not prohibited or limited by Board regulations. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act and which are consistent with Board regulations. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit pursuant to the provisions of subsection (a) of Section 40 of this Act.

(d) For purposes of this Section, the term "landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment or an underground injection well.
(Source: P.A. 83-1078.)

(415 ILCS 5/22.7) (from Ch. 111 1/2, par. 1022.7)

Sec. 22.7. (a) (Blank).

(b) The Board may adopt regulations relating to a state contingency plan which are not identical in substance to federal regulations promulgated by the Administrator of the United States Environmental Protection Agency to implement Section 105 of the comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510), as amended. Regulations adopted pursuant to this subsection shall be adopted in accordance with the provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act.

(c) Nothing in this Section shall limit the authority of the Agency to enforce or implement any provision of this Act, including but not limited to Section 4 or 22.2 of this Act, prior to the adoption of regulations by the Board under this Section.
(Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

(415 ILCS 5/22.8) (from Ch. 111 1/2, par. 1022.8)

Sec. 22.8. Environmental Protection Permit and Inspection Fund.

(a) There is hereby created in the State Treasury a special fund to be known as the Environmental Protection Permit and Inspection Fund. All fees collected by the Agency pursuant to this Section, Section 9.6, 12.2, 16.1, 56.4, 56.5, 56.6, and subsection (f) of Section 5 of this Act, or pursuant to Section 22 of the Public Water Supply Operations Act or Section 1011 of

the Solid Waste Site Operator Certification Law, as well as funds collected under subsection (b.5) of Section 42 of this Act, shall be deposited into the Fund. In addition to any monies appropriated from the General Revenue Fund, monies in the Fund shall be appropriated by the General Assembly to the Agency in amounts deemed necessary for manifest, permit, and inspection activities and for performing its functions, powers, and duties under the Solid Waste Site Operator Certification Law.

The General Assembly may appropriate monies in the Fund deemed necessary for Board regulatory and adjudicatory proceedings.

(a-5) (Blank).

(a-6) (Blank).

(b) The Agency shall collect from the owner or operator of any of the following types of hazardous waste disposal sites or management facilities which require a RCRA permit under subsection (f) of Section 21 of this Act, or a UIC permit under subsection (g) of Section 12 of this Act, an annual fee in the amount of:

(1) $35,000 ($70,000 beginning in 2004) for a hazardous waste disposal site receiving hazardous waste if the hazardous waste disposal site is located off the site where such waste was produced;

(2) $9,000 ($18,000 beginning in 2004) for a hazardous waste disposal site receiving hazardous waste if the hazardous waste disposal site is located on the site where such waste was produced;

(3) $7,000 ($14,000 beginning in 2004) for a hazardous waste disposal site receiving hazardous waste if the hazardous waste disposal site is an underground injection well;

(4) $2,000 ($4,000 beginning in 2004) for a hazardous waste management facility treating hazardous waste by incineration;

(5) $1,000 ($2,000 beginning in 2004) for a hazardous waste management facility treating hazardous waste by a method, technique or process other than incineration;

(6) $1,000 ($2,000 beginning in 2004) for a hazardous waste management facility storing hazardous waste in a surface impoundment or pile;

(7) $250 ($500 beginning in 2004) for a hazardous waste management facility storing hazardous waste other than in a surface impoundment or pile; and

(8) Beginning in 2004, $500 for a large quantity hazardous waste generator required to submit an annual or biennial report for hazardous waste generation.

(c) Where two or more operational units are located within a single hazardous waste disposal site, the Agency shall collect from the owner or operator of such site an annual fee equal to the highest fee imposed by subsection (b) of this Section upon any single operational unit within the site.

(d) The fee imposed upon a hazardous waste disposal site under this Section shall be the exclusive permit and inspection fee applicable to hazardous waste disposal at such site, provided that nothing in this Section shall be construed to diminish or otherwise affect any fee imposed upon the owner or operator of a hazardous waste disposal site by Section 22.2.

(e) The Agency shall establish procedures, no later than December 1, 1984, relating to the collection of the hazardous waste disposal site fees authorized by this Section. Such procedures shall include, but not be limited to the time and manner of payment of fees to the Agency, which shall be quarterly, payable at the beginning of each quarter for hazardous waste disposal site fees. Annual fees required under

paragraph (7) of subsection (b) of this Section shall accompany the annual report required by Board regulations for the calendar year for which the report applies.

(f) For purposes of this Section, a hazardous waste disposal site consists of one or more of the following operational units:

(1) a landfill receiving hazardous waste for disposal;

(2) a waste pile or surface impoundment, receiving hazardous waste, in which residues which exhibit any of the characteristics of hazardous waste pursuant to Board regulations are reasonably expected to remain after closure;

(3) a land treatment facility receiving hazardous waste; or

(4) a well injecting hazardous waste.

(g) The Agency shall assess a fee for each manifest provided by the Agency. For manifests provided on or after January 1, 1989 but before July 1, 2003, the fee shall be $1 per manifest. For manifests provided on or after July 1, 2003, the fee shall be $3 per manifest.

(Source: P.A. 102-1071, eff. 6-10-22.)

(415 ILCS 5/22.9) (from Ch. 111 1/2, par. 1022.9)

Sec. 22.9. Special waste determinations.

(a) (Blank.)

(b) Not later than December 1, 1990, the Pollution Control Board shall, pursuant to Title VII of the Act, adopt regulations that establish standards and criteria for classifying special wastes according to the degree of hazard or an alternative method.

(c) The Board shall adopt regulations by December 1, 1990, establishing the standards and criteria by which the Agency may determine upon written request by any person that a waste or class of waste is not special waste.

(d) (Blank.)

(e) (Blank.)

(f) The determinations to be made under subsection (c) of this Section shall not apply to hazardous waste.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.10) (from Ch. 111 1/2, par. 1022.10)

Sec. 22.10. The Agency may issue permits which authorize owners or operators of treatment, storage and disposal facilities to receive Agency approved categories of waste from multiple generators.

(Source: P.A. 83-1528.)

(415 ILCS 5/22.12) (from Ch. 111 1/2, par. 1022.12)

Sec. 22.12. (a) The Agency shall coordinate with the Office of the State Fire Marshal in the administration of the Leaking Underground Storage Tank program, as established in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), as amended, of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580). The Agency shall act as the lead agency in the formulation of regulations and policies, and shall be responsible for groundwater monitoring and any necessary site cleanup requirements encountered under the Resource Conservation and Recovery Act of 1976, the Comprehensive Environmental Response Compensation and Liability Act, or the State "Clean Illinois" program.

(b) By May 8, 1986, a person who is the owner of an underground storage tank containing hazardous waste on July 1, 1986 shall register the tank with the Agency on the form provided by the Agency pursuant to Subtitle I of The Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) of the Resource

Conservation and Recovery Act of 1976 (P.L. 94-580), as amended.

(c) A person who is the owner of an underground storage tank containing hazardous waste installed or replaced after July 1, 1986 shall register prior to the installation of the tank.

(d) Except as otherwise provided in subsection (e), a person who is the owner of an underground storage tank containing hazardous waste registered under subsection (b) or (c) shall notify the Agency of any change in the information required under this Section or of the removal of an underground storage tank from service.

(e) A person who is the owner of an underground storage tank containing hazardous waste the contents of which are changed routinely shall indicate all the materials which are stored in the tank on the registration form. A person providing the information described in this subsection is not required to notify the Agency of changes in the contents of the tank unless the material to be stored in the tank differs from the information provided on the registration form.
(Source: P.A. 88-496.)

(415 ILCS 5/22.13) (from Ch. 111 1/2, par. 1022.13)
Sec. 22.13. (Repealed).
(Source: Repealed by P.A. 88-496.)

(415 ILCS 5/22.14) (from Ch. 111 1/2, par. 1022.14)

Sec. 22.14. (a) No person may establish any pollution control facility for use as a garbage transfer station, which is located less than 1000 feet from the nearest property zoned for primarily residential uses or within 1000 feet of any dwelling, except in counties of at least 3,000,000 inhabitants. In counties of at least 3,000,000 inhabitants, no person may establish any pollution control facility for use as a garbage transfer station which is located less than 1000 feet from the nearest property zoned for primarily residential uses, provided, however, a station which is located in an industrial area of 10 or more contiguous acres may be located within 1000 feet but no closer than 800 feet from the nearest property zoned for primarily residential uses. However, in a county with over 300,000 and less than 350,000 inhabitants, a station used for the transfer or separation of waste for recycling or disposal in a sanitary landfill that is located in an industrial area of 10 or more acres may be located within 1000 feet but no closer than 800 feet from the nearest property zoned for primarily residential uses.

(b) This Section does not prohibit (i) any such facility which is in existence on January 1, 1988, nor (ii) any facility in existence on January 1, 1988, as expanded before January 1, 1990, to include processing and transferring of municipal wastes for both recycling and disposal purposes, nor (iii) any such facility which becomes nonconforming due to a change in zoning or the establishment of a dwelling which occurs after the establishment of the facility, nor (iv) any facility established by a municipality with a population in excess of 1,000,000, nor (v) any transfer facility operating on January 1, 1988. No facility described in item (ii) shall, after July 14, 1995, accept landscape waste and other municipal waste in the same vehicle load. However, the use of an existing pollution control facility as a garbage transfer station shall be deemed to be the establishment of a new facility, and shall be subject to subsection (a), if such facility had not been used as a garbage transfer station within one year prior to January 1, 1988.
(Source: P.A. 88-681, eff. 12-22-94; 89-143, eff. 7-14-95; 89-336, eff. 8-17-95; 89-626, eff. 8-9-96.)

(415 ILCS 5/22.15) (from Ch. 111 1/2, par. 1022.15)

(Text of Section from P.A. 102-699)

Sec. 22.15. Solid Waste Management Fund; fees.

(a) There is hereby created within the State Treasury a special fund to be known as the Solid Waste Management Fund, to be constituted from the fees collected by the State pursuant to this Section, from repayments of loans made from the Fund for solid waste projects, from registration fees collected pursuant to the Consumer Electronics Recycling Act, and from amounts transferred into the Fund pursuant to Public Act 100-433. Moneys received by either the Agency or the Department of Commerce and Economic Opportunity in repayment of loans made pursuant to the Illinois Solid Waste Management Act shall be deposited into the General Revenue Fund.

(b) The Agency shall assess and collect a fee in the amount set forth herein from the owner or operator of each sanitary landfill permitted or required to be permitted by the Agency to dispose of solid waste if the sanitary landfill is located off the site where such waste was produced and if such sanitary landfill is owned, controlled, and operated by a person other than the generator of such waste. The Agency shall deposit all fees collected into the Solid Waste Management Fund. If a site is contiguous to one or more landfills owned or operated by the same person, the volumes permanently disposed of by each landfill shall be combined for purposes of determining the fee under this subsection. Beginning on July 1, 2018, and on the first day of each month thereafter during fiscal years 2019 through 2023, the State Comptroller shall direct and State Treasurer shall transfer an amount equal to 1/12 of $5,000,000 per fiscal year from the Solid Waste Management Fund to the General Revenue Fund.

(1) If more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall either pay a fee of 95 cents per cubic yard or, alternatively, the owner or operator may weigh the quantity of the solid waste permanently disposed of with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of $2.00 per ton of solid waste permanently disposed of. In no case shall the fee collected or paid by the owner or operator under this paragraph exceed $1.55 per cubic yard or $3.27 per ton.

(2) If more than 100,000 cubic yards but not more than 150,000 cubic yards of non-hazardous waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $52,630.

(3) If more than 50,000 cubic yards but not more than 100,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $23,790.

(4) If more than 10,000 cubic yards but not more than 50,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $7,260.

(5) If not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $1050.

(c) (Blank).

(d) The Agency shall establish rules relating to the collection of the fees authorized by this Section. Such rules shall include, but not be limited to:

(1) necessary records identifying the quantities of solid waste received or disposed;

(2) the form and submission of reports to accompany the payment of fees to the Agency;

(3) the time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly; and

(4) procedures setting forth criteria establishing when an owner or operator may measure by weight or volume during any given quarter or other fee payment period.

(e) Pursuant to appropriation, all monies in the Solid Waste Management Fund shall be used by the Agency for the purposes set forth in this Section and in the Illinois Solid Waste Management Act, including for the costs of fee collection and administration, and for the administration of (1) the Consumer Electronics Recycling Act and (2) until January 1, 2020, the Electronic Products Recycling and Reuse Act.

(f) The Agency is authorized to enter into such agreements and to promulgate such rules as are necessary to carry out its duties under this Section and the Illinois Solid Waste Management Act.

(g) On the first day of January, April, July, and October of each year, beginning on July 1, 1996, the State Comptroller and Treasurer shall transfer $500,000 from the Solid Waste Management Fund to the Hazardous Waste Fund. Moneys transferred under this subsection (g) shall be used only for the purposes set forth in item (1) of subsection (d) of Section 22.2.

(h) The Agency is authorized to provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste disposal sites.

(i) The Agency is authorized to conduct household waste collection and disposal programs.

(j) A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a solid waste disposal facility is located may establish a fee, tax, or surcharge with regard to the permanent disposal of solid waste. All fees, taxes, and surcharges collected under this subsection shall be utilized for solid waste management purposes, including long-term monitoring and maintenance of landfills, planning, implementation, inspection, enforcement and other activities consistent with the Solid Waste Management Act and the Local Solid Waste Disposal Act, or for any other environment-related purpose, including, but not limited to, an environment-related public works project, but not for the construction of a new pollution control facility other than a household hazardous waste facility. However, the total fee, tax or surcharge imposed by all units of local government under this subsection (j) upon the solid waste disposal facility shall not exceed:

(1) 60¢ per cubic yard if more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year, unless the owner or operator weighs the quantity of the solid waste received with a device for which certification has been obtained under the Weights and Measures Act, in which case the fee shall not exceed $1.27 per ton of solid waste permanently disposed of.

(2) $33,350 if more than 100,000 cubic yards, but not more than 150,000 cubic yards, of non-hazardous waste is permanently disposed of at the site in a calendar year.

(3) $15,500 if more than 50,000 cubic yards, but not more than 100,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(4) $4,650 if more than 10,000 cubic yards, but not more than 50,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(5) $650 if not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

The corporate authorities of the unit of local government may use proceeds from the fee, tax, or surcharge to reimburse a highway commissioner whose road district lies wholly or partially within the corporate limits of the unit of local government for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

For the disposal of solid waste from general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160, the total fee, tax, or surcharge imposed by all units of local government under this subsection (j) upon the solid waste disposal facility shall not exceed 50% of the applicable amount set forth above. A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a general construction or demolition debris recovery facility is located may establish a fee, tax, or surcharge on the general construction or demolition debris recovery facility with regard to the permanent disposal of solid waste by the general construction or demolition debris recovery facility at a solid waste disposal facility, provided that such fee, tax, or surcharge shall not exceed 50% of the applicable amount set forth above, based on the total amount of solid waste transported from the general construction or demolition debris recovery facility for disposal at solid waste disposal facilities, and the unit of local government and fee shall be subject to all other requirements of this subsection (j).

A county or Municipal Joint Action Agency that imposes a fee, tax, or surcharge under this subsection may use the proceeds thereof to reimburse a municipality that lies wholly or partially within its boundaries for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

If the fees are to be used to conduct a local sanitary landfill inspection or enforcement program, the unit of local government must enter into a written delegation agreement with the Agency pursuant to subsection (r) of Section 4. The unit of local government and the Agency shall enter into such a written delegation agreement within 60 days after the establishment of such fees. At least annually, the Agency shall conduct an audit of the expenditures made by units of local government from the funds granted by the Agency to the units of local government for purposes of local sanitary landfill inspection and enforcement programs, to ensure that the funds have been expended for the prescribed purposes under the grant.

The fees, taxes or surcharges collected under this subsection (j) shall be placed by the unit of local government in a separate fund, and the interest received on the moneys in the fund shall be credited to the fund. The monies in the fund may be accumulated over a period of years to be expended in accordance with this subsection.

A unit of local government, as defined in the Local Solid Waste Disposal Act, shall prepare and post on its website, in April of each year, a report that details spending plans for monies collected in accordance with this subsection. The report will at a minimum include the following:

(1) The total monies collected pursuant to this subsection.

(2) The most current balance of monies collected pursuant to this subsection.

(3) An itemized accounting of all monies expended for

the previous year pursuant to this subsection.

(4) An estimation of monies to be collected for the following 3 years pursuant to this subsection.

(5) A narrative detailing the general direction and scope of future expenditures for one, 2 and 3 years.

The exemptions granted under Sections 22.16 and 22.16a, and under subsection (k) of this Section, shall be applicable to any fee, tax or surcharge imposed under this subsection (j); except that the fee, tax or surcharge authorized to be imposed under this subsection (j) may be made applicable by a unit of local government to the permanent disposal of solid waste after December 31, 1986, under any contract lawfully executed before June 1, 1986 under which more than 150,000 cubic yards (or 50,000 tons) of solid waste is to be permanently disposed of, even though the waste is exempt from the fee imposed by the State under subsection (b) of this Section pursuant to an exemption granted under Section 22.16.

(k) In accordance with the findings and purposes of the Illinois Solid Waste Management Act, beginning January 1, 1989 the fee under subsection (b) and the fee, tax or surcharge under subsection (j) shall not apply to:

(1) waste which is hazardous waste;

(2) waste which is pollution control waste;

(3) waste from recycling, reclamation or reuse processes which have been approved by the Agency as being designed to remove any contaminant from wastes so as to render such wastes reusable, provided that the process renders at least 50% of the waste reusable; the exemption set forth in this paragraph (3) of this subsection (k) shall not apply to general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160;

(4) non-hazardous solid waste that is received at a sanitary landfill and composted or recycled through a process permitted by the Agency; or

(5) any landfill which is permitted by the Agency to receive only demolition or construction debris or landscape waste.

(Source: P.A. 101-10, eff. 6-5-19; 101-636, eff. 6-10-20; 102-16, eff. 6-17-21; 102-310, eff. 8-6-21; 102-444, eff. 8-20-21; 102-699, eff. 4-19-22.)

(Text of Section from P.A. 102-813)

Sec. 22.15. Solid Waste Management Fund; fees.

(a) There is hereby created within the State Treasury a special fund to be known as the Solid Waste Management Fund, to be constituted from the fees collected by the State pursuant to this Section, from repayments of loans made from the Fund for solid waste projects, from registration fees collected pursuant to the Consumer Electronics Recycling Act, and from amounts transferred into the Fund pursuant to Public Act 100-433. Moneys received by either the Agency or the Department of Commerce and Economic Opportunity in repayment of loans made pursuant to the Illinois Solid Waste Management Act shall be deposited into the General Revenue Fund.

(b) The Agency shall assess and collect a fee in the amount set forth herein from the owner or operator of each sanitary landfill permitted or required to be permitted by the Agency to dispose of solid waste if the sanitary landfill is located off the site where such waste was produced and if such sanitary landfill is owned, controlled, and operated by a person other than the generator of such waste. The Agency shall deposit all fees collected into the Solid Waste Management Fund. If a site is contiguous to one or more landfills owned or operated by the

same person, the volumes permanently disposed of by each landfill shall be combined for purposes of determining the fee under this subsection. Beginning on July 1, 2018, and on the first day of each month thereafter during fiscal years 2019 through 2022, the State Comptroller shall direct and State Treasurer shall transfer an amount equal to 1/12 of $5,000,000 per fiscal year from the Solid Waste Management Fund to the General Revenue Fund.

(1) If more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall either pay a fee of 95 cents per cubic yard or, alternatively, the owner or operator may weigh the quantity of the solid waste permanently disposed of with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of $2.00 per ton of solid waste permanently disposed of. In no case shall the fee collected or paid by the owner or operator under this paragraph exceed $1.55 per cubic yard or $3.27 per ton.

(2) If more than 100,000 cubic yards but not more than 150,000 cubic yards of non-hazardous waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $52,630.

(3) If more than 50,000 cubic yards but not more than 100,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $23,790.

(4) If more than 10,000 cubic yards but not more than 50,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $7,260.

(5) If not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $1050.

(c) (Blank).

(d) The Agency shall establish rules relating to the collection of the fees authorized by this Section. Such rules shall include, but not be limited to:

(1) necessary records identifying the quantities of solid waste received or disposed;

(2) the form and submission of reports to accompany the payment of fees to the Agency;

(3) the time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly; and

(4) procedures setting forth criteria establishing when an owner or operator may measure by weight or volume during any given quarter or other fee payment period.

(e) Pursuant to appropriation, all monies in the Solid Waste Management Fund shall be used by the Agency for the purposes set forth in this Section and in the Illinois Solid Waste Management Act, including for the costs of fee collection and administration, and for the administration of (1) the Consumer Electronics Recycling Act and (2) until January 1, 2020, the Electronic Products Recycling and Reuse Act.

(f) The Agency is authorized to enter into such agreements and to promulgate such rules as are necessary to carry out its duties under this Section and the Illinois Solid Waste Management Act.

(g) On the first day of January, April, July, and October of each year, beginning on July 1, 1996, the State Comptroller and Treasurer shall transfer $500,000 from the Solid Waste Management Fund to the Hazardous Waste Fund. Moneys transferred

under this subsection (g) shall be used only for the purposes set forth in item (1) of subsection (d) of Section 22.2.

(h) The Agency is authorized to provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste disposal sites.

(i) The Agency is authorized to conduct household waste collection and disposal programs.

(j) A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a solid waste disposal facility is located may establish a fee, tax, or surcharge with regard to the permanent disposal of solid waste. All fees, taxes, and surcharges collected under this subsection shall be utilized for solid waste management purposes, including long-term monitoring and maintenance of landfills, planning, implementation, inspection, enforcement and other activities consistent with the Solid Waste Management Act and the Local Solid Waste Disposal Act, or for any other environment-related purpose, including, but not limited to, an environment-related public works project, but not for the construction of a new pollution control facility other than a household hazardous waste facility. However, the total fee, tax or surcharge imposed by all units of local government under this subsection (j) upon the solid waste disposal facility shall not exceed:

(1) 60¢ per cubic yard if more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year, unless the owner or operator weighs the quantity of the solid waste received with a device for which certification has been obtained under the Weights and Measures Act, in which case the fee shall not exceed $1.27 per ton of solid waste permanently disposed of.

(2) $33,350 if more than 100,000 cubic yards, but not more than 150,000 cubic yards, of non-hazardous waste is permanently disposed of at the site in a calendar year.

(3) $15,500 if more than 50,000 cubic yards, but not more than 100,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(4) $4,650 if more than 10,000 cubic yards, but not more than 50,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(5) $650 if not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

The corporate authorities of the unit of local government may use proceeds from the fee, tax, or surcharge to reimburse a highway commissioner whose road district lies wholly or partially within the corporate limits of the unit of local government for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

For the disposal of solid waste from general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160, the total fee, tax, or surcharge imposed by all units of local government under this subsection (j) upon the solid waste disposal facility shall not exceed 50% of the applicable amount set forth above. A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a general construction or demolition debris recovery facility is located may establish a fee, tax, or surcharge on the general construction or demolition debris recovery facility with regard to the permanent disposal of solid waste by the general construction or demolition debris recovery facility at a solid waste disposal facility, provided that such fee, tax, or

surcharge shall not exceed 50% of the applicable amount set forth above, based on the total amount of solid waste transported from the general construction or demolition debris recovery facility for disposal at solid waste disposal facilities, and the unit of local government and fee shall be subject to all other requirements of this subsection (j).

A county or Municipal Joint Action Agency that imposes a fee, tax, or surcharge under this subsection may use the proceeds thereof to reimburse a municipality that lies wholly or partially within its boundaries for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

If the fees are to be used to conduct a local sanitary landfill inspection or enforcement program, the unit of local government must enter into a written delegation agreement with the Agency pursuant to subsection (r) of Section 4. The unit of local government and the Agency shall enter into such a written delegation agreement within 60 days after the establishment of such fees. At least annually, the Agency shall conduct an audit of the expenditures made by units of local government from the funds granted by the Agency to the units of local government for purposes of local sanitary landfill inspection and enforcement programs, to ensure that the funds have been expended for the prescribed purposes under the grant.

The fees, taxes or surcharges collected under this subsection (j) shall be placed by the unit of local government in a separate fund, and the interest received on the moneys in the fund shall be credited to the fund. The monies in the fund may be accumulated over a period of years to be expended in accordance with this subsection.

A unit of local government, as defined in the Local Solid Waste Disposal Act, shall prepare and post on its website, in April of each year, a report that details spending plans for monies collected in accordance with this subsection. The report will at a minimum include the following:

(1) The total monies collected pursuant to this subsection.

(2) The most current balance of monies collected pursuant to this subsection.

(3) An itemized accounting of all monies expended for the previous year pursuant to this subsection.

(4) An estimation of monies to be collected for the following 3 years pursuant to this subsection.

(5) A narrative detailing the general direction and scope of future expenditures for one, 2 and 3 years.

The exemptions granted under Sections 22.16 and 22.16a, and under subsection (k) of this Section, shall be applicable to any fee, tax or surcharge imposed under this subsection (j); except that the fee, tax or surcharge authorized to be imposed under this subsection (j) may be made applicable by a unit of local government to the permanent disposal of solid waste after December 31, 1986, under any contract lawfully executed before June 1, 1986 under which more than 150,000 cubic yards (or 50,000 tons) of solid waste is to be permanently disposed of, even though the waste is exempt from the fee imposed by the State under subsection (b) of this Section pursuant to an exemption granted under Section 22.16.

(k) In accordance with the findings and purposes of the Illinois Solid Waste Management Act, beginning January 1, 1989 the fee under subsection (b) and the fee, tax or surcharge under subsection (j) shall not apply to:

(1) waste which is hazardous waste;

(2) waste which is pollution control waste;

(3) waste from recycling, reclamation or reuse processes which have been approved by the Agency as being designed to remove any contaminant from wastes so as to render such wastes reusable, provided that the process renders at least 50% of the waste reusable; the exemption set forth in this paragraph (3) of this subsection (k) shall not apply to general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160;

(4) non-hazardous solid waste that is received at a sanitary landfill and composted or recycled through a process permitted by the Agency; or

(5) any landfill which is permitted by the Agency to receive only demolition or construction debris or landscape waste.

(Source: P.A. 101-10, eff. 6-5-19; 101-636, eff. 6-10-20; 102-16, eff. 6-17-21; 102-310, eff. 8-6-21; 102-444, eff. 8-20-21; 102-813, eff. 5-13-22.)

(Text of Section from P.A. 102-1055)

Sec. 22.15. Solid Waste Management Fund; fees.

(a) There is hereby created within the State Treasury a special fund to be known as the Solid Waste Management Fund, to be constituted from the fees collected by the State pursuant to this Section, from repayments of loans made from the Fund for solid waste projects, from registration fees collected pursuant to the Consumer Electronics Recycling Act, and from amounts transferred into the Fund pursuant to Public Act 100-433. Moneys received by either the Agency or the Department of Commerce and Economic Opportunity in repayment of loans made pursuant to the Illinois Solid Waste Management Act shall be deposited into the General Revenue Fund.

(b) The Agency shall assess and collect a fee in the amount set forth herein from the owner or operator of each sanitary landfill permitted or required to be permitted by the Agency to dispose of solid waste if the sanitary landfill is located off the site where such waste was produced and if such sanitary landfill is owned, controlled, and operated by a person other than the generator of such waste. The Agency shall deposit all fees collected into the Solid Waste Management Fund. If a site is contiguous to one or more landfills owned or operated by the same person, the volumes permanently disposed of by each landfill shall be combined for purposes of determining the fee under this subsection. Beginning on July 1, 2018, and on the first day of each month thereafter during fiscal years 2019 through 2022, the State Comptroller shall direct and State Treasurer shall transfer an amount equal to 1/12 of $5,000,000 per fiscal year from the Solid Waste Management Fund to the General Revenue Fund.

(1) If more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall either pay a fee of 95 cents per cubic yard or, alternatively, the owner or operator may weigh the quantity of the solid waste permanently disposed of with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of $2.00 per ton of solid waste permanently disposed of. In no case shall the fee collected or paid by the owner or operator under this paragraph exceed $1.55 per cubic yard or $3.27 per ton.

(2) If more than 100,000 cubic yards but not more than 150,000 cubic yards of non-hazardous waste is permanently disposed of at a site in a calendar year, the

owner or operator shall pay a fee of $52,630.

(3) If more than 50,000 cubic yards but not more than 100,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $23,790.

(4) If more than 10,000 cubic yards but not more than 50,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $7,260.

(5) If not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $1050.

(c) (Blank).

(d) The Agency shall establish rules relating to the collection of the fees authorized by this Section. Such rules shall include, but not be limited to:

(1) necessary records identifying the quantities of solid waste received or disposed;

(2) the form and submission of reports to accompany the payment of fees to the Agency;

(3) the time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly; and

(4) procedures setting forth criteria establishing when an owner or operator may measure by weight or volume during any given quarter or other fee payment period.

(e) Pursuant to appropriation, all monies in the Solid Waste Management Fund shall be used by the Agency for the purposes set forth in this Section and in the Illinois Solid Waste Management Act, including for the costs of fee collection and administration, and for the administration of the Consumer Electronics Recycling Act and the Drug Take-Back Act.

(f) The Agency is authorized to enter into such agreements and to promulgate such rules as are necessary to carry out its duties under this Section and the Illinois Solid Waste Management Act.

(g) On the first day of January, April, July, and October of each year, beginning on July 1, 1996, the State Comptroller and Treasurer shall transfer $500,000 from the Solid Waste Management Fund to the Hazardous Waste Fund. Moneys transferred under this subsection (g) shall be used only for the purposes set forth in item (1) of subsection (d) of Section 22.2.

(h) The Agency is authorized to provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste disposal sites.

(i) The Agency is authorized to conduct household waste collection and disposal programs.

(j) A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a solid waste disposal facility is located may establish a fee, tax, or surcharge with regard to the permanent disposal of solid waste. All fees, taxes, and surcharges collected under this subsection shall be utilized for solid waste management purposes, including long-term monitoring and maintenance of landfills, planning, implementation, inspection, enforcement and other activities consistent with the Solid Waste Management Act and the Local Solid Waste Disposal Act, or for any other environment-related purpose, including, but not limited to, an environment-related public works project, but not for the construction of a new pollution control facility other than a household hazardous waste facility. However, the total fee, tax or surcharge imposed by all units of local government under this subsection (j) upon

the solid waste disposal facility shall not exceed:

(1) 60¢ per cubic yard if more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year, unless the owner or operator weighs the quantity of the solid waste received with a device for which certification has been obtained under the Weights and Measures Act, in which case the fee shall not exceed $1.27 per ton of solid waste permanently disposed of.

(2) $33,350 if more than 100,000 cubic yards, but not more than 150,000 cubic yards, of non-hazardous waste is permanently disposed of at the site in a calendar year.

(3) $15,500 if more than 50,000 cubic yards, but not more than 100,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(4) $4,650 if more than 10,000 cubic yards, but not more than 50,000 cubic yards, of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

(5) $650 if not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at the site in a calendar year.

The corporate authorities of the unit of local government may use proceeds from the fee, tax, or surcharge to reimburse a highway commissioner whose road district lies wholly or partially within the corporate limits of the unit of local government for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

For the disposal of solid waste from general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160, the total fee, tax, or surcharge imposed by all units of local government under this subsection (j) upon the solid waste disposal facility shall not exceed 50% of the applicable amount set forth above. A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a general construction or demolition debris recovery facility is located may establish a fee, tax, or surcharge on the general construction or demolition debris recovery facility with regard to the permanent disposal of solid waste by the general construction or demolition debris recovery facility at a solid waste disposal facility, provided that such fee, tax, or surcharge shall not exceed 50% of the applicable amount set forth above, based on the total amount of solid waste transported from the general construction or demolition debris recovery facility for disposal at solid waste disposal facilities, and the unit of local government and fee shall be subject to all other requirements of this subsection (j).

A county or Municipal Joint Action Agency that imposes a fee, tax, or surcharge under this subsection may use the proceeds thereof to reimburse a municipality that lies wholly or partially within its boundaries for expenses incurred in the removal of nonhazardous, nonfluid municipal waste that has been dumped on public property in violation of a State law or local ordinance.

If the fees are to be used to conduct a local sanitary landfill inspection or enforcement program, the unit of local government must enter into a written delegation agreement with the Agency pursuant to subsection (r) of Section 4. The unit of local government and the Agency shall enter into such a written delegation agreement within 60 days after the establishment of such fees. At least annually, the Agency shall conduct an audit of the expenditures made by units of local government from the funds granted by the Agency to the units of local government for purposes of local sanitary landfill inspection and enforcement

programs, to ensure that the funds have been expended for the prescribed purposes under the grant.

The fees, taxes or surcharges collected under this subsection (j) shall be placed by the unit of local government in a separate fund, and the interest received on the moneys in the fund shall be credited to the fund. The monies in the fund may be accumulated over a period of years to be expended in accordance with this subsection.

A unit of local government, as defined in the Local Solid Waste Disposal Act, shall prepare and post on its website, in April of each year, a report that details spending plans for monies collected in accordance with this subsection. The report will at a minimum include the following:

(1) The total monies collected pursuant to this subsection.

(2) The most current balance of monies collected pursuant to this subsection.

(3) An itemized accounting of all monies expended for the previous year pursuant to this subsection.

(4) An estimation of monies to be collected for the following 3 years pursuant to this subsection.

(5) A narrative detailing the general direction and scope of future expenditures for one, 2 and 3 years.

The exemptions granted under Sections 22.16 and 22.16a, and under subsection (k) of this Section, shall be applicable to any fee, tax or surcharge imposed under this subsection (j); except that the fee, tax or surcharge authorized to be imposed under this subsection (j) may be made applicable by a unit of local government to the permanent disposal of solid waste after December 31, 1986, under any contract lawfully executed before June 1, 1986 under which more than 150,000 cubic yards (or 50,000 tons) of solid waste is to be permanently disposed of, even though the waste is exempt from the fee imposed by the State under subsection (b) of this Section pursuant to an exemption granted under Section 22.16.

(k) In accordance with the findings and purposes of the Illinois Solid Waste Management Act, beginning January 1, 1989 the fee under subsection (b) and the fee, tax or surcharge under subsection (j) shall not apply to:

(1) waste which is hazardous waste;

(2) waste which is pollution control waste;

(3) waste from recycling, reclamation or reuse processes which have been approved by the Agency as being designed to remove any contaminant from wastes so as to render such wastes reusable, provided that the process renders at least 50% of the waste reusable; the exemption set forth in this paragraph (3) of this subsection (k) shall not apply to general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160;

(4) non-hazardous solid waste that is received at a sanitary landfill and composted or recycled through a process permitted by the Agency; or

(5) any landfill which is permitted by the Agency to receive only demolition or construction debris or landscape waste.

(Source: P.A. 101-10, eff. 6-5-19; 101-636, eff. 6-10-20; 102-16, eff. 6-17-21; 102-310, eff. 8-6-21; 102-444, eff. 8-20-21; 102-1055, eff. 6-10-22.)

(415 ILCS 5/22.15a)

Sec. 22.15a. Open dumping cleanup program.

(a) Upon making a finding that open dumping poses a threat to the public health or to the environment, the Agency may take

whatever preventive or corrective action is necessary or appropriate to end that threat. This preventive or corrective action may consist of any or all of the following:

(1) Removing waste from the site.

(2) Removing soil and water contamination that is related to waste at the site.

(3) Installing devices to monitor and control groundwater and surface water contamination that is related to waste at the site.

(4) Taking any other actions that are authorized by Board regulations.

(b) Subject to the availability of appropriated funds, the Agency may undertake a consensual removal action for the removal of up to 20 cubic yards of waste at no cost to the owner of property where open dumping has occurred in accordance with the following requirements:

(1) Actions under this subsection must be taken pursuant to a written agreement between the Agency and the owner of the property.

(2) The written agreement must at a minimum specify:

(A) that the owner relinquishes any claim of an ownership interest in any waste that is removed and in any proceeds from its sale;

(B) that waste will no longer be allowed to accumulate at the site in a manner that constitutes open dumping;

(C) that the owner will hold harmless the Agency and any employee or contractor used by the Agency to effect the removal for any damage to property incurred during the course of action under this subsection, except for damage incurred by gross negligence or intentional misconduct; and

(D) any conditions imposed upon or assistance required from the owner to assure that the waste is so located or arranged as to facilitate its removal.

(3) The Agency may establish by rule the conditions and priorities for the removal of waste under this subsection (b).

(4) The Agency must prescribe the form of written agreements under this subsection (b).

(c) The Agency may provide notice to the owner of property where open dumping has occurred whenever the Agency finds that open dumping poses a threat to public health or the environment. The notice provided by the Agency must include the identified preventive or corrective action and must provide an opportunity for the owner to perform the action.

(d) In accordance with constitutional limitations, the Agency may enter, at all reasonable times, upon any private or public property for the purpose of taking any preventive or corrective action that is necessary and appropriate under this Section whenever the Agency finds that open dumping poses a threat to the public health or to the environment.

(e) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (g) of this Section, the following persons shall be liable for all costs of corrective or preventive action incurred by the State of Illinois as a result of open dumping, including the reasonable costs of collection:

(1) any person with an ownership interest in property where open dumping has occurred;

(2) any person with an ownership or leasehold interest in the property at the time the open dumping occurred;

(3) any person who transported waste that was open

dumped at the property; and

(4) any person who open dumped at the property.

Any moneys received by the Agency under this subsection (e) must be deposited into the Subtitle D Management Fund.

(f) Any person liable to the Agency for costs incurred under subsection (e) of this Section may be liable to the State of Illinois for punitive damages in an amount at least equal to and not more than 3 times the costs incurred by the State if that person failed, without sufficient cause, to take preventive or corrective action under the notice issued under subsection (c) of this Section.

(g) There shall be no liability under subsection (e) of this Section for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the open dumping was caused solely by:

(1) an act of God;

(2) an act of war; or

(3) an act or omission of a third party other than an employee or agent and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable. For the purposes of this paragraph, "contractual relationship" includes, but is not limited to, land contracts, deeds, and other instruments transferring title or possession, unless the real property upon which the open dumping occurred was acquired by the defendant after the open dumping occurred and one or more of the following circumstances is also established by a preponderance of the evidence:

(A) at the time the defendant acquired the property, the defendant did not know and had no reason to know that any open dumping had occurred and the defendant undertook, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability;

(B) the defendant is a government entity that acquired the property by escheat or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(C) the defendant acquired the property by inheritance or bequest.

(h) Nothing in this Section shall affect or modify the obligations or liability of any person under any other provision of this Act, federal law, or State law, including the common law, for injuries, damages, or losses resulting from the circumstances leading to Agency action under this Section.

(i) The costs and damages provided for in this Section may be imposed by the Board in an action brought before the Board in accordance with Title VIII of this Act, except that subsection (c) of Section 33 of this Act shall not apply to any such action.

(j) Except for willful and wanton misconduct, neither the State, the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any act or omission occurring under the provisions of this amendatory Act of the 94th General Assembly.

(k) Before taking preventive or corrective action under this Section, the Agency shall consider whether the open dumping:

(1) occurred on public land;

(2) occurred on a public right-of-way;

(3) occurred in a park or natural area;

(4) occurred in an environmental justice area;

(5) was caused or allowed by persons other than the

owner of the site;

(6) creates the potential for groundwater contamination;

(7) creates the potential for surface water contamination;

(8) creates the potential for disease vectors;

(9) creates a fire hazard; or

(10) preventive or corrective action by the Agency has been requested by a unit of local government.

In taking preventive or corrective action under this Section, the Agency shall not expend more than $50,000 at any single site in response to open dumping unless: (i) the Director determines that the open dumping poses an imminent and substantial endangerment to the public health or welfare or the environment; or (ii) the General Assembly appropriates more than $50,000 for preventive or corrective action in response to the open dumping, in which case the Agency may spend the appropriated amount.

(Source: P.A. 94-272, eff. 7-19-05.)

(415 ILCS 5/22.16) (from Ch. 111 1/2, par. 1022.16)

Sec. 22.16. Fee exemptions.

(a) The Agency shall grant exemptions from the fee requirements of Section 22.15 of this Act for permanent disposal or transport of solid waste meeting all of the following criteria:

(1) permanent disposal of the solid waste is pursuant to a written contract between the owner or operator of the sanitary landfill and some other person, or transport of the solid waste is pursuant to a written contract between the transporter and some other person;

(2) the contract for permanent disposal or transport of solid waste was lawfully executed on or before December 31, 1986, and by its express terms continues beyond January 1, 1987, or was lawfully executed during 1987 or 1988 and by its express terms continues beyond January 1, 1989;

(3) the contract for permanent disposal or transport of solid waste establishes a fixed fee or compensation, does not allow the operator or transporter to pass the fee through to another party, and does not allow voluntary cancellation or re-negotiation of the compensation or fee during the term of the contract; and

(4) the contract was lawfully executed on or before December 31, 1986 and has not been amended at any time after that date, or was lawfully executed during 1987 or 1988 and has not been amended on or after January 1, 1989.

(b) Exemptions granted under this Section shall cause the solid waste received by an owner or operator of a sanitary landfill pursuant to a contract exempted under this Section to be disregarded in calculating the volume or weight of solid waste permanently disposed of during a calendar year under Section 22.15 of this Act.

(c) (Blank.)

(d) It shall be the duty of an owner or operator of a sanitary landfill to keep accurate records and to prove to the satisfaction of the Agency the volume or weight of solid waste received under an exemption during a calendar year.

(e) Exemptions under this Section shall expire upon the expiration, renewal or amendment of the exempted contract, whichever occurs first.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.16a) (from Ch. 111 1/2, par. 1022.16a)

Sec. 22.16a. Additional fee exemptions.

(a) In accordance with the findings and purposes of the Illinois Solid Waste Management Act, the Agency shall grant exemptions from the fee requirements of Section 22.15 of this Act for solid waste meeting all of the following criteria:

(1) the waste is non-putrescible and homogeneous and does not contain free liquids;

(2) combustion of the waste would not provide practical energy recovery or practical reduction in volume; and

(3) the applicant for exemption demonstrates that it is not technologically and economically reasonable to recycle or reuse the waste.

(b) Exemptions granted under this Section shall cause the solid waste exempted under subsection (a) which is permanently disposed of by an owner or operator of a sanitary landfill to be disregarded in calculating the volume or weight of solid waste permanently disposed of during a calendar year under Section 22.15 of this Act.

(c) Applications for exemptions under this Section must be submitted on forms provided by the Agency for such purpose, together with proof of satisfaction of all criteria for granting the exemption. For applications received on or after March 1, 1989, exemptions issued under subsection (a) shall be effective beginning with the next calendar quarter following issuance of the exemption.

(d) If the Agency denies a request made pursuant to subsection (a), the applicant may seek review before the Board pursuant to Section 40 as if the Agency had denied an application for a permit. If the Agency fails to act within 90 days after receipt of an application, the request shall be deemed granted until such time as the Agency has taken final action.

(e) It shall be the duty of an owner or operator of a sanitary landfill to keep accurate records and to prove to the satisfaction of the Agency the volume or weight of solid waste received under an exemption during a calendar year.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.16b) (from Ch. 111 1/2, par. 1022.16b)

Sec. 22.16b. (a) Beginning January 1, 1991, the Agency shall assess and collect a fee from the owner or operator of each new municipal waste incinerator. The fee shall be calculated by applying the rates established from time to time for the disposal of solid waste at sanitary landfills under subdivision (b)(1) of Section 22.15 to the total amount of municipal waste accepted for incineration at the new municipal waste incinerator. The exemptions provided by this Act to the fees imposed under subsection (b) of Section 22.15 shall not apply to the fee imposed by this Section.

The owner or operator of any new municipal waste incinerator permitted after January 1, 1990, but before July 1, 1990 by the Agency for the development or operation of a new municipal waste incinerator shall be exempt from this fee, but shall include the following conditions:

(1) The owner or operator shall provide information programs to those communities serviced by the owner or operator concerning recycling and separation of waste not suitable for incineration.

(2) The owner or operator shall provide information programs to those communities serviced by the owner or operator concerning the Agency's household hazardous waste collection program and participation in that program.

For the purposes of this Section, "new municipal waste incinerator" means a municipal waste incinerator initially permitted for development or construction on or after January 1, 1990.

Amounts collected under this subsection shall be deposited into the Municipal Waste Incinerator Tax Fund, which is hereby established as an interest-bearing special fund in the State Treasury. Monies in the Fund may be used, subject to appropriation:

(1) by the Agency to fund its public information programs on recycling in those communities served by new municipal waste incinerators; and

(2) by the Agency to fund its household hazardous waste collection activities in those communities served by new municipal waste incinerators.

(b) Any permit issued by the Agency for the development or operation of a new municipal waste incinerator shall include the following conditions:

(1) The incinerator must be designed to provide continuous monitoring while in operation, with direct transmission of the resultant data to the Agency, until the Agency determines the best available control technology for monitoring the data. The Agency shall establish the test methods, procedures and averaging periods, as certified by the USEPA for solid waste incinerator units, and the form and frequency of reports containing results of the monitoring. Compliance and enforcement shall be based on such reports. Copies of the results of such monitoring shall be maintained on file at the facility concerned for one year, and copies shall be made available for inspection and copying by interested members of the public during business hours.

(2) The facility shall comply with the emission limits adopted by the Agency under subsection (c).

(3) The operator of the facility shall take reasonable measures to ensure that waste accepted for incineration complies with all legal requirements for incineration. The incinerator operator shall establish contractual requirements or other notification and inspection procedures sufficient to assure compliance with this subsection (b)(3) which may include, but not be limited to, routine inspections of waste, lists of acceptable and unacceptable waste provided to haulers and notification to the Agency when the facility operator rejects and sends loads away. The notification shall contain at least the name of the hauler and the site from where the load was hauled.

(4) The operator may not accept for incineration any waste generated or collected in a municipality that has not implemented a recycling plan or is party to an implemented county plan, consistent with State goals and objectives. Such plans shall include provisions for collecting, recycling or diverting from landfills and municipal incinerators landscape waste, household hazardous waste and batteries. Such provisions may be performed at the site of the new municipal incinerator.

The Agency, after careful scrutiny of a permit application for the construction, development or operation of a new municipal waste incinerator, shall deny the permit if (i) the Agency finds in the permit application noncompliance with the laws and rules of the State or (ii) the application indicates that the mandated air emissions standards will not be reached within six months of the proposed municipal waste incinerator beginning operation.

(c) The Agency shall adopt specific limitations on the

emission of mercury, chromium, cadmium and lead, and good combustion practices, including temperature controls from municipal waste incinerators pursuant to Section 9.4 of the Act.

(d) The Agency shall establish household hazardous waste collection centers in appropriate places in this State. The Agency may operate and maintain the centers itself or may contract with other parties for that purpose. The Agency shall ensure that the wastes collected are properly disposed of. The collection centers may charge fees for their services, not to exceed the costs incurred. Such collection centers shall not (i) be regulated as hazardous waste facilities under RCRA nor (ii) be subject to local siting approval under Section 39.2 if the local governing authority agrees to waive local siting approval procedures.

(Source: P.A. 102-444, eff. 8-20-21.)

(415 ILCS 5/22.17) (from Ch. 111 1/2, par. 1022.17)

Sec. 22.17. Landfill post-closure care.

(a) The owner and operator of a sanitary landfill site that is not a site subject to subsection (a.5) or (a.10) of this Section shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.

(a.5) The owner and operator of a MSWLF unit that accepts household waste after October 8, 1993, shall conduct post-closure care at the site for a period of 30 years after the site is completed or closed, or such other period as may be approved by the Agency pursuant to Board or federal rules.

(a.10) The owner and operator of a MSWLF unit that accepts household waste on or after October 9, 1991, but stops receiving waste before October 9, 1993, and installs final cover more than 6 months after the receipt of the final volume of waste shall conduct post-closure care at the site for a period of 30 years after the site is completed or closed, or such other period as may be approved by the Agency pursuant to Board or federal rules.

(b) The owner and operator of a sanitary landfill that is not a facility subject to subsection (a.5) or (a.10) of this Section shall take whatever remedial action is necessary to abate any gas, water or settling problems which appear during such period of time specified in subsection (a). The owner and operator of a MSWLF unit that accepts household waste after October 8, 1993, shall take whatever remedial action is required under Sections 22.40 and 22.41 of this Act during the period of time specified in subsection (a.5) or (a.10).

(c) Except for MSWLF units that received household waste on or after October 9, 1991, this Section does not apply to a landfill used exclusively for the disposal of waste generated at the site.

(Source: P.A. 88-496.)

(415 ILCS 5/22.18) (from Ch. 111 1/2, par. 1022.18)

Sec. 22.18. (Repealed).

(Source: Repealed by P.A. 88-496.)

(415 ILCS 5/22.18b) (from Ch. 111 1/2, par. 1022.18b)

Sec. 22.18b. (Repealed).

(Source: Repealed by P.A. 88-496.)

(415 ILCS 5/22.18c) (from Ch. 111 1/2, par. 1022.18c)

Sec. 22.18c. (Repealed).

(Source: Repealed by P.A. 88-496.)

(415 ILCS 5/22.19) (from Ch. 111 1/2, par. 1022.19)

Sec. 22.19. (a) Counties with 200,000 or more inhabitants but fewer than 300,000 inhabitants, which border on the Mississippi River, may by ordinance set reasonable operating hours for all sanitary landfills and waste-to-energy facilities within their boundaries that receive wastes from sources off the site where such landfills or waste-to-energy facilities are located.

(b) Beginning January 1, 1989, the Agency shall not grant any permit for the construction or operation of a solid waste disposal facility on a site which is held in a land trust, unless the application therefor has been signed by all beneficiaries of the land trust.

(Source: P.A. 85-1311.)

(415 ILCS 5/22.19a)

Sec. 22.19a. Floodplain.

(a) On and after January 1, 1998, no sanitary landfill or waste disposal site that is a pollution control facility, or any part of a sanitary landfill or waste disposal site that is a pollution control facility, may be located within the boundary of the 100-year floodplain.

(b) Subsection (a) shall not apply to the following:

(1) a sanitary landfill or waste disposal site initially permitted for development or construction by the Agency before August 19, 1997;

(2) a sanitary landfill or waste disposal site for which local siting approval has been granted before August 19, 1997;

(3) the area of expansion beyond the boundary of a currently permitted sanitary landfill or waste disposal site, provided that the area of expansion is, on August 19, 1997, owned by the owner or operator of the currently sited or permitted sanitary landfill or waste site to which the area of expansion is adjacent; or

(4) a sanitary landfill or waste disposal site that is a pollution control facility that ceased accepting waste on or before August 19, 1997 or any part of a sanitary landfill or waste disposal site that is a pollution control facility that ceased accepting waste on or before August 19, 1997.

(Source: P.A. 90-503, eff. 8-19-97; 91-588, eff. 8-14-99.)

(415 ILCS 5/22.19b)

Sec. 22.19b. Postclosure care requirements.

(a) For those sanitary landfills and waste disposal sites located within the boundary of the 100-year floodplain pursuant to paragraph (3) of subsection (b) of Section 22.19a, to address the risks posed by flooding to the integrity of the sanitary landfill or waste disposal site, the owner or operator of the sanitary landfill or waste disposal site shall comply with the following financial assurance requirements for that portion of the site permitted for the disposal of solid waste within the boundary of the 100-year floodplain:

(1) The owner or operator must include, in the facility postclosure care plan and the postclosure care cost estimate:

(A) the cost of inspecting, and anticipated repairs to, all surface water drainage structures in the area of the landfill or waste disposal site permitted for the disposal of solid waste within the boundary of the 100-year floodplain;

(B) the cost of repairing anticipated erosion

affecting both the final cover and vegetation in the area of the landfill or waste disposal site permitted for the disposal of solid waste within the boundary of the 100-year floodplain below the 100-year flood elevation;

(C) the cost of inspecting the portion of the site permitted for the disposal of solid waste within the boundary of the 100-year floodplain a minimum of once every 5 years; and

(D) the cost of monitoring the portion of the landfill or waste disposal site permitted for the disposal of solid waste within the boundary of the 100-year floodplain after a 100-year flood.

(2) The owner or operator must provide financial assurance, using any of the financial assurance mechanisms set forth in Title 35, Part 811, Subpart G of the Illinois Administrative Code, as amended, to cover the costs identified in subsection (a)(1) of this Section;

(3) The owner or operator must base the portion of the postclosure care cost estimate addressing the activities prescribed in subsection (a)(1) of this Section on a period of 100 years; and

(4) The owner or operator must submit the information required under subsection (a)(1) of this Section to the Agency as part of the facility's application for a permit required to develop the area pursuant to Title 35, Section 812.115 of the Illinois Administrative Code, as amended, for non-hazardous waste landfills or pursuant to Title 35, Section 724.218 of the Illinois Administrative Code, as amended, for hazardous waste landfills.

(b) Any sanitary landfill or waste disposal site owner or operator subject to subsection (a) of this Section must certify in the facility's application for permit renewal that the postclosure care activities set forth in the postclosure care plan to comply with this Section have been met and will be performed.

(c) Nothing in this Section shall be construed as limiting the general authority of the Board to adopt rules pursuant to Title VII of this Act.

(d) Notwithstanding any requirements of this Section, the owner or operator of any landfill or waste disposal facility located in a 100-year floodplain shall, upon receipt of notification from the Agency, repair damage to that facility caused by a 100-year flood.

(Source: P.A. 90-503, eff. 8-19-97; 91-588, eff. 8-14-99.)

(415 ILCS 5/22.20) (from Ch. 111 1/2, par. 1022.20)

Sec. 22.20. (Repealed).

(Source: P.A. 86-820. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.21) (from Ch. 111 1/2, par. 1022.21)

Sec. 22.21. During operation of a pollution control facility, the operator shall comply with the safety standards relating to construction established pursuant to the federal Occupational Safety and Health Act of 1970, Title 29, United States Code, Sections 651 through 678, Public Law 91-596, as amended.

(Source: P.A. 91-357, eff. 7-29-99.)

(415 ILCS 5/22.22) (from Ch. 111 1/2, par. 1022.22)

Sec. 22.22. Landscape waste.

(a) Beginning July 1, 1990, no person may knowingly mix landscape waste that is intended for collection or for disposal

at a landfill with any other municipal waste.

(b) Beginning July 1, 1990, no person may knowingly put landscape waste into a container intended for collection or disposal at a landfill, unless such container is biodegradable.

(c) Beginning July 1, 1990, no owner or operator of a sanitary landfill shall accept landscape waste for final disposal, except that landscape waste separated from municipal waste may be accepted by a sanitary landfill if (1) the landfill provides and maintains for that purpose separate landscape waste composting facilities and composts all landscape waste, and (2) the composted waste is utilized, by the operators of the landfill or by any other person, as part of the final vegetative cover for the landfill or for such other uses as soil conditioning material, or the landfill has received an Agency permit to use source separated and processed landscape waste as an alternative daily cover and the landscape waste is processed at a site, other than the sanitary landfill, that has received an Agency permit before July 30, 1997 to process landscape waste. For purposes of this Section, (i) "source separated" means divided into its component parts at the point of generation and collected separately from other solid waste and (ii) "processed" means shredded by mechanical means to reduce the landscape waste to a uniform consistency.

(d) The requirements of this Section shall not apply (i) to landscape waste collected as part of a municipal street sweeping operation where the intent is to provide street sweeping service rather than leaf collection, nor (ii) to landscape waste collected by bar screens or grates in a sewage treatment system. (Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.23) (from Ch. 111 1/2, par. 1022.23)

Sec. 22.23. Batteries.

(a) Beginning September 1, 1990, any person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this State shall:

(1) accept for recycling used lead-acid batteries from customers, at the point of transfer, in a quantity equal to the number of new batteries purchased; and

(2) post in a conspicuous place a written notice at least 8.5 by 11 inches in size that includes the universal recycling symbol and the following statements: "DO NOT put motor vehicle batteries in the trash."; "Recycle your used batteries."; and "State law requires us to accept motor vehicle batteries for recycling, in exchange for new batteries purchased.".

(b) Any person selling lead-acid batteries at retail in this State may either charge a recycling fee on each new lead-acid battery sold for which the customer does not return a used battery to the retailer, or provide a recycling credit to each customer who returns a used battery for recycling at the time of purchasing a new one.

(c) Beginning September 1, 1990, no lead-acid battery retailer may dispose of a used lead-acid battery except by delivering it (1) to a battery wholesaler or its agent, (2) to a battery manufacturer, (3) to a collection or recycling facility that accepts lead-acid batteries, or (4) to a secondary lead smelter permitted by either a state or federal environmental agency.

(d) Any person selling lead-acid batteries at wholesale or offering lead-acid batteries for sale at wholesale shall accept for recycling used lead-acid batteries from customers, at the point of transfer, in a quantity equal to the number of new batteries purchased. Such used batteries shall be disposed of as provided in subsection (c).

(e) A person who accepts used lead-acid batteries for recycling pursuant to subsection (a) or (d) shall not allow such batteries to accumulate for periods of more than 90 days.

(f) Beginning September 1, 1990, no person may knowingly cause or allow:

(1) the placing of a lead-acid battery into any container intended for collection and disposal at a municipal waste sanitary landfill; or

(2) the disposal of any lead-acid battery in any municipal waste sanitary landfill or incinerator.

(f-5) Beginning January 1, 2020, no person shall knowingly mix a lead-acid battery with any other material intended for collection as a recyclable material by a hauler.

Beginning January 1, 2020, no person shall knowingly place a lead-acid battery into a container intended for collection by a hauler for processing at a recycling center.

(g) (Blank).

(h) For the purpose of this Section:

"Lead-acid battery" means a battery containing lead and sulfuric acid that has a nominal voltage of at least 6 volts and is intended for use in motor vehicles.

"Motor vehicle" includes automobiles, vans, trucks, tractors, motorcycles and motorboats.

(i) (Blank).

(j) Knowing violation of this Section shall be a petty offense punishable by a fine of $100.

(Source: P.A. 100-621, eff. 7-20-18; 101-137, eff. 7-26-19.)

(415 ILCS 5/22.23a)

Sec. 22.23a. Fluorescent and high intensity discharge lamps.

(a) As used in this Section, "fluorescent or high intensity discharge lamp" means a lighting device that contains mercury and generates light through the discharge of electricity either directly or indirectly through a fluorescent coating, including a mercury vapor, high pressure sodium, or metal halide lamp containing mercury, lead, or cadmium.

(b) No person may knowingly cause or allow the disposal of any fluorescent or high intensity discharge lamp in any municipal waste incinerator beginning July 1, 1997. This Section does not apply to lamps generated by households.

(c) (1) Hazardous fluorescent and high intensity discharge lamps are hereby designated as a category of universal waste subject to the streamlined hazardous waste rules set forth in Title 35 of the Illinois Administrative Code, Subtitle G, Chapter I, Subchapter c, Part 733 ("Part 733"). Within 60 days of August 19, 1997 (the effective date of Public Act 90-502) the Agency shall propose, and within 180 days of receipt of the Agency's proposal the Board shall adopt, rules that reflect this designation and that prescribe procedures and standards for the management of hazardous fluorescent and high intensity discharge lamps as universal waste.

(2) If the United States Environmental Protection Agency adopts streamlined hazardous waste regulations pertaining to the management of fluorescent and high intensity discharge lamps, or otherwise exempts those lamps from regulation as hazardous waste, the Board shall adopt an equivalent rule in accordance with Section 7.2 of this Act within 180 days of adoption of the federal regulation. The equivalent Board rule may serve as an alternative to the rules adopted under subdivision (1) of this subsection.

(d) (Blank.)

(e) (Blank.)

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.23b)

Sec. 22.23b. Mercury and mercury-added products.

(a) Beginning July 1, 2005, no person shall purchase or accept, for use in a primary or secondary school classroom, bulk elemental mercury, chemicals containing mercury compounds, or instructional equipment or materials containing mercury added during their manufacture. This subsection (a) does not apply to: (i) other products containing mercury added during their manufacture that are used in schools and (ii) measuring devices used as teaching aids, including, but not limited to, barometers, manometers, and thermometers, if no adequate mercury-free substitute exists.

(b) Beginning July 1, 2007, no person shall sell, offer to sell, distribute, or offer to distribute in this State a mercury switch or mercury relay individually or as a product component. For a product that contains one or more mercury switches or mercury relays as a component, this subsection (b) is applicable to each component part or parts and not the entire product. This subsection (b) does not apply to the following:

(1) Mercury switches and mercury relays used in medical diagnostic equipment regulated under the federal Food, Drug, and Cosmetic Act.

(2) Mercury switches and mercury relays used at electric generating facilities.

(3) Mercury switches in thermostats used to sense and control room temperature.

(4) Mercury switches and mercury relays required to be used under federal law or federal contract specifications.

(5) A mercury switch or mercury relay used to replace a mercury switch or mercury relay that is a component in a larger product in use before July 1, 2007, and one of the following applies:

(A) The larger product is used in manufacturing; or

(B) The mercury switch or mercury relay is integrated and not physically separate from other components of the larger product.

(c) The manufacturer of a mercury switch or mercury relay, or a scientific instrument or piece of instructional equipment containing mercury added during its manufacture, may apply to the Agency for an exemption from the provisions of subsection (a) or (b) of this Section for one or more specific uses of the switch, relay, instrument, or piece of equipment by filing a written petition with the Agency. The Agency may grant an exemption, with or without conditions, if the manufacturer demonstrates the following:

(1) A convenient and widely available system exists for the proper collection, transportation, and processing of the switch, relay, instrument, or piece of equipment at the end of its useful life; and

(2) The specific use or uses of the switch, relay, instrument, or piece of equipment provides a net benefit to the environment, public health, or public safety when compared to available nonmercury alternatives.

Before approving any exemption under this subsection (c) the Agency must consult with other states to promote consistency in the regulation of products containing mercury added during their manufacture. Exemptions shall be granted for a period of 5 years. The manufacturer may request renewals of the exemption for additional 5-year periods by filing additional written petitions with the Agency. The Agency may renew an exemption if the manufacturer demonstrates that the criteria set forth in

paragraphs (1) and (2) of this subsection (c) continue to be satisfied. All petitions for an exemption or exemption renewal shall be submitted on forms prescribed by the Agency.

The Agency must adopt rules for processing petitions submitted pursuant to this subsection (c). The rules shall include, but shall not be limited to, provisions allowing for the submission of written public comments on the petitions.

(d) No later than January 1, 2005, the Agency must submit to the Governor and the General Assembly a report that includes the following:

(1) An evaluation of programs to reduce and recycle mercury from mercury thermostats and mercury vehicle components; and

(2) Recommendations for altering the programs to make them more effective.

In preparing the report the Agency may seek information from and consult with, businesses, trade associations, environmental organizations, and other government agencies.

(e) Mercury switches and mercury relays, and scientific instruments and instructional equipment containing mercury added during their manufacture, are hereby designated as categories of universal waste subject to the streamlined hazardous waste rules set forth in Title 35 of the Illinois Administrative Code, Subtitle G, Chapter I, Subchapter c, Part 733 ("Part 733"). Within 60 days of the effective date of this amendatory Act of the 93rd General Assembly, the Agency shall propose, and within 180 days of receipt of the Agency's proposal the Board shall adopt, rules that reflect this designation and that prescribe procedures and standards for the management of such items as universal waste.

If the United States Environmental Protection Agency adopts streamlined hazardous waste regulations pertaining to the management of mercury switches or mercury relays, or scientific instruments or instructional equipment containing mercury added during their manufacture, or otherwise exempts such items from regulation as hazardous waste, the Board shall adopt equivalent rules in accordance with Section 7.2 of this Act within 180 days of adoption of the federal regulations. The equivalent Board rules may serve as an alternative to the rules adopted under subsection (1) of this subsection (e).

(f) Beginning July 1, 2008, no person shall install, sell, offer to sell, distribute, or offer to distribute a mercury thermostat in this State. For purposes of this subsection (f), "mercury thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air conditioning equipment. "Mercury thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include thermostats used to sense and control temperature as a part of a manufacturing or industrial process.

(Source: P.A. 97-459, eff. 7-1-12.)

(415 ILCS 5/22.23c)

Sec. 22.23c. Vehicle wheel weights.

(a) In this Section:

"New vehicle" has the same meaning as ascribed in Section 1-148.4 of the Illinois Vehicle Code.

"Vehicle" has the same meaning as ascribed in Section 1-217 of the Illinois Vehicle Code.

(b) On and after January 1, 2012, no person shall use a weight or other product to balance a vehicle wheel or tire if the weight or other product contains mercury that was intentionally added during the manufacturing process or contains

more than 0.1 percent lead by weight.

(c) On and after January 1, 2012, no person shall sell, offer to sell, distribute, or offer to distribute a weight or other product for balancing a vehicle wheel or tire if the weight or other product contains mercury that was intentionally added during the manufacturing process or contains more than 0.1 percent lead by weight.

(d) On and after January 1, 2012, no person shall sell a new vehicle equipped with a weight or other product used to balance a vehicle wheel or tire if the weight or other product contains mercury that was intentionally added during the manufacturing process or contains more than 0.1 percent lead by weight.

(Source: P.A. 96-1296, eff. 7-26-10.)

(415 ILCS 5/22.23d)

Sec. 22.23d. Rechargeable batteries.

(a) "Rechargeable battery" means one or more voltaic or galvanic cells, electrically connected to produce electric energy, that are designed to be recharged for repeated uses. "Rechargeable battery" includes, but is not limited to, a battery containing lithium ion, lithium metal, or lithium polymer or that uses lithium as an anode or cathode, that is designed to be recharged for repeated uses. "Rechargeable battery" does not mean either of the following:

(1) Any dry cell battery that is used as the principal power source for transportation, including, but not limited to, automobiles, motorcycles, or boats.

(2) Any battery that is used only as a backup power source for memory or program instruction storage, timekeeping, or any similar purpose that requires uninterrupted electrical power in order to function if the primary energy supply fails or fluctuates momentarily.

(b) Unless expressly authorized by a recycling collection program, beginning January 1, 2020, no person shall knowingly mix a rechargeable battery or any appliance, device, or other item that contains a rechargeable battery with any other material intended for collection by a hauler as a recyclable material.

Unless expressly authorized by a recycling collection program, beginning January 1, 2020, no person shall knowingly place a rechargeable battery or any appliance, device, or other item that contains a rechargeable battery into a container intended for collection by a hauler for processing at a recycling center.

(c) The Agency shall include on its website information regarding the recycling of rechargeable batteries.

(Source: P.A. 101-137, eff. 7-26-19; 102-558, eff. 8-20-21.)

(415 ILCS 5/22.24) (from Ch. 111 1/2, par. 1022.24)

Sec. 22.24. (a) Beginning January 1, 1990, no person may operate any landfill in any county with a population over 275,000, as determined by the latest federal decennial census, unless facilities are provided at such landfills which are appropriate for cleaning mud, gravel, waste and other material from the site off of the wheels and undercarriages of trucks and other vehicles exiting the site.

(b) Beginning January 1, 1990, no person may drive any truck or trailer off the site of a landfill in any county with a population over 275,000, as determined by the latest federal decennial census, without first cleaning any mud, gravel, waste or other material from the site off of the wheels and undercarriage of the vehicle.

(Source: P.A. 86-772; 86-1028.)

(415 ILCS 5/22.26) (from Ch. 111 1/2, par. 1022.26)

Sec. 22.26. The Agency shall not issue a development or construction permit after December 31, 1990 for any composting facility, unless the applicant has given notice thereof (1) in person or by mail to the members of the General Assembly from the legislative district in which the proposed facility is to be located, (2) by registered or certified mail to the owners of all real property located within 250 feet of the site of the proposed facility (determined as provided in subsection (b) of Section 39.2), and (3) to the general public by publication in a newspaper of general circulation in the county in which the proposed facility is to be located. The notice required under this Section must include: (i) a description of the type of facility being proposed, (ii) the location of the proposed facility, (iii) the name of the person proposing the construction or development of the facility and the contact information (including a phone number) for that person, (iv) instructions directing the recipient of the notice to send written comments relating to the construction or development of the facility to the Agency within 21 days after the notice is either received by mail or last published in a newspaper of general circulation, and (v) the Agency's address, as well as the phone numbers for the Bureaus and Sections responsible for issuing the permit.
(Source: P.A. 96-418, eff. 1-1-10.)

(415 ILCS 5/22.27) (from Ch. 111 1/2, par. 1022.27)

Sec. 22.27. Alternative Daily Cover for Sanitary Landfills.

(a) If the Agency determines that any or all chemical foams provides a cover material that is as good as, or better than, the traditional soil cover commonly used in this State, the Agency shall certify that material as meeting the requirements of this Section. If the Agency determines that any alternative materials other than chemical foams adequately satisfies daily cover requirements at sanitary landfills, it shall permit use of such materials at such facilities.

(b) In complying with the daily cover requirements imposed on sanitary landfills by Board regulation, the operator of a sanitary landfill may use any foam that has been certified by the Agency under this Section in place of a soil cover.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.28) (from Ch. 111 1/2, par. 1022.28)

Sec. 22.28. White goods.

(a) No person shall knowingly offer for collection or collect white goods for the purpose of disposal by landfilling unless the white good components have been removed.

(b) No owner or operator of a landfill shall accept any white goods for final disposal, except that white goods may be accepted if:

(1) (blank);

(2) prior to final disposal, any white good components have been removed from the white goods; and

(3) a site operating plan satisfying this Act has been approved under the landfill's site operating permit and the conditions of the operating plan are met.

(c) For the purposes of this Section:

(1) "White goods" shall include all discarded refrigerators, ranges, water heaters, freezers, air conditioners, humidifiers and other similar domestic and commercial large appliances.

(2) "White good components" shall include:

(i) any chlorofluorocarbon refrigerant gas;

(ii) any electrical switch containing mercury;

(iii) any device that contains or may contain PCBs in a closed system, such as a dielectric fluid for a capacitor, ballast or other component; and

(iv) any fluorescent lamp that contains mercury.

(d) The Agency is authorized to provide financial assistance to units of local government from the Solid Waste Management Fund to plan for and implement programs to collect, transport and manage white goods. Units of local government may apply jointly for financial assistance under this Section.

Applications for such financial assistance shall be submitted to the Agency and must provide a description of:

(A) the area to be served by the program;

(B) the white goods intended to be included in the program;

(C) the methods intended to be used for collecting and receiving materials;

(D) the property, buildings, equipment and personnel included in the program;

(E) the public education systems to be used as part of the program;

(F) the safety and security systems that will be used;

(G) the intended processing methods for each white goods type;

(H) the intended destination for final material handling location; and

(I) any staging sites used to handle collected materials, the activities to be performed at such sites and the procedures for assuring removal of collected materials from such sites.

The application may be amended to reflect changes in operating procedures, destinations for collected materials, or other factors.

Financial assistance shall be awarded for a State fiscal year, and may be renewed, upon application, if the Agency approves the operation of the program.

(e) All materials collected or received under a program operated with financial assistance under this Section shall be recycled whenever possible. Treatment or disposal of collected materials are not eligible for financial assistance unless the applicant shows and the Agency approves which materials may be treated or disposed of under various conditions.

Any revenue from the sale of materials collected under such a program shall be retained by the unit of local government and may be used only for the same purposes as the financial assistance under this Section.

(f) The Agency is authorized to adopt rules necessary or appropriate to the administration of this Section.

(g) (Blank).

(Source: P.A. 100-103, eff. 8-11-17; 100-201, eff. 8-18-17; 100-621, eff. 7-20-18.)

(415 ILCS 5/22.28a)

Sec. 22.28a. White goods handled by scrap dealership or junkyard.

(a) No owner, operator, agent, or employee of a junkyard or scrap dealership may knowingly shred, scrap, dismantle, recycle, incinerate, handle, store, or otherwise manage any white good that contains any white good components in violation of this Act or any other applicable State or federal law.

(b) For the purposes of this Section, the terms "white goods" and "white goods components" have the same meaning as in

Section 22.28.
(Source: P.A. 92-447, eff. 8-21-01.)

(415 ILCS 5/22.29) (from Ch. 111 1/2, par. 1022.29)

Sec. 22.29. (a) Except as provided in subsection (c), any waste material generated by processing recyclable metals by shredding shall be managed as a special waste unless a site operating plan has been approved by the Agency and the conditions of such operating plan are met.

(b) An operating plan submitted to the Agency under this Section shall include the following concerning recyclable metals processing and components which may contaminate waste from shredding recyclable metals (such as lead acid batteries, fuel tanks, or components that contain or may contain PCB's in a closed system such as a capacitor or ballast):

(1) procedures for inspecting recyclable metals when received to assure that such components are identified;

(2) a list of equipment and removal procedures to be used to assure proper removal of such components;

(3) procedures for safe storage of such components after removal and any waste materials;

(4) procedures to assure that such components and waste materials will only be stored for a period long enough to accumulate the proper quantities for off-site transportation;

(5) identification of how such components and waste materials will be managed after removal from the site to assure proper handling and disposal;

(6) procedures for sampling and analyzing waste intended for disposal or off-site handling as a waste;

(7) a demonstration, including analytical reports, that any waste generated is not a hazardous waste and will not pose a present or potential threat to human health or the environment.

(c) Any waste generated as a result of processing recyclable metals by shredding which is determined to be hazardous waste shall be managed as a hazardous waste.

(d) The Agency is authorized to adopt rules necessary or appropriate to the administration of this Section.
(Source: P.A. 100-103, eff. 8-11-17; 100-621, eff. 7-20-18.)

(415 ILCS 5/22.30) (from Ch. 111 1/2, par. 1022.30)

Sec. 22.30. Grease trap sludge.

(a) As used in this Section: (i) "treatment works" has the meaning provided in Section 19.2 of this Act and (ii) "grease trap sludge" means the solid, lighter than water fraction of wastewaters from the handling, processing, preparation, cooking, or consumption of food that are discharged to a pretreatment unit or device commonly referred to as a grease trap. The principal components of grease trap sludge are fats, oils, and greases.

(b) Beginning January 1, 1992, no person may dispose of any untreated grease trap sludge by any method of land application.

(c) Beginning January 1, 1995, no person may cause or allow the discharge, deposit, or disposal of any grease trap sludge into a treatment works or into any sewer tributary to a treatment works, except pursuant to the express authorization, by ordinance or license, of the owner of the treatment works and the owner of the sewer. Nothing in this subsection shall be construed to require treatment works or sewer owners to establish any ordinances or programs to provide such authorization.

(d) Beginning January 1, 1995, no person may cause or allow

the transportation or acceptance of grease trap sludge for rendering, storage, treatment, or disposal away from the site where the sludge was generated, unless the sludge is accompanied by a shipping paper containing, at a minimum, the information prescribed in subsection (e). No specific form of shipping paper is required by this Section, but a form may be prescribed pursuant to subsection (g).

(e) Each shipping paper shall contain at a minimum the following information:

(1) The name and telephone number of the generator of the sludge, the street address of the grease trap, the volume of grease trap sludge removed, the legible signature of an authorized representative of the generator, and the date of the sludge removal.

(2) The name, address, and telephone number of the sludge transporter, an acknowledgement of receipt of the sludge, the legible signature of an authorized representative of the transporter, and the date of sludge collection.

(3) The name, street address, and telephone number of the facility receiving the sludge, an acknowledgement of such receipt, the legible signature of an authorized representative of the receiving facility, and the date of sludge receipt.

(f) The grease trap sludge generator, transporter, and management facility operator shall each retain a copy of the shipping paper for a minimum of 2 years, and shall produce such documents upon request of the Agency, or the owner of the affected treatment works.

(g) The owner of a treatment works is authorized, but not required, to establish a program to register or license the collection and transportation of grease trap sludge from grease traps within the owner's jurisdiction, and to charge a fee therefor. Further, the owner of a treatment works is authorized, but not required, to develop and require the use of a particular form of shipping paper for use in effecting the requirement of subsection (d).

(h) Violations of this Section shall be subject to the civil penalties specified in subsection (a) of Section 42 of this Act. However, if an action to enforce this Section is brought by or on behalf of the owner of a treatment works, the owner shall be entitled to recover 75% of any penalty assessed.

(Source: P.A. 87-310; 87-895; 88-633, eff. 1-1-95.)

(415 ILCS 5/22.31) (from Ch. 111 1/2, par. 1022.31)

Sec. 22.31. Waste reporting.

(a) Beginning January 1, 1992, no landfill or incinerator operator may accept any nonhazardous solid waste for permanent disposal or incineration unless the operator makes a record, based on information provided by the waste transporter, of the state where the waste was generated, or the state from which the waste was shipped to the disposal facility.

(b) If the waste was generated in or transported from more than one state, the operator shall estimate the quantity from each state, based on information provided by the transporter, and record the estimate.

(c) Beginning April 15, 1992, each April 15, July 15, October 15, and January 15, each landfill or incinerator operator shall provide a report to the Agency, on forms provided by the Agency, that includes:

(1) The Agency designated site number, the site name, and the calendar quarter for which the summary applies.

(2) The total quantity of solid waste received from

each state during the preceding calendar quarter, in tons or cubic yards.

(Source: P.A. 87-484; 87-895.)

(415 ILCS 5/22.32) (from Ch. 111 1/2, par. 1022.32)

Sec. 22.32. Hospital waste assessment.

(a) On or before June 1, 1992, each hospital burning potentially infectious medical waste on site or transporting such waste to a pollution control facility shall conduct a waste reduction opportunity assessment that evaluates methods to reduce the volume and toxicity of infectious wastes, general refuse and chemical wastes that are generated at the hospital.

At a minimum, the waste reduction assessment shall evaluate the following reduction options:

(1) improving operating practices;

(2) eliminating or reducing the use of carcinogenic chemicals;

(3) increasing the use of analytical instrumentation that can decrease the use of laboratory chemicals;

(4) improving inventory control;

(5) recycling;

(6) on-site use and reuse of solvents.

(b) On or before October 1, 1992, each such hospital shall adopt a waste reduction plan that identifies technically and economically feasible waste reduction options and a timetable for implementing those options.

The hospital shall consider the quantity of waste, the hazardous properties of the waste, the safety of its patients and employees, economic costs and savings, and other appropriate factors in selecting target waste streams and waste reduction options.

The hospital shall begin implementation of its plan within one year of its adoption.

(Source: P.A. 87-800; 87-895; 88-182; 88-681, eff. 12-22-94.)

(415 ILCS 5/22.33)

Sec. 22.33. Compost quality standards.

(a) By January 1, 1994, the Agency shall develop and make recommendations to the Board concerning (i) performance standards for landscape waste compost facilities and (ii) testing procedures and standards for the end-product compost produced by landscape waste compost facilities.

Performance standards for landscape waste compost facilities shall at a minimum include:

(1) the management of odor;

(2) the management of surface water;

(3) contingency planning for handling end-product compost material that does not meet requirements of subsection (b);

(4) plans for intended purposes of end-use product; and

(5) a financial assurance plan necessary to restore the site as specified in Agency permit.

(b) By December 1, 1997, the Board shall adopt:

(1) performance standards for landscape waste compost facilities; and

(2) testing procedures and standards for the end-product compost produced by landscape waste compost facilities.

The Board shall evaluate the merits of different standards for end-product compost applications.

(c) On-site composting that is used solely for the purpose of composting landscape waste generated on-site and that will

not be offered for off-site sale or use is exempt from any standards promulgated under subsections (a) and (b). Subsection (b)(2) shall not apply to end-product compost used as daily cover or vegetative amendment in the final layer. Subsection (b) applies to any end-product compost offered for sale or use in Illinois.

(d) Standards adopted under this Section do not apply to compost operations exempt from permitting under paragraph (1.5) of subsection (q) of Section 21 of this Act.

(Source: P.A. 98-239, eff. 8-9-13.)

(415 ILCS 5/22.34)

Sec. 22.34. Organic waste compost quality standards.

(a) The Agency may develop and make recommendations to the Board concerning (i) performance standards for organic waste compost facilities and (ii) testing procedures and standards for the end-product compost produced by organic waste compost facilities.

The Agency, in cooperation with the Department, shall appoint a Technical Advisory Committee for the purpose of developing these recommendations. Among other things, the Committee shall evaluate environmental and safety considerations, compliance costs, and regulations adopted in other states and countries. The Committee shall have balanced representation and shall include members representing academia, the composting industry, the Department of Agriculture, the landscaping industry, environmental organizations, municipalities, and counties.

Performance standards for organic waste compost facilities may include, but are not limited to:

(1) the management of potential exposures for human disease vectors and odor;

(2) the management of surface water;

(3) contingency planning for handling end-product compost material that does not meet end-product compost standards adopted by the Board;

(4) plans for intended purposes of end-use product; and

(5) a financial assurance plan necessary to restore the site as specified in Agency permit. The financial assurance plan may include, but is not limited to, posting with the Agency a performance bond or other security for the purpose of ensuring site restoration.

(b) No later than one year after the Agency makes recommendations to the Board under subsection (a) of this Section, the Board shall adopt, as applicable:

(1) performance standards for organic waste compost facilities; and

(2) testing procedures and standards for the end-product compost produced by organic waste compost facilities.

The Board shall evaluate the merits of different standards for end-product compost applications.

(c) On-site residential composting that is used solely for the purpose of composting organic waste generated on-site and that will not be offered for off-site sale or use is exempt from any standards promulgated under subsections (a) and (b). Subsection (b)(2) shall not apply to end-product compost used as daily cover or vegetative amendment in the final layer. Subsection (b) applies to any end-product compost offered for sale or use in Illinois.

(d) For the purposes of this Section, "organic waste" means food scrap, landscape waste, wood waste, livestock waste, crop residue, paper waste, or other non-hazardous carbonaceous waste

that is collected and processed separately from the rest of the municipal waste stream.

(e) Except as otherwise provided in Board rules, solid waste permits for organic waste composting facilities shall be issued under the Board's Solid Waste rules at 35 Ill. Adm. Code 807. The permits must include, but shall not be limited to, measures designed to reduce pathogens in the compost.

(f) Standards adopted under this Section do not apply to compost operations exempt from permitting under paragraph (1.5) of subsection (q) of Section 21 of this Act.

(Source: P.A. 98-239, eff. 8-9-13.)

(415 ILCS 5/22.35)

Sec. 22.35. Mixed municipal waste compost quality standards.

(a) By January 1, 1994, the Agency shall develop and make recommendations to the Board concerning (i) performance standards for mixed municipal waste compost facilities and (ii) testing procedures and standards for the end-product compost produced by mixed municipal waste compost facilities.

The Agency, in cooperation with the Department, shall appoint a Technical Advisory Committee for the purpose of developing these recommendations. Among other things, the Committee shall evaluate environmental and safety considerations, compliance costs, and regulations adopted in other states and countries. The Committee shall have balanced representation and shall include members representing academia, the composting industry, the Department of Agriculture, the landscaping industry, environmental organizations, municipalities, and counties.

Performance standards for mixed municipal waste compost facilities shall at a minimum include:

(1) the management of vectors, potential exposures for human disease, litter, and odor;

(2) the management of surface water and leachate;

(3) provisions restricting the processing of potential contaminants and problem materials, such as heavy metals.

(4) contingency planning for handling residuals and end-product compost material that does not meet requirements of subsection (b);

(5) plans for intended purpose of end-use product; and

(6) a financial assurance plan necessary to restore the site as specified in Agency permit.

(b) By December 1, 1997, the Board shall adopt:

(1) performance standards for mixed municipal waste compost facilities; and

(2) testing procedures and standards for the end-product compost produced by mixed municipal waste compost facilities.

The Board shall evaluate the merits of different standards for end-product compost applications.

(c) Subsection (b)(2) shall not apply to end-product compost used as daily cover or vegetative amendment in the final layer. Subsection (b) applies to any end-product compost offered for sale or use in Illinois.

(d) For the purpose of this Section, "mixed municipal waste" means municipal waste generated by households and commercial businesses that has not been separated for composting at the point of generation.

(Source: P.A. 87-1227; 88-690, eff. 1-24-95.)

(415 ILCS 5/22.36)

Sec. 22.36. Solid waste disposal site; underground hazards.

(a) The Agency may not issue any new permit for the construction or development of any solid waste disposal facility that is proposed to be located above an active or inactive shaft or tunnelled mine or within 200 feet of a fault that has had displacement within Holocene time, unless engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted by geological processes.

(b) For the purposes of this Section, "structural components" means liners, leachate collection systems, final covers, run-on and run-off systems, and any other component used in the construction and operation of a solid waste disposal facility that is necessary for protection of human health and the environment.

(Source: P.A. 88-447.)

(415 ILCS 5/22.38)

Sec. 22.38. General construction or demolition debris recovery facilities.

(a) General construction or demolition debris recovery facilities shall be subject to local zoning, ordinance, and land use requirements. General construction or demolition debris recovery facilities shall be located in accordance with local zoning requirements or, in the absence of local zoning requirements, shall be located so that no part of the facility boundary is closer than 1,320 feet from the nearest property zoned for primarily residential use.

(b) An owner or operator of a general construction or demolition debris recovery facility shall:

(0.5) Ensure that no less than 40% of the total general construction or demolition debris received at the facility on a rolling 12-month average basis is recyclable general construction or demolition debris as defined in subsection (c). The percentage in this paragraph (0.5) of subsection (b) shall be calculated by weight.

(1) Within 48 hours after receipt of the general construction or demolition debris at the facility, sort the general construction or demolition debris to separate the (i) recyclable general construction or demolition debris and (ii) wood being recovered for use as fuel from all other general construction or demolition debris.

(2) Transport off site for disposal, in accordance with all applicable federal, State, and local requirements, within 72 hours after its receipt at the facility, all general construction or demolition debris that is not (i) recyclable general construction or demolition debris or (ii) wood being recovered for use as fuel.

(3) Use best management practices to identify and remove all drywall and other wallboard containing gypsum from the (i) recyclable general construction or demolition debris and (ii) wood being recovered for use as fuel, prior to any mechanical sorting, separating, grinding, or other processing.

(4) Within 45 calendar days after receipt, transport off-site all putrescible recyclable general construction or demolition debris and all wood recovered for use as fuel.

(5) Within 6 months after receipt, transport off-site all non-putrescible recyclable general construction or demolition debris.

(6) Employ tagging and recordkeeping procedures to, at a minimum, (i) demonstrate compliance with this Section, (ii) identify the type, amount, source, and transporter of material accepted by the facility, and (iii) identify the type, amount, destination, and transporter of material

transported from the facility. Records shall be maintained in a form and format prescribed by the Agency, and beginning October 1, 2021, no later than every October 1, January 1, April 1, and July 1 thereafter the records shall be summarized in quarterly reports submitted to the Agency in a form and format prescribed by the Agency.

(7) Control odor, noise, combustion of materials, disease vectors, dust, and litter.

(8) Control, manage, and dispose of any storm water runoff and leachate generated at the facility in accordance with applicable federal, State, and local requirements.

(9) Control access to the facility.

(10) Comply with all applicable federal, State, or local requirements for the handling, storage, transportation, or disposal of asbestos-containing material or other material accepted at the facility that is not general construction or demolition debris.

(11) For an owner or operator that first received general construction or demolition debris prior to August 24, 2009, submit to the Agency, no later than 6 months after the effective date of rules adopted by the Board under subsection (n), a permit application for a general construction or demolition debris recovery facility.

(12) On or after August 24, 2009 (the effective date of Public Act 96-611), obtain a permit for the operation of a general construction or demolition debris recovery facility prior to the initial acceptance of general construction or demolition debris at the facility.

(c) For purposes of this Section, the term "recyclable general construction or demolition debris" means general construction or demolition debris that is being reclaimed from the general construction or demolition debris waste stream and (i) is rendered reusable and is reused or (ii) would otherwise be disposed of or discarded but is collected, separated, or processed and returned to the economic mainstream in the form of raw materials or products. "Recyclable general construction or demolition debris" does not include general construction or demolition debris that is (i) recovered for use as fuel or that is otherwise incinerated or burned, (ii) buried or used as fill material, including, but not limited to, the use of any clean construction or demolition debris fraction of general construction or demolition debris as fill material under subsection (b) of Section 3.160 or at a clean construction or demolition debris fill operation under Section 22.51, or (iii) disposed of at a landfill.

(d) (Blank).

(e) For purposes of this Section, wood recovered for use as fuel is wood that is recovered from the general construction or demolition debris waste stream for use as fuel, as authorized by the applicable state or federal environmental regulatory authority, and supplied only to intermediate processing facilities for sizing, or to combustion facilities for use as fuel, that have obtained all necessary waste management and air permits for handling and combustion of the fuel.

(f) (Blank).

(g) (Blank).

(h) (Blank).

(i) (Blank).

(j) No person shall cause or allow the acceptance of any waste at a general construction or demolition debris recovery facility, other than general construction or demolition debris.

(k) No person shall cause or allow the deposit or other placement of any general construction or demolition debris that is received at a general construction or demolition debris

recovery facility, including any clean construction or demolition debris fraction, into or on any land or water. However, any clean construction or demolition debris fraction may be used as fill or road construction material at a clean construction or demolition debris fill operation under Section 22.51 and any rules or regulations adopted thereunder if the clean construction or demolition debris is separated and managed separately from other general construction or demolition debris and otherwise meets the requirements applicable to clean construction or demolition debris at a clean construction or demolition debris fill operation.

(l) Beginning one year after the effective date of rules adopted by the Board under subsection (n), no person shall own or operate a general construction or demolition debris recovery facility without a permit issued by the Agency.

(m) In addition to any other requirements of this Act, no person shall, at a general construction or demolition debris recovery facility, cause or allow the storage or treatment of general construction or demolition debris in violation of this Act, any regulations or standards adopted under this Act, or any condition of a permit issued under this Act.

(n) No later than one year after the effective date of this amendatory Act of the 102nd General Assembly, the Agency shall propose to the Board, and no later than one year after receipt of the Agency's proposal, the Board shall adopt, rules for the permitting of general construction or demolition debris recovery facilities. Such rules shall include, but not be limited to: requirements for material receipt, handling, storage, and transfer; improvements to best management practices for identifying, testing for, and removing drywall containing gypsum; recordkeeping; reporting; limiting or prohibiting sulfur in wallboard used or disposed of at landfills; and requirements for the separation and separate management of any clean construction or demolition debris that will be transported to a clean construction or demolition debris fill operation.
(Source: P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/22.38a)
Sec. 22.38a. (Repealed).
(Source: P.A. 99-317, eff. 8-7-15. Repealed by P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/22.40)
Sec. 22.40. Municipal solid waste landfill rules.

(a) In accordance with Sec. 7.2, the Board shall adopt rules that are identical in substance to federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency to implement Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) insofar as those regulations relate to a municipal solid waste landfill unit program. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months. Where the federal regulations authorize the State to adopt alternative standards, schedules, or procedures to the standards, schedules, or procedures contained in the federal regulations, the Board may adopt alternative standards, schedules, or procedures under subsection (b) or retain existing Board rules that establish alternative standards, schedules, or procedures that are not inconsistent with the federal regulations. The Board may consolidate into a single rulemaking under this Section all such federal regulations adopted within a period of time not to exceed 6 months.

The provisions and requirements of Title VII of this Act

shall not apply to rules adopted under this subsection (a). Section 5-35 of the Illinois Administrative Procedure Act relating to the procedures for rulemaking shall not apply to regulations adopted under this subsection (a).

(b) The Board may adopt regulations relating to a State municipal solid waste landfill program that are not inconsistent with the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), or regulations adopted thereunder. Rules adopted under this subsection shall be adopted in accordance with the provisions and requirements of Title VII of this Act and the procedures for rulemaking in Section 5-35 of the Illinois Administrative Procedure Act.

(c) (Blank.)

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.40a)

Sec. 22.40a. Disposal of manufactured gas plant waste in waste disposal sites other than permitted hazardous waste disposal sites prohibited. Notwithstanding any other law or regulation, no person shall dispose, in a waste disposal site other than a permitted hazardous waste disposal site, waste generated from the remediation of a manufactured gas plant site or facility, unless (i) the waste is tested using Method 1311 (Toxicity Characteristic Leaching Procedure (TCLP)) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," USEPA Publication Number EPA 530/SW-846, and (ii) that analysis demonstrates that the waste does not exceed the regulatory levels for any contaminant given in the table contained in 40 C.F.R. 261.24(b).

(Source: P.A. 99-365, eff. 1-1-16.)

(415 ILCS 5/22.41)

Sec. 22.41. (Repealed).

(Source: P.A. 88-496. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.42)

Sec. 22.42. (Repealed).

(Source: P.A. 88-496. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.43)

Sec. 22.43. Permit modifications for lateral expansions. The Agency may issue a permit modification for a lateral expansion, as defined in Section 3.275 of this Act, for an existing MSWLF unit under Section 39 of this Act to a person required to obtain such a permit modification under subsection (t) of Section 21 of this Act.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.43a)

Sec. 22.43a. Establishment and expansion of landfills; ban in counties with more than 2,000,000 inhabitants.

(a) Notwithstanding any other provision of law, no person shall establish, nor shall the Agency issue a permit for the establishment of, a new municipal solid waste landfill unit or a new sanitary landfill in a county of more than 2,000,000 inhabitants on or after the effective date of this amendatory Act of the 97th General Assembly.

(b) Notwithstanding any other provision of law, no person shall laterally expand, nor shall the Agency issue a permit for the lateral expansion of, a municipal solid waste landfill unit or the expansion of a sanitary landfill in a county of more than 2,000,000 inhabitants on or after the effective date of this amendatory Act of the 97th General Assembly.

(Source: P.A. 97-843, eff. 7-23-12.)

(415 ILCS 5/22.44)

Sec. 22.44. Subtitle D management fees.

(a) There is created within the State treasury a special fund to be known as the "Subtitle D Management Fund" constituted from the fees collected by the State under this Section.

(b) The Agency shall assess and collect a fee in the amount set forth in this subsection from the owner or operator of each sanitary landfill permitted or required to be permitted by the Agency to dispose of solid waste if the sanitary landfill is located off the site where the waste was produced and if the sanitary landfill is owned, controlled, and operated by a person other than the generator of the waste. The Agency shall deposit all fees collected under this subsection into the Subtitle D Management Fund. If a site is contiguous to one or more landfills owned or operated by the same person, the volumes permanently disposed of by each landfill shall be combined for purposes of determining the fee under this subsection.

(1) If more than 150,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall either pay a fee of 10.1 cents per cubic yard or, alternatively, the owner or operator may weigh the quantity of the solid waste permanently disposed of with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of 22 cents per ton of waste permanently disposed of.

(2) If more than 100,000 cubic yards, but not more than 150,000 cubic yards, of non-hazardous waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $7,020.

(3) If more than 50,000 cubic yards, but not more than 100,000 cubic yards, of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $3,120.

(4) If more than 10,000 cubic yards, but not more than 50,000 cubic yards, of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $975.

(5) If not more than 10,000 cubic yards of non-hazardous solid waste is permanently disposed of at a site in a calendar year, the owner or operator shall pay a fee of $210.

(c) The fee under subsection (b) shall not apply to any of the following:

(1) Hazardous waste.

(2) Pollution control waste.

(3) Waste from recycling, reclamation, or reuse processes that have been approved by the Agency as being designed to remove any contaminant from wastes so as to render the wastes reusable, provided that the process renders at least 50% of the waste reusable. However, the exemption set forth in this paragraph (3) of this subsection (c) shall not apply to general construction or demolition debris recovery facilities as defined in subsection (a-1) of Section 3.160.

(4) Non-hazardous solid waste that is received at a sanitary landfill and composted or recycled through a process permitted by the Agency.

(5) Any landfill that is permitted by the Agency to receive only demolition or construction debris or landscape waste.

(d) The Agency shall establish rules relating to the collection of the fees authorized by this Section. These rules

shall include, but not be limited to the following:

(1) Necessary records identifying the quantities of solid waste received or disposed.

(2) The form and submission of reports to accompany the payment of fees to the Agency.

(3) The time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly.

(4) Procedures setting forth criteria establishing when an owner or operator may measure by weight or volume during any given quarter or other fee payment period.

(e) Fees collected under this Section shall be in addition to any other fees collected under any other Section.

(f) The Agency shall not refund any fee paid to it under this Section.

(g) Pursuant to appropriation, all moneys in the Subtitle D Management Fund shall be used by the Agency to administer the United States Environmental Protection Agency's Subtitle D Program provided in Sections 4004 and 4010 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as it relates to a municipal solid waste landfill program in Illinois and to fund a delegation of inspecting, investigating, and enforcement functions, within the municipality only, pursuant to subsection (r) of Section 4 of this Act to a municipality having a population of more than 1,000,000 inhabitants. The Agency shall execute a delegation agreement pursuant to subsection (r) of Section 4 of this Act with a municipality having a population of more than 1,000,000 inhabitants within 90 days of September 13, 1993 and shall on an annual basis distribute from the Subtitle D Management Fund to that municipality no less than $150,000. Pursuant to appropriation, moneys in the Subtitle D Management Fund may also be used by the Agency for activities conducted under Section 22.15a of this Act.

(Source: P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/22.45)

Sec. 22.45. Subtitle D management fee exemptions; pre-existing contracts.

(a) The Agency shall grant exemptions from the fee requirements of Section 22.44 of this Act for permanent disposal or transport of solid waste meeting all of the following criteria:

(1) Permanent disposal of the solid waste is pursuant to a written contract between the owner or operator of the sanitary landfill and some other person, or transport of the solid waste is pursuant to a written contract between the transporter and some other person.

(2) The contract for permanent disposal or transport of solid waste was lawfully executed on or before September 13, 1993 and by its express terms continues beyond January 1, 1994.

(3) The contract for permanent disposal or transport of solid waste establishes a fixed fee or compensation, does not allow the operator or transporter to pass the fee through to another party, and does not allow voluntary cancellation or renegotiation of the compensation or fee during the term of the contract.

(4) The contract was lawfully executed on or before September 13, 1993 and has not been amended at any time after that date.

(b) Exemptions granted under this Section shall cause the solid waste received by an owner or operator of a sanitary landfill pursuant to a contract exempted under this Section to be disregarded in calculating the volume or weight of solid

waste permanently disposed of during a calendar year under Section 22.44 of this Act.

(c) An owner or operator of a sanitary landfill shall keep accurate records and prove, to the satisfaction of the Agency, the volume or weight of solid waste received under an exemption during a calendar year.

(d) Exemptions under this Section shall expire upon the expiration, renewal, or amendment of the exempted contract, whichever occurs first.

(e) For the purposes of this Section, the term "some other person" shall only include persons that are independent operating entities. For purposes of this Section, a person is not an independent operating entity if:

(1) the person has any officers or directors that are also officers or directors of the sanitary landfill or transporter;

(2) the person is a parent corporation, subsidiary, or affiliate of the owner or operator of the sanitary landfill or transporter; or

(3) the person and the owner or operator of the sanitary landfill or transporter are owned by the same entity.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.46)

Sec. 22.46. Subtitle D management fee exemptions; types of waste.

(a) In accordance with the findings and purpose of the Illinois Solid Waste Management Act, the Agency shall grant exemptions from the fee requirements of Section 22.44 of this Act for solid waste meeting all of the following criteria:

(1) The waste is nonputrescible and homogeneous and does not contain free liquids.

(2) Combustion of the waste would not provide practical energy recovery or practical reduction in volume.

(3) The applicant for exemption demonstrates that it is not technologically and economically reasonable to recycle or reuse the waste.

(b) Exemptions granted under this Section shall cause the solid waste exempted under subsection (a) that is permanently disposed of by an owner or operator of a sanitary landfill to be disregarded in calculating the volume or weight of solid waste permanently disposed of during a calendar year under Section 22.44 of this Act.

(c) Applications for exemptions under this Section must be submitted on forms provided by the Agency for that purpose, together with proof of satisfaction of all criteria for granting the exemption.

(d) If the Agency denies a request made under subsection (a), the applicant may seek review before the Board under Section 40 as if the Agency had denied an application for a permit. If the Agency fails to act within 90 days after receipt of an application, the request shall be deemed granted until such time as the Agency has taken final action.

(e) An owner or operator of a sanitary landfill shall keep accurate records and to prove to the satisfaction of the Agency the volume or weight of solid waste received under an exemption during a calendar year.

(Source: P.A. 88-496.)

(415 ILCS 5/22.47)

Sec. 22.47. School district hazardous educational waste collection.

(a) The Agency shall develop, implement, and fund (through

appropriations for that purpose from the General Revenue Fund) a program to collect school district hazardous educational waste from school districts and schools in the State. The program shall provide for the availability for collection, transportation, and appropriate management of hazardous educational wastes for each school district or school by private contractors at least every 3 years.

(b) A school district or school may participate in a hazardous educational waste collection program by:

(1) Notifying the Agency of the hazardous educational wastes used by the school district or school and including the following information:

(A) Waste types.

(B) Waste volumes.

(C) Number of containers.

(D) Condition of containers.

(E) Location of containers.

(2) Maintaining wastes in the original containers, if practical.

(3) Labeling each container if contents are known.

(4) Following Agency instructions on waste segregation, preparation, or delivery for subsequent handling.

(c) The Agency shall accept applications from school districts or schools throughout the year. The Agency shall designate waste haulers throughout the State qualified to remove school district hazardous waste at the request of a school district or school. By March 1 and September 1 of each year the Agency shall prepare a schedule of school districts or schools that have been selected for collections over the next 6 months. The selections shall be based on the waste types and volumes, geographic distribution, order of application, and expected costs balanced by available resources. The Agency shall notify each selected school or school district of the date of collection and instruction on waste preparation.

(d) For purposes of this Section "hazardous educational waste" means a waste product that could pose a hazard during normal storage, transportation, or disposal generated from an instructional curriculum including laboratory wastes, expired chemicals, unstable compounds, and toxic or flammable materials. "Hazardous educational waste" does not include wastes generated as a result of building, grounds, or vehicle maintenance, asbestos abatement, lead paint abatement, or other non-curriculum activities.

(e) (Blank.)

(f) The Agency is authorized to use funds from the Solid Waste Management Fund to implement this Section.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.48)

Sec. 22.48. Non-special waste certification; effect on permit.

(a) An industrial process waste or pollution control waste not within the exception set forth in subdivision (2) of subsection (c) of Section 3.475 of this Act must be managed as special waste unless the generator first certifies in a signed, dated, written statement that the waste is outside the scope of the categories listed in subdivision (1) of subsection (c) of Section 3.475 of this Act.

(b) All information used to determine that the waste is not a special waste shall be attached to the certification. The information shall include but not be limited to:

(1) the means by which the generator has determined that the waste is not a hazardous waste;

(2) the means by which the generator has determined that the waste is not a liquid;

(3) if the waste undergoes testing, the analytic results obtained from testing, signed and dated by the person responsible for completing the analysis;

(4) if the waste does not undergo testing, an explanation as to why no testing is needed;

(5) a description of the process generating the waste; and

(6) relevant Material Data Safety Sheets.

(c) Certification made pursuant to this Section shall be effective from the date signed until there is a change in the generator, in the raw materials used, or in the process generating the waste.

(d) Certification made pursuant to this Section, with the requisite attachments, shall be maintained by the certifying generator while effective and for at least 3 years following a change in the generator, a change in the raw materials used, or a change in or termination of the process generating the waste. The generator shall provide a copy of the certification, upon request by the Agency, the waste hauler, or the operator of the facility receiving the waste for storage, treatment, or disposal, to the party requesting the copy. If the Agency believes that the waste that is the subject of the certification has been inaccurately certified to, the Agency may require the generator to analytically test the waste for the constituent believed to be present and provide the Agency with a copy of the analytic results.

(e) A person who knowingly and falsely certifies that a waste is not special waste is subject to the penalties set forth in subdivision (6) of subsection (h) of Section 44 of this Act.

(f) To the extent that a term or condition of an existing permit requires the permittee to manage as special waste a material that is made a non-special waste under Public Act 90-502, that term or condition is hereby superseded, and the permittee may manage that material as a non-special waste, even if the material is identified in the permit as part of a particular waste stream rather than identified specifically as a special waste.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/22.49)

Sec. 22.49. Animal cremation. Unless subject to the requirements of Title XV of this Act as potentially infectious medical waste, a deceased companion animal, as defined in the Companion Animal Cremation Act, that is delivered to a provider of companion animal cremation services subject to the Companion Animal Cremation Act is not waste for the purposes of this Act. Providing companion animal cremation services at a location does not make that location a waste management facility for the purposes of this Act.

For the purposes of this Section, "companion animal" does not include livestock.

(Source: P.A. 93-121, eff. 1-1-04.)

(415 ILCS 5/22.50)

Sec. 22.50. Compliance with land use limitations. No person shall use, or cause or allow the use of, any site for which a land use limitation has been imposed under this Act in a manner inconsistent with the land use limitation unless further investigation or remedial action has been conducted that documents the attainment of remedial objectives appropriate for the new land use and a new closure letter has been obtained from the Agency and recorded in the chain of title for the site. For

the purpose of this Section, the term "land use limitation" shall include, but shall not be limited to, institutional controls and engineered barriers imposed under this Act and the regulations adopted under this Act. For the purposes of this Section, the term "closure letter" shall include, but shall not be limited to, No Further Remediation Letters issued under Titles XVI and XVII of this Act and the regulations adopted under those Titles.
(Source: P.A. 94-272, eff. 7-19-05; 94-314, eff. 7-25-05; 95-331, eff. 8-21-07.)

(415 ILCS 5/22.50a)

Sec. 22.50a. Compliance with environmental covenants. No person shall use, or cause or allow the use of, any site subject to an environmental covenant created under the Uniform Environmental Covenants Act in a manner that is inconsistent with the activity and use limitations imposed under the environmental covenant. For purposes of this Section, the terms "activity and use limitations" and "environmental covenant" shall mean "activity and use limitations" and "environmental covenant" as those terms are defined in the Uniform Environmental Covenants Act.
(Source: P.A. 97-220, eff. 7-28-11.)

(415 ILCS 5/22.51)

Sec. 22.51. Clean Construction or Demolition Debris Fill Operations.

(a) No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

(b)(1)(A) Beginning August 18, 2005 but prior to July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation, unless they have applied for an interim authorization from the Agency for the clean construction or demolition debris fill operation.

(B) The Agency shall approve an interim authorization upon its receipt of a written application for the interim authorization that is signed by the site owner and the site operator, or their duly authorized agent, and that contains the following information: (i) the location of the site where the clean construction or demolition debris fill operation is taking place, (ii) the name and address of the site owner, (iii) the name and address of the site operator, and (iv) the types and amounts of clean construction or demolition debris being used as fill material at the site.

(C) The Agency may deny an interim authorization if the site owner or the site operator, or their duly authorized agent, fails to provide to the Agency the information listed in subsection (b)(1)(B) of this Section. Any denial of an interim authorization shall be subject to appeal to the Board in accordance with the procedures of Section 40 of this Act.

(D) No person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation for which the Agency has denied interim authorization under subsection (b)(1)(C) of this Section. The Board may stay the prohibition of this subsection (D) during the pendency of an appeal of the Agency's denial of the interim authorization brought under subsection (b)(1)(C) of this Section.

(2) Beginning September 1, 2006, owners and operators of clean construction or demolition debris fill operations shall, in accordance with a schedule prescribed by the Agency, submit to the Agency applications for the permits required under this

Section. The Agency shall notify owners and operators in writing of the due date for their permit application. The due date shall be no less than 90 days after the date of the Agency's written notification. Owners and operators who do not receive a written notification from the Agency by October 1, 2007, shall submit a permit application to the Agency by January 1, 2008. The interim authorization of owners and operators who fail to submit a permit application to the Agency by the permit application's due date shall terminate on (i) the due date established by the Agency if the owner or operator received a written notification from the Agency prior to October 1, 2007, or (ii) or January 1, 2008, if the owner or operator did not receive a written notification from the Agency by October 1, 2007.

(3) On and after July 1, 2008, no person shall use clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation (i) without a permit granted by the Agency for the clean construction or demolition debris fill operation or in violation of any conditions imposed by such permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with Board regulations and standards adopted under this Act or (ii) in violation of any regulations or standards adopted by the Board under this Act.

(4) This subsection (b) does not apply to:

(A) the use of clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation located on the site where the clean construction or demolition debris was generated;

(B) the use of clean construction or demolition debris as fill material in an excavation other than a current or former quarry or mine if this use complies with Illinois Department of Transportation specifications; or

(C) current or former quarries, mines, and other excavations that do not use clean construction or demolition debris as fill material.

(c) In accordance with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Section. The Agency shall consult with the mining and construction industries during the development of any regulations to promote the purposes of this Section.

(1) No later than December 15, 2005, the Agency shall propose to the Board, and no later than September 1, 2006, the Board shall adopt, regulations for the use of clean construction or demolition debris as fill material in current and former quarries, mines, and other excavations. Such regulations shall include, but shall not be limited to, standards for clean construction or demolition debris fill operations and the submission and review of permits required under this Section.

(2) Until the Board adopts rules under subsection (c)(1) of this Section, all persons using clean construction or demolition debris as fill material in a current or former quarry, mine, or other excavation shall:

(A) Assure that only clean construction or demolition debris is being used as fill material by screening each truckload of material received using a device approved by the Agency that detects volatile organic compounds. Such devices may include, but are not limited to, photo ionization detectors. All screening devices shall be operated and maintained in accordance with manufacturer's specifications. Unacceptable fill material shall be rejected from the site; and

(B) Retain for a minimum of 3 years the following

information:

(i) The name of the hauler, the name of the generator, and place of origin of the debris or soil;

(ii) The approximate weight or volume of the debris or soil; and

(iii) The date the debris or soil was received.

(d) This Section applies only to clean construction or demolition debris that is not considered "waste" as provided in Section 3.160 of this Act.

(e) For purposes of this Section:

(1) The term "operator" means a person responsible for the operation and maintenance of a clean construction or demolition debris fill operation.

(2) The term "owner" means a person who has any direct or indirect interest in a clean construction or demolition debris fill operation or in land on which a person operates and maintains a clean construction or demolition debris fill operation. A "direct or indirect interest" does not include the ownership of publicly traded stock. The "owner" is the "operator" if there is no other person who is operating and maintaining a clean construction or demolition debris fill operation.

(3) The term "clean construction or demolition debris fill operation" means a current or former quarry, mine, or other excavation where clean construction or demolition debris is used as fill material.

(4) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.

(f)(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose to the Board, and, no later than one year after the Board's receipt of the Agency's proposal, the Board shall adopt, rules for the use of clean construction or demolition debris and uncontaminated soil as fill material at clean construction or demolition debris fill operations. The rules must include standards and procedures necessary to protect groundwater, which may include, but shall not be limited to, the following: requirements regarding testing and certification of soil used as fill material, surface water runoff, liners or other protective barriers, monitoring (including, but not limited to, groundwater monitoring), corrective action, recordkeeping, reporting, closure and post-closure care, financial assurance, post-closure land use controls, location standards, and the modification of existing permits to conform to the requirements of this Act and Board rules. The rules may also include limits on the use of recyclable concrete and asphalt as fill material at clean construction or demolition debris fill operations, taking into account factors such as technical feasibility, economic reasonableness, and the availability of markets for such materials.

(2) Until the effective date of the Board rules adopted under subdivision (f)(1) of this Section, and in addition to any other requirements, owners and operators of clean construction or demolition debris fill operations must do all of the following in subdivisions (f)(2)(A) through (f)(2)(D) of this Section for all clean construction or demolition debris and uncontaminated soil accepted for use as fill material. The requirements in subdivisions (f)(2)(A) through (f)(2)(D) of this Section shall not limit any rules adopted by the Board.

(A) Document the following information for each load

of clean construction or demolition debris or uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the clean construction or demolition debris or uncontaminated soil, (ii) the weight or volume of the clean construction or demolition debris or uncontaminated soil, and (iii) the date the clean construction or demolition debris or uncontaminated soil was received.

(B) For all soil, obtain either (i) a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil or (ii) a certification from a licensed Professional Engineer or licensed Professional Geologist that the soil is uncontaminated soil. Certifications required under this subdivision (f)(2)(B) must be on forms and in a format prescribed by the Agency.

(C) Confirm that the clean construction or demolition debris or uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program, such as the Leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, or from the real property.

(D) Document all activities required under subdivision (f)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

(3) Owners and operators of clean construction or demolition debris fill operations must maintain all documentation required under subdivision (f)(2) of this Section for a minimum of 3 years following the receipt of each load of clean construction or demolition debris or uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. Copies of the documentation must be made available to the Agency and to units of local government for inspection and copying during normal business hours. The Agency may prescribe forms and formats for the documentation required under subdivision (f)(2) of this Section.

Chemical analysis conducted under subdivision (f)(2) of this Section must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended, and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as amended.

(g)(1) No person shall use soil other than uncontaminated soil as fill material at a clean construction or demolition debris fill operation.

(2) No person shall use construction or demolition debris other than clean construction or demolition debris as fill material at a clean construction or demolition debris fill

operation.
(Source: P.A. 96-1416, eff. 7-30-10; 97-137, eff. 7-14-11.)

(415 ILCS 5/22.51a)
Sec. 22.51a. Uncontaminated Soil Fill Operations.
(a) For purposes of this Section:
(1) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.
(2) The term "uncontaminated soil fill operation" means a current or former quarry, mine, or other excavation where uncontaminated soil is used as fill material, but does not include a clean construction or demolition debris fill operation.
(b) No person shall use soil other than uncontaminated soil as fill material at an uncontaminated soil fill operation.
(c) Owners and operators of uncontaminated soil fill operations must register the fill operations with the Agency. Uncontaminated soil fill operations that received uncontaminated soil prior to the effective date of this amendatory Act of the 96th General Assembly must be registered with the Agency no later than March 31, 2011. Uncontaminated soil fill operations that first receive uncontaminated soil on or after the effective date of this amendatory Act of the 96th General Assembly must be registered with the Agency prior to the receipt of any uncontaminated soil. Registrations must be submitted on forms and in a format prescribed by the Agency.
(d)(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose to the Board, and, no later than one year after the Board's receipt of the Agency's proposal, the Board shall adopt, rules for the use of uncontaminated soil as fill material at uncontaminated soil fill operations. The rules must include standards and procedures necessary to protect groundwater, which shall include, but shall not be limited to, testing and certification of soil used as fill material and requirements for recordkeeping.
(2) Until the effective date of the Board rules adopted under subdivision (d)(1) of this Section, owners and operators of uncontaminated soil fill operations must do all of the following in subdivisions (d)(2)(A) through (d)(2)(F) of this Section for all uncontaminated soil accepted for use as fill material. The requirements in subdivisions (d)(2)(A) through (d)(2)(F) of this Section shall not limit any rules adopted by the Board.
(A) Document the following information for each load of uncontaminated soil received: (i) the name of the hauler, the address of the site of origin, and the owner and the operator of the site of origin of the uncontaminated soil, (ii) the weight or volume of the uncontaminated soil, and (iii) the date the uncontaminated soil was received.
(B) Obtain either (i) a certification from the owner or operator of the site from which the soil was removed that the site has never been used for commercial or industrial purposes and is presumed to be uncontaminated soil or (ii) a certification from a licensed Professional Engineer or a licensed Professional Geologist that the soil is uncontaminated soil. Certifications required under this subdivision (d)(2)(B) must be on forms and in a format prescribed by the Agency.
(C) Confirm that the uncontaminated soil was not removed from a site as part of a cleanup or removal of contaminants, including, but not limited to, activities conducted under the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended; as part of a Closure or Corrective Action under the Resource Conservation and Recovery Act, as amended; or under an Agency remediation program, such as the Leaking Underground Storage Tank Program or Site Remediation Program, but excluding sites subject to Section 58.16 of this Act where there is no presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, or from the real property.

(D) Visually inspect each load to confirm that only uncontaminated soil is being accepted for use as fill material.

(E) Screen each load of uncontaminated soil using a device that is approved by the Agency and detects volatile organic compounds. Such a device may include, but is not limited to, a photo ionization detector or a flame ionization detector. All screening devices shall be operated and maintained in accordance with the manufacturer's specifications. Unacceptable soil must be rejected from the fill operation.

(F) Document all activities required under subdivision (d)(2) of this Section. Documentation of any chemical analysis must include, but is not limited to, (i) a copy of the lab analysis, (ii) accreditation status of the laboratory performing the analysis, and (iii) certification by an authorized agent of the laboratory that the analysis has been performed in accordance with the Agency's rules for the accreditation of environmental laboratories and the scope of accreditation.

(3) Owners and operators of uncontaminated soil fill operations must maintain all documentation required under subdivision (d)(2) of this Section for a minimum of 3 years following the receipt of each load of uncontaminated soil, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. Copies of the documentation must be made available to the Agency and to units of local government for inspection and copying during normal business hours. The Agency may prescribe forms and formats for the documentation required under subdivision (d)(2) of this Section.

Chemical analysis conducted under subdivision (d)(2) of this Section must be conducted in accordance with the requirements of 35 Ill. Adm. Code 742, as amended, and "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", USEPA Publication No. SW-846, as amended.

(Source: P.A. 96-1416, eff. 7-30-10; 97-137, eff. 7-14-11.)

(415 ILCS 5/22.51b)

Sec. 22.51b. Fees for permitted facilities accepting clean construction or demolition debris or uncontaminated soil.

(a) The Agency shall assess and collect a fee from the owner or operator of each clean construction or demolition debris fill operation that is permitted or required to be permitted by the Agency. The fee assessed and collected under this subsection shall be 28 cents per cubic yard of clean construction or demolition debris or uncontaminated soil accepted by the clean construction or demolition debris fill operation, or, alternatively, the owner or operator may weigh the quantity of the clean construction or demolition debris or uncontaminated soil with a device for which certification has been obtained under the Weights and Measures Act and pay a fee of 20 cents per ton of clean construction or demolition debris or uncontaminated soil. The fee shall apply to construction or demolition debris

or uncontaminated soil if (i) the clean construction or demolition debris fill operation is located off the site where the clean construction or demolition debris or uncontaminated soil was generated and (ii) the clean construction or demolition debris fill operation is owned, controlled, and operated by a person other than the generator of the clean construction or demolition debris or uncontaminated soil.

(b) The Agency shall establish rules relating to the collection of the fees authorized by subsection (a) of this Section. These rules shall include, but are not limited to, the following:

(1) Records identifying the quantities of clean construction or demolition debris and uncontaminated soil received.

(2) The form and submission of reports to accompany the payment of fees to the Agency.

(3) The time and manner of payment of fees to the Agency, which payments shall not be more often than quarterly.

(c) Fees collected under this Section shall be in addition to any other fees collected under any other Section.

(d) The Agency shall not refund any fee paid to it under this Section.

(e) The Agency shall deposit all fees collected under this subsection into the Environmental Protection Permit and Inspection Fund. Pursuant to appropriation, all moneys collected under this Section shall be used by the Agency for the implementation of this Section and for permit and inspection activities.

(f) A unit of local government, as defined in the Local Solid Waste Disposal Act, in which a clean construction or demolition debris fill operation is located and which has entered into a delegation agreement with the Agency pursuant to subsection (r) of Section 4 of this Act for inspection, investigation, or enforcement functions related to clean construction or demolition debris fill operations may establish a fee, tax, or surcharge with regard to clean construction or demolition debris or uncontaminated soil accepted by clean construction or demolition debris fill operations. All fees, taxes, and surcharges collected under this subsection shall be used for inspection, investigation, and enforcement functions performed by the unit of local government pursuant to the delegation agreement with the Agency and for environmental safety purposes. Fees, taxes, and surcharges established under this subsection (f) shall not exceed a total of 20 cents per cubic yard of clean construction or demolition debris or uncontaminated soil accepted by the clean construction or demolition debris fill operation, unless the owner or operator weighs the quantity of the clean construction or demolition debris or uncontaminated soil with a device for which certification has been obtained under the Weights and Measures Act, in which case the fee shall not exceed 14 cents per ton of clean construction or demolition debris or uncontaminated soil.

(g) For the purposes of this Section:

(1) The term "uncontaminated soil" shall have the same meaning as uncontaminated soil under Section 3.160 of this Act.

(2) The term "clean construction or demolition debris fill operation" shall have the same meaning as clean construction or demolition debris fill operation under Section 22.51 of this Act.

(Source: P.A. 102-271, eff. 1-1-22.)

(415 ILCS 5/22.52)

Sec. 22.52. Conflict of interest. Effective 30 days after the effective date of this amendatory Act of the 94th General Assembly, none of the following persons shall have a direct financial interest in or receive a personal financial benefit from any waste-disposal operation or any clean construction or demolition debris fill operation that requires a permit or interim authorization under this Act, or any corporate entity related to any such waste-disposal operation or clean construction or demolition debris fill operation:

(i) the Governor of the State of Illinois;

(ii) the Attorney General of the State of Illinois;

(iii) the Director of the Illinois Environmental Protection Agency;

(iv) the Chairman of the Illinois Pollution Control Board;

(v) the members of the Illinois Pollution Control Board;

(vi) the staff of any person listed in items (i) through (v) of this Section who makes a regulatory or licensing decision that directly applies to any waste-disposal operation or any clean construction or demolition debris fill operation; and

(vii) a relative of any person listed in items (i) through (vi) of this Section.

The prohibitions of this Section shall apply during the person's term of State employment and shall continue for 5 years after the person's termination of State employment. The prohibition of this Section shall not apply to any person whose State employment terminates prior to 30 days after the effective date of this amendatory Act of the 94th General Assembly.

For the purposes of this Section:

(a) The terms "direct financial interest" and "personal financial benefit" do not include the ownership of publicly traded stock.

(b) The term "relative" means father, mother, son, daughter, brother, sister, uncle, aunt, husband, wife, father-in-law, or mother-in-law.

(Source: P.A. 94-272, eff. 7-19-05.)

(415 ILCS 5/22.53)

Sec. 22.53. (Repealed).

(Source: P.A. 95-331, eff. 8-21-07. Repealed by P.A. 99-933, eff. 1-27-17.)

(415 ILCS 5/22.54)

Sec. 22.54. Beneficial Use Determinations. The purpose of this Section is to allow the Agency to determine that a material otherwise required to be managed as waste may be managed as non-waste if that material is used beneficially and in a manner that is protective of human health and the environment.

(a) To the extent allowed by federal law, the Agency may, upon the request of an applicant, make a written determination that a material is used beneficially (rather than discarded) and, therefore, not a waste if the applicant demonstrates all of the following:

(1) The chemical and physical properties of the material are comparable to similar commercially available materials.

(2) The market demand for the material is such that all of the following requirements are met:

(A) The material will be used within a reasonable time.

(B) The material's storage prior to use will be minimized.

(C) The material will not be abandoned.

(3) The material is legitimately beneficially used. For the purposes of this item (3) of subsection (a) of this Section, a material is "legitimately beneficially used" if the applicant demonstrates all of the following:

(A) The material is managed separately from waste, as a valuable material, and in a manner that maintains its beneficial usefulness, including, but not limited to, storing in a manner that minimizes the material's loss and maintains its beneficial usefulness.

(B) The material is used as an effective substitute for a similar commercially available material. For the purposes of this paragraph (B) of item (3) of subsection (a) of this Section, a material is "used as an effective substitute for a commercially available material" if the applicant demonstrates one or more of the following:

(i) The material is used as a valuable raw material or ingredient to produce a legitimate end product.

(ii) The material is used directly as a legitimate end product in place of a similar commercially available product.

(iii) The material replaces a catalyst or carrier to produce a legitimate end product.

The applicant's demonstration under this paragraph (B) of item (3) of subsection (a) of this Section must include, but is not limited to, a description of the use of the material, a description of the use of the legitimate end product, and a demonstration that the use of the material is comparable to the use of similar commercially available products.

(C) The applicant demonstrates all of the following:

(i) The material is used under paragraph (B) of item (3) of subsection (a) of this Section within a reasonable time.

(ii) The material's storage prior to use is minimized.

(iii) The material is not abandoned.

(4) The management and use of the material will not cause, threaten, or allow the release of any contaminant into the environment, except as authorized by law.

(5) The management and use of the material otherwise protects human health and safety and the environment.

(b) Applications for beneficial use determinations must be submitted on forms and in a format prescribed by the Agency. Agency approval, approval with conditions, or disapproval of an application for a beneficial use determination must be in writing. Approvals with conditions and disapprovals of applications for a beneficial use determination must include the Agency's reasons for the conditions or disapproval, and they are subject to review under Section 40 of this Act.

(c) Beneficial use determinations shall be effective for a period approved by the Agency, but that period may not exceed 5 years. Material that is beneficially used (i) in accordance with a beneficial use determination, (ii) during the effective period of the beneficial use determination, and (iii) by the recipient of a beneficial use determination shall maintain its non-waste status after the effective period of the beneficial use determination unless its use no longer complies with the terms of the beneficial use determination or the material otherwise

becomes waste.

(d) No recipient of a beneficial use determination shall manage or use the material that is the subject of the determination in violation of the determination or any conditions in the determination, unless the material is managed as waste.

(e) A beneficial use determination shall terminate by operation of law if, due to a change in law, it conflicts with the law; however, the recipient of the determination may apply for a new beneficial use determination that is consistent with the law as amended.

(f) This Section does not apply to hazardous waste, coal combustion waste, coal combustion by-product, sludge applied to the land, potentially infectious medical waste, or used oil.

(g) This Section does not apply to material that is burned for energy recovery, that is used to produce a fuel, or that is otherwise contained in a fuel. The prohibition in this subsection (g) does not apply to any dust suppressants applied to a material that is (i) burned for energy recovery, (ii) used to produce a fuel, or (iii) otherwise contained in a fuel.

(h) This Section does not apply to waste from the steel and foundry industries that is (i) classified as beneficially usable waste under Board rules and (ii) beneficially used in accordance with Board rules governing the management of beneficially usable waste from the steel and foundry industries. This Section does apply to other beneficial uses of waste from the steel and foundry industries, including, but not limited to, waste that is classified as beneficially usable waste but not used in accordance with the Board's rules governing the management of beneficially usable waste from the steel and foundry industries. No person shall use iron slags, steelmaking slags, or foundry sands for land reclamation purposes unless they have obtained a beneficial use determination for such use under this Section.

(i) For purposes of this Section, the term "commercially available material" means virgin material that (i) meets industry standards for a specific use and (ii) is normally sold for such use. For purposes of this Section, the term "commercially available product" means a product made of virgin material that (i) meets industry standards for a specific use and (ii) is normally sold for such use.

(j) Before issuing a beneficial use determination for the beneficial use of asphalt shingles, the Agency shall conduct an evaluation of the applicant's prior experience in asphalt shingle recycling operations. The Agency may deny such a beneficial use determination if the applicant, or any employee or officer of the applicant, has a history of any one or more of the following related to the operation of asphalt shingle recycling operation facilities or sites:

(1) repeated violations of federal, State, or local laws, rules, regulations, standards, or ordinances;

(2) conviction in a court of this State or another state of any crime that is a felony under the laws of this State;

(3) conviction in a federal court of any crime that is a felony under federal law;

(4) conviction in a court of this State or another state, or in a federal court, of forgery, official misconduct, bribery, perjury, or knowingly submitting false information under any environmental law, rule, regulation, or permit term or condition; or

(5) gross carelessness or incompetence in the handling, storing, processing, transporting, disposing, or recycling of asphalt shingles.

(Source: P.A. 98-296, eff. 1-1-14; 99-89, eff. 1-1-16.)

(415 ILCS 5/22.54a)

(Section scheduled to be repealed on February 1, 2023)

Sec. 22.54a. Disposal of asphalt roofing shingles.

(a) As used in this Section:

"BUD" means a beneficial use determination issued under Section 22.54 of this Act.

"Eligible shingle recycling facility" means a shingle recycling facility that:

(1) is approved for asphalt roofing shingle recycling under a beneficial use determination issued pursuant to Section 22.54 of this Act and is in compliance with the terms of that BUD;

(2) is listed on the Department of Transportation's "Qualified Producer List of Certified Sources for Reclaimed Asphalt Shingles" or identified as an approved producer of reclaimed asphalt shingles by the Illinois State Toll Highway Authority; and

(3) accepts all delivered loads of asphalt roofing shingles that can be processed into reclaimed asphalt shingles meeting Department of Transportation or Illinois State Toll Highway Authority specifications.

(b) No owner or operator of a sanitary landfill that is located within a 25-mile radius of an eligible shingle recycling facility shall accept for disposal loads of asphalt roofing shingles that can be processed into reclaimed asphalt shingles meeting Department of Transportation or Illinois State Toll Highway Authority specifications.

(c) Nothing in this Section shall prohibit or restrict a sanitary landfill from accepting for disposal asphalt roofing shingles that can be processed into reclaimed asphalt shingles meeting Department of Transportation or Illinois State Toll Highway Authority specifications but that are either commingled with municipal waste, including, but not limited to, general construction or demolition debris, or rejected by an eligible shingle recycling facility.

(d) The owner or operator of an eligible shingle recycling facility shall notify the Agency in writing of the name and street address of the eligible shingle recycling facility, and he or she shall also notify the Agency when the facility's status as an eligible shingle recycling facility is rescinded or reinstated in accordance with subsection (e) or subsection (f) of this Section. The Agency shall post on its website the information provided to the Agency under this subsection (d).

(e) The Agency may issue a notice of intent to rescind recognition as an eligible shingle recycling facility to any owner or operator of a shingle recycling facility that, in the Agency's judgment, is not in compliance with the terms of the facility's BUD. The Agency shall file a copy of the notice with the Board no later than 10 days after the date of service of the notice on the owner or operator. Each notice issued under this subsection (e) shall be served upon the owner or operator, or that person's authorized agent for service of process, and shall include the following information:

(1) a statement specifying the provisions of the BUD which were not complied with;

(2) if non-compliance was observed during an inspection by the Agency, a copy of the inspection report in which the Agency recorded the non-compliance, which report shall include the date and time of inspection, and weather conditions prevailing during the inspection;

(3) instructions for contesting the notice issued under this subsection (e), including notification that the owner or operator has 35 days within which to file a

petition for review before the Board to contest the notice; and

(4) an affidavit by the personnel observing the non-compliance, attesting to their material actions and observations.

If the owner or operator fails to petition the Board for review of the notice within 35 days after the date of service, then the Board shall adopt a final order holding that the shingle recycling facility is not an eligible shingle recycling facility for purposes of this Section. If, within 35 days after the date of service, a petition for review is filed before the Board to contest a notice issued under this subsection (e), then the Agency shall appear as a complainant at a hearing before the Board to be conducted in accordance with Section 32 of this Act. The hearing shall be held not less than 21 days after the Board sends a notice of the hearing to the Agency and the owner or operator who petitioned for review of the notice. In these hearings, the burden of proof shall be on the Agency. If, based on the record, the Board finds that the alleged non-compliance occurred, then the Board shall adopt a final order holding that the shingle recycling facility is not an eligible shingle recycling facility for purposes of this Section.

(f) If the Board has determined under subsection (e) of this Section that a shingle recycling facility is not an eligible shingle recycling facility, then the owner or operator of the facility may file with the Board a motion to have the facility reinstated as an eligible shingle recycling facility. If, at the time the motion is filed, the owner or operator of the facility is able to affirmatively demonstrate, to the satisfaction of the Board, that all non-compliance at the facility has been corrected, that the facility is in compliance with its BUD, and that the facility is not subject to any pending enforcement action under this Act, then the Board may enter an order reinstating the facility as an eligible shingle recycling facility for the purposes of this Section.

Before issuing any order under this subsection (f), the Board shall conduct an evaluation of the owner or operator's prior experience in asphalt shingle recycling operations. The Board may deny a petition for reinstatement under this subsection (f) if the owner or operator, or any employee or officer of the owner or operator, has a history of repeated violations of federal, State, or local laws, regulations, rules, standards, or ordinances related to the operation of an asphalt shingle recycling facility or site, or a history of gross carelessness or incompetence in the handling, storing, processing, transporting, disposing, or recycling of asphalt shingles.

(g) Nothing in this Section shall be construed to prevent the Agency from issuing an informal warning to an owner or operator before issuing a notice of intent to rescind recognition as an eligible shingle recycling facility under subsection (e) of this Section.

(h) Sections 10-25 through 10-60 of the Illinois Administrative Procedure Act do not apply to proceedings under this Section, and the orders issued by the Board under this subsection apply in addition to any other remedy or penalty that may be provided under this Act or any other law.

(i) This Section is repealed on February 1, 2023.

(Source: P.A. 100-266, eff. 8-22-17.)

(415 ILCS 5/22.54b)

Sec. 22.54b. Limitation on fees assessed by local government on facilities that have received a beneficial use determination. Except in counties with a population in excess of 1,500,000

residents, a facility that has received a beneficial use determination from the Agency under Section 22.54 of this Act shall not be subject to annual fees assessed by a unit of local government and that are directly related to the facility's recycling activities in excess of $1,500. A home rule unit may not regulate these fees in a manner that is inconsistent with this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.
(Source: P.A. 99-317, eff. 8-7-15.)

(415 ILCS 5/22.55)
Sec. 22.55. Household waste drop-off points.
(a) Findings; purpose and intent.
(1) The General Assembly finds that protection of human health and the environment can be enhanced if certain commonly generated household wastes are managed separately from the general household waste stream.
(2) The purpose of this Section is to provide, to the extent allowed under federal law, a method for managing certain types of household waste separately from the general household waste stream.
(b) Definitions. For the purposes of this Section:
"Compostable waste" means household waste that is source-separated food scrap, household waste that is source-separated landscape waste, or a mixture of both.
"Controlled substance" means a controlled substance as defined in the Illinois Controlled Substances Act.
"Household waste" means waste generated from a single residence or multiple residences.
"Household waste drop-off point" means the portion of a site or facility used solely for the receipt and temporary storage of household waste.
"One-day compostable waste collection event" means a household waste drop-off point approved by a county or municipality under subsection (d-5) of this Section.
"One-day household waste collection event" means a household waste drop-off point approved by the Agency under subsection (d) of this Section.
"Permanent compostable waste collection point" means a household waste drop-off point approved by a county or municipality under subsection (d-6) of this Section.
"Personal care product" means an item other than a pharmaceutical product that is consumed or applied by an individual for personal health, hygiene, or cosmetic reasons. Personal care products include, but are not limited to, items used in bathing, dressing, or grooming.
"Pharmaceutical product" means medicine or a product containing medicine. A pharmaceutical product may be sold by prescription or over the counter. "Pharmaceutical product" does not include medicine that contains a radioactive component or a product that contains a radioactive component.
"Recycling coordinator" means the person designated by each county waste management plan to administer the county recycling program, as set forth in the Solid Waste Management Act.
(c) Except as otherwise provided in Agency rules, the following requirements apply to each household waste drop-off point, other than a one-day household waste collection event, one-day compostable waste collection event, or permanent compostable waste collection point:
(1) A household waste drop-off point must not accept

waste other than the following types of household waste: pharmaceutical products, personal care products, batteries other than lead-acid batteries, paints, automotive fluids, compact fluorescent lightbulbs, mercury thermometers, and mercury thermostats. A household waste drop-off point may accept controlled substances in accordance with federal law.

(2) Except as provided in subdivision (c)(2) of this Section, household waste drop-off points must be located at a site or facility where the types of products accepted at the household waste drop-off point are lawfully sold, distributed, or dispensed. For example, household waste drop-off points that accept prescription pharmaceutical products must be located at a site or facility where prescription pharmaceutical products are sold, distributed, or dispensed.

(A) Subdivision (c)(2) of this Section does not apply to household waste drop-off points operated by a government or school entity, or by an association or other organization of government or school entities.

(B) Household waste drop-off points that accept mercury thermometers can be located at any site or facility where non-mercury thermometers are sold, distributed, or dispensed.

(C) Household waste drop-off points that accept mercury thermostats can be located at any site or facility where non-mercury thermostats are sold, distributed, or dispensed.

(3) The location of acceptance for each type of waste accepted at the household waste drop-off point must be clearly identified. Locations where pharmaceutical products are accepted must also include a copy of the sign required under subsection (j) of this Section.

(4) Household waste must be accepted only from private individuals. Waste must not be accepted from other persons, including, but not limited to, owners and operators of rented or leased residences where the household waste was generated, commercial haulers, and other commercial, industrial, agricultural, and government operations or entities.

(5) If more than one type of household waste is accepted, each type of household waste must be managed separately prior to its packaging for off-site transfer.

(6) Household waste must not be stored for longer than 90 days after its receipt, except as otherwise approved by the Agency in writing.

(7) Household waste must be managed in a manner that protects against releases of the waste, prevents nuisances, and otherwise protects human health and the environment. Household waste must also be properly secured to prevent unauthorized public access to the waste, including, but not limited to, preventing access to the waste during the non-business hours of the site or facility on which the household waste drop-off point is located. Containers in which pharmaceutical products are collected must be clearly marked "No Controlled Substances", unless the household waste drop-off point accepts controlled substances in accordance with federal law.

(8) Management of the household waste must be limited to the following: (i) acceptance of the waste, (ii) temporary storage of the waste prior to transfer, and (iii) off-site transfer of the waste and packaging for off-site transfer.

(9) Off-site transfer of the household waste must comply with federal and State laws and regulations.

(d) One-day household waste collection events. To further aid in the collection of certain household wastes, the Agency may approve the operation of one-day household waste collection events. The Agency shall not approve a one-day household waste collection event at the same site or facility for more than one day each calendar quarter. Requests for approval must be submitted on forms prescribed by the Agency. The Agency must issue its approval in writing, and it may impose conditions as necessary to protect human health and the environment and to otherwise accomplish the purposes of this Act. One-day household waste collection events must be operated in accordance with the Agency's approval, including all conditions contained in the approval. The following requirements apply to all one-day household waste collection events, in addition to the conditions contained in the Agency's approval:

(1) Waste accepted at the event must be limited to household waste and must not include garbage, landscape waste, or other waste excluded by the Agency in the Agency's approval or any conditions contained in the approval. A one-day household waste collection event may accept controlled substances in accordance with federal law.

(2) Household waste must be accepted only from private individuals. Waste must not be accepted from other persons, including, but not limited to, owners and operators of rented or leased residences where the household waste was generated, commercial haulers, and other commercial, industrial, agricultural, and government operations or entities.

(3) Household waste must be managed in a manner that protects against releases of the waste, prevents nuisances, and otherwise protects human health and the environment. Household waste must also be properly secured to prevent public access to the waste, including, but not limited to, preventing access to the waste during the event's non-business hours.

(4) Management of the household waste must be limited to the following: (i) acceptance of the waste, (ii) temporary storage of the waste before transfer, and (iii) off-site transfer of the waste or packaging for off-site transfer.

(5) Except as otherwise approved by the Agency, all household waste received at the collection event must be transferred off-site by the end of the day following the collection event.

(6) The transfer and ultimate disposition of household waste received at the collection event must comply with the Agency's approval, including all conditions contained in the approval.

(d-5) One-day compostable waste collection event. To further aid in the collection and composting of compostable waste, as defined in subsection (b), a municipality may approve the operation of one-day compostable waste collection events at any site or facility within its territorial jurisdiction, and a county may approve the operation of one-day compostable waste collection events at any site or facility in any unincorporated area within its territorial jurisdiction. The approval granted under this subsection (d-5) must be in writing; must specify the date, location, and time of the event; and must list the types of compostable waste that will be collected at the event. If the one-day compostable waste collection event is to be operated at a location within a county with a population of more than 400,000 but less than 2,000,000 inhabitants, according to the 2010 decennial census, then the operator of the event shall, at least 30 days before the event, provide a copy of the approval

to the recycling coordinator designated by that county. The approval granted under this subsection (d-5) may include conditions imposed by the county or municipality as necessary to protect public health and prevent odors, vectors, and other nuisances. A one-day compostable waste collection event approved under this subsection (d-5) must be operated in accordance with the approval, including all conditions contained in the approval. The following requirements shall apply to the one-day compostable waste collection event, in addition to the conditions contained in the approval:

(1) Waste accepted at the event must be limited to the types of compostable waste authorized to be accepted under the approval.

(2) Information promoting the event and signs at the event must clearly indicate the types of compostable waste approved for collection. To discourage the receipt of other waste, information promoting the event and signs at the event must also include:

(A) examples of compostable waste being collected; and

(B) examples of waste that is not being collected.

(3) Compostable waste must be accepted only from private individuals. It may not be accepted from other persons, including, but not limited to, owners and operators of rented or leased residences where it was generated, commercial haulers, and other commercial, industrial, agricultural, and government operations or entities.

(4) Compostable waste must be managed in a manner that protects against releases of the waste, prevents nuisances, and otherwise protects human health and the environment. Compostable waste must be properly secured to prevent it from being accessed by the public at any time, including, but not limited to, during the collection event's non-operating hours. One-day compostable waste collection events must be adequately supervised during their operating hours.

(5) Compostable waste must be secured in non-porous, rigid, leak-proof containers that:

(A) are covered, except when the compostable waste is being added to or removed from the containers or it is otherwise necessary to access the compostable waste;

(B) prevent precipitation from draining through the compostable waste;

(C) prevent dispersion of the compostable waste by wind;

(D) contain spills or releases that could create nuisances or otherwise harm human health or the environment;

(E) limit access to the compostable waste by vectors;

(F) control odors and other nuisances; and

(G) provide for storage, removal, and off-site transfer of the compostable waste in a manner that protects its ability to be composted.

(6) No more than a total of 40 cubic yards of compostable waste shall be located at the collection site at any one time.

(7) Management of the compostable waste must be limited to the following: (A) acceptance, (B) temporary storage before transfer, and (C) off-site transfer.

(8) All compostable waste received at the event must be transferred off-site to a permitted compost facility by no later than 48 hours after the event ends or by the end

of the first business day after the event ends, whichever is sooner.

(9) If waste other than compostable waste is received at the event, then that waste must be disposed of within 48 hours after the event ends or by the end of the first business day after the event ends, whichever is sooner.

(d-6) Permanent compostable waste collection points. To further aid in the collection and composting of compostable waste, as defined in subsection (b), a municipality may approve the operation of permanent compostable waste collection points at any site or facility within its territorial jurisdiction, and a county may approve the operation of permanent compostable waste collection points at any site or facility in any unincorporated area within its territorial jurisdiction. The approval granted pursuant to this subsection (d-6) must be in writing; must specify the location, operating days, and operating hours of the collection point; must list the types of compostable waste that will be collected at the collection point; and must specify a term of not more than 365 calendar days during which the approval will be effective. In addition, if the permanent compostable waste collection point is to be operated at a location within a county with a population of more than 400,000 but less than 2,000,000 inhabitants, according to the 2010 federal decennial census, then the operator of the collection point shall, at least 30 days before the collection point begins operation, provide a copy of the approval to the recycling coordinator designated by that county. The approval may include conditions imposed by the county or municipality as necessary to protect public health and prevent odors, vectors, and other nuisances. A permanent compostable waste collection point approved pursuant to this subsection (d-6) must be operated in accordance with the approval, including all conditions contained in the approval. The following requirements apply to the permanent compostable waste collection point, in addition to the conditions contained in the approval:

(1) Waste accepted at the collection point must be limited to the types of compostable waste authorized to be accepted under the approval.

(2) Information promoting the collection point and signs at the collection point must clearly indicate the types of compostable waste approved for collection. To discourage the receipt of other waste, information promoting the collection point and signs at the collection point must also include (A) examples of compostable waste being collected and (B) examples of waste that is not being collected.

(3) Compostable waste must be accepted only from private individuals. It may not be accepted from other persons, including, but not limited to, owners and operators of rented or leased residences where it was generated, commercial haulers, and other commercial, industrial, agricultural, and government operations or entities.

(4) Compostable waste must be managed in a manner that protects against releases of the waste, prevents nuisances, and otherwise protects human health and the environment. Compostable waste must be properly secured to prevent it from being accessed by the public at any time, including, but not limited to, during the collection point's non-operating hours. Permanent compostable waste collection points must be adequately supervised during their operating hours.

(5) Compostable waste must be secured in non-porous, rigid, leak-proof containers that:

(A) are no larger than 10 cubic yards in size;

(B) are covered, except when the compostable waste is being added to or removed from the container or it is otherwise necessary to access the compostable waste;

(C) prevent precipitation from draining through the compostable waste;

(D) prevent dispersion of the compostable waste by wind;

(E) contain spills or releases that could create nuisances or otherwise harm human health or the environment;

(F) limit access to the compostable waste by vectors;

(G) control odors and other nuisances; and

(H) provide for storage, removal, and off-site transfer of the compostable waste in a manner that protects its ability to be composted.

(6) No more than a total of 10 cubic yards of compostable waste shall be located at the permanent compostable waste collection site at any one time.

(7) Management of the compostable waste must be limited to the following: (A) acceptance, (B) temporary storage before transfer, and (C) off-site transfer.

(8) All compostable waste received at the permanent compostable waste collection point must be transferred off-site to a permitted compost facility not less frequently than once every 7 days.

(9) If a permanent compostable waste collection point receives waste other than compostable waste, then that waste must be disposed of not less frequently than once every 7 days.

(e) The Agency may adopt rules governing the operation of household waste drop-off points, other than one-day household waste collection events, one-day compostable waste collection events, and permanent compostable waste collection points. Those rules must be designed to protect against releases of waste to the environment, prevent nuisances, and otherwise protect human health and the environment. As necessary to address different circumstances, the regulations may contain different requirements for different types of household waste and different types of household waste drop-off points, and the regulations may modify the requirements set forth in subsection (c) of this Section. The regulations may include, but are not limited to, the following: (i) identification of additional types of household waste that can be collected at household waste drop-off points, (ii) identification of the different types of household wastes that can be received at different household waste drop-off points, (iii) the maximum amounts of each type of household waste that can be stored at household waste drop-off points at any one time, and (iv) the maximum time periods each type of household waste can be stored at household waste drop-off points.

(f) Prohibitions.

(1) Except as authorized in a permit issued by the Agency, no person shall cause or allow the operation of a household waste drop-off point, other than a one-day household waste collection event, one-day compostable waste collection event, or permanent compostable waste collection point, in violation of this Section or any regulations adopted under this Section.

(2) No person shall cause or allow the operation of a one-day household waste collection event in violation of this Section or the Agency's approval issued under

subsection (d) of this Section, including all conditions contained in the approval.

(3) No person shall cause or allow the operation of a one-day compostable waste collection event in violation of this Section or the approval issued for the one-day compostable waste collection event under subsection (d-5) of this Section, including all conditions contained in the approval.

(4) No person shall cause or allow the operation of a permanent compostable waste collection event in violation of this Section or the approval issued for the permanent compostable waste collection point under subsection (d-6) of this Section, including all conditions contained in the approval.

(g) Permit exemptions.

(1) No permit is required under subdivision (d)(1) of Section 21 of this Act for the operation of a household waste drop-off point, other than a one-day household waste collection event, one-day compostable waste collection event, or permanent compostable waste collection point, if the household waste drop-off point is operated in accordance with this Section and all regulations adopted under this Section.

(2) No permit is required under subdivision (d)(1) of Section 21 of this Act for the operation of a one-day household waste collection event if the event is operated in accordance with this Section and the Agency's approval issued under subsection (d) of this Section, including all conditions contained in the approval, or for the operation of a household waste collection event by the Agency.

(3) No permit is required under paragraph (1) of subsection (d) of Section 21 of this Act for the operation of a one-day compostable waste collection event if the compostable waste collection event is operated in accordance with this Section and the approval issued for the compostable waste collection point under subsection (d-5) of this Section, including all conditions contained in the approval.

(4) No permit is required under paragraph (1) of subsection (d) of Section 21 of this Act for the operation of a permanent compostable waste collection point if the collection point is operated in accordance with this Section and the approval issued for the compostable waste collection event under subsection (d-6) of this Section, including all conditions contained in the approval.

(h) This Section does not apply to the following:

(1) Persons accepting household waste that they are authorized to accept under a permit issued by the Agency.

(2) Sites or facilities operated pursuant to an intergovernmental agreement entered into with the Agency under Section 22.16b(d) of this Act.

(i) (Blank).

(j) (Blank).

(k) If an entity chooses to participate as a household waste drop-off point, then it must follow the provisions of this Section and any rules the Agency may adopt governing household waste drop-off points.

(l) (Blank).

(Source: P.A. 102-1055, eff. 6-10-22.)

(415 ILCS 5/22.56)

Sec. 22.56. Regulation of farm land sludge application.

(a) Any person applying sludge, as defined in Section 3.465

of this Act, to agricultural farm land in this State must:

(1) provide, no sooner than 90 days and no later than 7 days before the application of the sludge to the land in question, written notice to the owners of the land upon which the sludge is to be applied, the owners of land that is adjacent to the land upon which the sludge is to be applied, and the township and county officials whose jurisdiction encompasses the land upon which the sludge is to be applied;

(2) not stockpile sludge, except for lime sludge, which is defined as any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial water treatment plant using the lime softening treatment process, and lime-alum sludge, at the same site for a period of more than 30 days between applications of sludge;

(3) not apply the sludge in trenches that are deeper than the rooting depth of the crop, unless the sludge is applied at rates that do not exceed the agronomic rate, as defined and calculated under 35 Ill. Adm. Code 391;

(4) not apply sludge closer than 100 feet to an occupied dwelling; and

(5) make available to any requesting party, for up to 5 years after the application of the sludge, any documentation of sludge analysis for parameters required under 40 CFR 503 or 35 Ill. Adm. Code 391.

(b) The requirements contained in this Section shall be in addition to any permit requirements otherwise imposed by the Agency. Nothing in this Section shall be interpreted to restrict, or in any way limit, the application of sludge on land (i) owned by a unit of local government or (ii) used for recreational purposes.

(Source: P.A. 97-551, eff. 8-25-11.)

(415 ILCS 5/22.56a)

Sec. 22.56a. Land application of Exceptional Quality biosolids.

(a) The General Assembly finds that:

(1) technological advances in wastewater treatment have allowed for the production of Exceptional Quality biosolids that can be used on land as a beneficial recyclable material that improves soil tilth, fertility, and stability and their use enhances the growth of agricultural, silvicultural, and horticultural crops;

(2) Exceptional Quality biosolids are a resource to be recovered; and

(3) the beneficial use of Exceptional Quality biosolids and their recycling to the land as a soil amendment is encouraged.

(b) To encourage and promote the use of Exceptional Quality biosolids in productive and beneficial applications, to the extent allowed by federal law, Exceptional Quality biosolids shall not be subject to regulation as a sludge or other waste if all of the following requirements are met:

(1) The sewage treatment plant generating the Exceptional Quality biosolids maintains the following information with respect to the biosolids:

(A) documentation demonstrating that the Exceptional Quality biosolids do not exceed the ceiling concentration limits in Table 1 of 40 CFR 503.13 and the pollutant concentration limits in Table 3 of 40 CFR 503.13;

(B) documentation demonstrating that the Class A pathogen requirements in 40 CFR 503.32(a) are met, including but not limited to a description of how they

were met;

(C) documentation demonstrating that the vector attraction requirements in 40 CFR 503.33(b)(1) through (b)(8) are met, including but not limited to a description of how they were met;

(D) a certification statement regarding the Class A pathogen requirements in 40 CFR 503.32(a) and the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), as required in 40 CFR 503.17(a)(1)(ii); and

(E) the quantity of Exceptional Quality biosolids sold or given away by the sewage treatment plant each year. The information must be maintained for a minimum of 5 years after the biosolids are generated, and upon request must be made available to the Agency for inspection and copying during normal business hours.

(2) For Exceptional Quality biosolids that have not been bagged:

(A) they are not applied to snow-covered or frozen ground; and

(B) they are used on agricultural land in a manner that follows recommended application rates and are used on all land in a manner that follows best management practices to protect water quality.

(3) If Exceptional Quality biosolids that have not been bagged are generated in another state and imported into this State, the person importing the biosolids must maintain the information set forth in subparagraph (A) of paragraph (1) of subsection (a) through subparagraph (D) of paragraph (1) of subsection (a) of this Section and the amount of Exceptional Quality biosolids imported each year. The information must be maintained for a minimum of 5 years after the biosolids are imported, and upon request must be made available to the Agency for inspection and copying during normal business hours.

(c) For purposes of this Section, Exceptional Quality biosolids are considered "bagged" if they are in a bag or in an open or closed receptacle that has a capacity of one metric ton or less, including, but not limited to, a bucket, box, carton, vehicle, or trailer.

(d) Nothing in this Act shall limit or supersede the authority of the Illinois Emergency Management Agency to regulate exceptional quality biosolids under the Nuclear Safety Law of 2004.

(Source: P.A. 99-67, eff. 7-20-15; 100-128, eff. 8-18-17.)

(415 ILCS 5/22.57)

Sec. 22.57. Perchloroethylene in drycleaning.

(a) For the purposes of this Section:

"Drycleaning" means the process of cleaning clothing, garments, textiles, fabrics, leather goods, or other like articles using a nonaqueous solvent.

"Drycleaning machine" means any machine, device, or other equipment used in drycleaning.

"Drycleaning solvents" means solvents used in drycleaning.

"Perchloroethylene drycleaning machine" means a drycleaning machine that uses perchloroethylene.

"Primary control system" means a refrigerated condenser or an equivalent closed-loop vapor recovery system that reduces the concentration of perchloroethylene in the recirculating air of a perchloroethylene drycleaning machine.

"Refrigerated condenser" means a closed-loop vapor recovery system into which perchloroethylene vapors are introduced and trapped by cooling below the dew point of the perchloroethylene.

"Secondary control system" means a device or apparatus that reduces the concentration of perchloroethylene in the recirculating air of a perchloroethylene drycleaning machine at the end of the drying cycle beyond the level achievable with a refrigerated condenser alone.

(b) Beginning January 1, 2013:

(1) Perchloroethylene drycleaning machines in operation on the effective date of this Section that have a primary control system but not a secondary control system can continue to be used until the end of their useful life, provided that perchloroethylene drycleaning machines that do not have a secondary control system cannot be operated at a facility other than the facility at which they were located on the effective date of this Section.

(2) Except as allowed under paragraph (1) of subsection (b) of this Section, no person shall install or operate a perchloroethylene drycleaning machine unless the machine has a primary control system and a secondary control system.

(c) No person shall operate a drycleaning machine unless all of the following are met:

(1) During the operation of any perchloroethylene drycleaning machine, a person who has successfully completed all continuing education requirements adopted by the Board pursuant to Section 12 of the Drycleaner Environmental Response Trust Fund Act is present at the facility where the machine is located.

(2) For drycleaning facilities where one or more perchloroethylene drycleaning machines are used, proof of successful completion of all training required by the Board pursuant to Section 12 of the Drycleaner Environmental Response Trust Fund Act is maintained at the drycleaning facility. Proof of successful completion of the training must be made available for inspection and copying by the Agency or units of local government during normal business hours. Training used to satisfy paragraph (3) of subsection (b) of Section 60 of the Drycleaner Environmental Response Trust Fund Act may also be used to satisfy training requirements under this Section to the extent that the training meets the requirements of the Board rules.

(3) All of the following secondary containment measures are in place:

(A) There is a containment dike or other containment structure around each machine, item of equipment, drycleaning area, and portable waste container in which any drycleaning solvent is utilized, which shall be capable of containing leaks, spills, or releases of drycleaning solvent from that machine, item, area, or container. The containment dike or other containment structure shall be capable of at least the following: (i) containing a capacity of 110% of the drycleaning solvent in the largest tank or vessel within the machine; (ii) containing 100% of the drycleaning solvent of each item of equipment or drycleaning area; and (iii) containing 100% of the drycleaning solvent of the largest portable waste container or at least 10% of the total volume of the portable waste containers stored within the containment dike or structure, whichever is greater. Petroleum underground storage tank systems that are upgraded in accordance with USEPA upgrade standards pursuant to 40 CFR Part 280 for the tanks and related piping systems and use a leak detection system approved by the USEPA or the Agency are exempt from this subparagraph (A).

(B) Those portions of diked floor surfaces on which a drycleaning solvent may leak, spill, or otherwise be released have been sealed or otherwise rendered impervious.

(C) All chlorine-based drycleaning solvent is delivered to the drycleaning facility by means of closed, direct-coupled delivery systems.

(d) (Blank).

(e) (Blank).

(Source: P.A. 101-400, eff. 7-1-20.)

(415 ILCS 5/22.58)

Sec. 22.58. Drug destruction by law enforcement agency.

(a) For purposes of this Section:

"Drug destruction device" means a device that is (i) designed by its manufacturer to destroy drug evidence and render it non-retrievable and (ii) used exclusively for that purpose or, to the extent allowed under federal law, to destroy pharmaceuticals collected under Section 17 of the Safe Pharmaceutical Disposal Act.

"Drug evidence" means any illegal drug collected as evidence by a law enforcement agency. "Drug evidence" does not include hazardous waste.

"Illegal drug" means any one or more of the following when obtained without a prescription or otherwise in violation of the law:

(1) any substance as defined and included in the Schedules of Article II of the Illinois Controlled Substances Act;

(2) any cannabis as defined in Section 3 of the Cannabis Control Act; or

(3) any drug as defined in paragraph (b) of Section 3 of the Pharmacy Practice Act.

"Law enforcement agency" means an agency of this State or unit of local government that is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws or ordinances.

"Non-retrievable" means the condition or state following a process that permanently alters the illegal drug's physical or chemical condition or state through irreversible means and thereby renders the illegal drug unavailable and unusable for all practical purposes.

(b) To the extent allowed under federal law, drug evidence that is placed into a drug destruction device by a law enforcement agency at the location where the evidence is stored by the agency and that is destroyed under the supervision of the agency in accordance with the specifications of the device manufacturer shall not be considered discarded or a waste under this Act until it is rendered non-retrievable.

(Source: P.A. 99-60, eff. 7-16-15; 100-250, eff. 8-22-17.)

(415 ILCS 5/22.59)

Sec. 22.59. CCR surface impoundments.

(a) The General Assembly finds that:

(1) the State of Illinois has a long-standing policy to restore, protect, and enhance the environment, including the purity of the air, land, and waters, including groundwaters, of this State;

(2) a clean environment is essential to the growth and well-being of this State;

(3) CCR generated by the electric generating industry has caused groundwater contamination and other forms of pollution at active and inactive plants throughout this

State;

(4) environmental laws should be supplemented to ensure consistent, responsible regulation of all existing CCR surface impoundments; and

(5) meaningful participation of State residents, especially vulnerable populations who may be affected by regulatory actions, is critical to ensure that environmental justice considerations are incorporated in the development of, decision-making related to, and implementation of environmental laws and rulemaking that protects and improves the well-being of communities in this State that bear disproportionate burdens imposed by environmental pollution.

Therefore, the purpose of this Section is to promote a healthful environment, including clean water, air, and land, meaningful public involvement, and the responsible disposal and storage of coal combustion residuals, so as to protect public health and to prevent pollution of the environment of this State.

The provisions of this Section shall be liberally construed to carry out the purposes of this Section.

(b) No person shall:

(1) cause or allow the discharge of any contaminants from a CCR surface impoundment into the environment so as to cause, directly or indirectly, a violation of this Section or any regulations or standards adopted by the Board under this Section, either alone or in combination with contaminants from other sources;

(2) construct, install, modify, operate, or close any CCR surface impoundment without a permit granted by the Agency, or so as to violate any conditions imposed by such permit, any provision of this Section or any regulations or standards adopted by the Board under this Section;

(3) cause or allow, directly or indirectly, the discharge, deposit, injection, dumping, spilling, leaking, or placing of any CCR upon the land in a place and manner so as to cause or tend to cause a violation of this Section or any regulations or standards adopted by the Board under this Section; or

(4) construct, install, modify, or close a CCR surface impoundment in accordance with a permit issued under this Act without certifying to the Agency that all contractors, subcontractors, and installers utilized to construct, install, modify, or close a CCR surface impoundment are participants in:

(A) a training program that is approved by and registered with the United States Department of Labor's Employment and Training Administration and that includes instruction in erosion control and environmental remediation; and

(B) a training program that is approved by and registered with the United States Department of Labor's Employment and Training Administration and that includes instruction in the operation of heavy equipment and excavation.

Nothing in this paragraph (4) shall be construed to require providers of construction-related professional services to participate in a training program approved by and registered with the United States Department of Labor's Employment and Training Administration.

In this paragraph (4), "construction-related professional services" includes, but is not limited to, those services within the scope of: (i) the practice of architecture as regulated under the Illinois Architecture Practice Act of 1989; (ii) professional engineering as

defined in Section 4 of the Professional Engineering Practice Act of 1989; (iii) the practice of a structural engineer as defined in Section 4 of the Structural Engineering Practice Act of 1989; or (iv) land surveying under the Illinois Professional Land Surveyor Act of 1989.

(c) (Blank).

(d) Before commencing closure of a CCR surface impoundment, in accordance with Board rules, the owner of a CCR surface impoundment must submit to the Agency for approval a closure alternatives analysis that analyzes all closure methods being considered and that otherwise satisfies all closure requirements adopted by the Board under this Act. Complete removal of CCR, as specified by the Board's rules, from the CCR surface impoundment must be considered and analyzed. Section 3.405 does not apply to the Board's rules specifying complete removal of CCR. The selected closure method must ensure compliance with regulations adopted by the Board pursuant to this Section.

(e) Owners or operators of CCR surface impoundments who have submitted a closure plan to the Agency before May 1, 2019, and who have completed closure prior to 24 months after July 30, 2019 (the effective date of Public Act 101-171) shall not be required to obtain a construction permit for the surface impoundment closure under this Section.

(f) Except for the State, its agencies and institutions, a unit of local government, or not-for-profit electric cooperative as defined in Section 3.4 of the Electric Supplier Act, any person who owns or operates a CCR surface impoundment in this State shall post with the Agency a performance bond or other security for the purpose of: (i) ensuring closure of the CCR surface impoundment and post-closure care in accordance with this Act and its rules; and (ii) ensuring remediation of releases from the CCR surface impoundment. The only acceptable forms of financial assurance are: a trust fund, a surety bond guaranteeing payment, a surety bond guaranteeing performance, or an irrevocable letter of credit.

(1) The cost estimate for the post-closure care of a CCR surface impoundment shall be calculated using a 30-year post-closure care period or such longer period as may be approved by the Agency under Board or federal rules.

(2) The Agency is authorized to enter into such contracts and agreements as it may deem necessary to carry out the purposes of this Section. Neither the State, nor the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any action taken under this Section.

(3) The Agency shall have the authority to approve or disapprove any performance bond or other security posted under this subsection. Any person whose performance bond or other security is disapproved by the Agency may contest the disapproval as a permit denial appeal pursuant to Section 40.

(g) The Board shall adopt rules establishing construction permit requirements, operating permit requirements, design standards, reporting, financial assurance, and closure and post-closure care requirements for CCR surface impoundments. Not later than 8 months after July 30, 2019 (the effective date of Public Act 101-171) the Agency shall propose, and not later than one year after receipt of the Agency's proposal the Board shall adopt, rules under this Section. The Board shall not be deemed in noncompliance with the rulemaking deadline due to delays in adopting rules as a result of the Joint Commission on Administrative Rules oversight process. The rules must, at a minimum:

(1) be at least as protective and comprehensive as

the federal regulations or amendments thereto promulgated by the Administrator of the United States Environmental Protection Agency in Subpart D of 40 CFR 257 governing CCR surface impoundments;

(2) specify the minimum contents of CCR surface impoundment construction and operating permit applications, including the closure alternatives analysis required under subsection (d);

(3) specify which types of permits include requirements for closure, post-closure, remediation and all other requirements applicable to CCR surface impoundments;

(4) specify when permit applications for existing CCR surface impoundments must be submitted, taking into consideration whether the CCR surface impoundment must close under the RCRA;

(5) specify standards for review and approval by the Agency of CCR surface impoundment permit applications;

(6) specify meaningful public participation procedures for the issuance of CCR surface impoundment construction and operating permits, including, but not limited to, public notice of the submission of permit applications, an opportunity for the submission of public comments, an opportunity for a public hearing prior to permit issuance, and a summary and response of the comments prepared by the Agency;

(7) prescribe the type and amount of the performance bonds or other securities required under subsection (f), and the conditions under which the State is entitled to collect moneys from such performance bonds or other securities;

(8) specify a procedure to identify areas of environmental justice concern in relation to CCR surface impoundments;

(9) specify a method to prioritize CCR surface impoundments required to close under RCRA if not otherwise specified by the United States Environmental Protection Agency, so that the CCR surface impoundments with the highest risk to public health and the environment, and areas of environmental justice concern are given first priority;

(10) define when complete removal of CCR is achieved and specify the standards for responsible removal of CCR from CCR surface impoundments, including, but not limited to, dust controls and the protection of adjacent surface water and groundwater; and

(11) describe the process and standards for identifying a specific alternative source of groundwater pollution when the owner or operator of the CCR surface impoundment believes that groundwater contamination on the site is not from the CCR surface impoundment.

(h) Any owner of a CCR surface impoundment that generates CCR and sells or otherwise provides coal combustion byproducts pursuant to Section 3.135 shall, every 12 months, post on its publicly available website a report specifying the volume or weight of CCR, in cubic yards or tons, that it sold or provided during the past 12 months.

(i) The owner of a CCR surface impoundment shall post all closure plans, permit applications, and supporting documentation, as well as any Agency approval of the plans or applications on its publicly available website.

(j) The owner or operator of a CCR surface impoundment shall pay the following fees:

(1) An initial fee to the Agency within 6 months after July 30, 2019 (the effective date of Public Act 101-171) of:

$50,000 for each closed CCR surface impoundment;

and

$75,000 for each CCR surface impoundment that have not completed closure.

(2) Annual fees to the Agency, beginning on July 1, 2020, of:

$25,000 for each CCR surface impoundment that has not completed closure; and

$15,000 for each CCR surface impoundment that has completed closure, but has not completed post-closure care.

(k) All fees collected by the Agency under subsection (j) shall be deposited into the Environmental Protection Permit and Inspection Fund.

(l) The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is created as a special fund in the State treasury. Any moneys forfeited to the State of Illinois from any performance bond or other security required under this Section shall be placed in the Coal Combustion Residual Surface Impoundment Financial Assurance Fund and shall, upon approval by the Governor and the Director, be used by the Agency for the purposes for which such performance bond or other security was issued. The Coal Combustion Residual Surface Impoundment Financial Assurance Fund is not subject to the provisions of subsection (c) of Section 5 of the State Finance Act.

(m) The provisions of this Section shall apply, without limitation, to all existing CCR surface impoundments and any CCR surface impoundments constructed after July 30, 2019 (the effective date of Public Act 101-171), except to the extent prohibited by the Illinois or United States Constitutions.
(Source: P.A. 101-171, eff. 7-30-19; 102-16, eff. 6-17-21; 102-137, eff. 7-23-21; 102-309, eff. 8-6-21; 102-558, eff. 8-20-21; 102-662, eff. 9-15-21; 102-813, eff. 5-13-22.)

(415 ILCS 5/22.60)

(For Section repeal see subsection (e))

Sec. 22.60. Pilot project for Will County and Grundy County pyrolysis or gasification facility.

(a) As used in this Section:

"Plastics" means polystyrene or any other synthetic organic polymer that can be molded into shape under heat and pressure and then set into a rigid or slightly elastic form.

"Plastics gasification facility" means a manufacturing facility that:

(1) receives only uncontaminated plastics that have been processed prior to receipt at the facility into a feedstock meeting the facility's specifications for a gasification feedstock; and

(2) uses heat in an oxygen-deficient atmosphere to process the feedstock into fuels, chemicals, or chemical feedstocks that are returned to the economic mainstream in the form of raw materials or products.

"Plastics pyrolysis facility" means a manufacturing facility that:

(1) receives only uncontaminated plastics that have been processed prior to receipt at the facility into a feedstock meeting the facility's specifications for a pyrolysis feedstock; and

(2) uses heat in the absence of oxygen to process the uncontaminated plastics into fuels, chemicals, or chemical feedstocks that are returned to the economic mainstream in the form of raw materials or products.

(b) Provided that permitting and construction has commenced prior to July 1, 2025, a pilot project allowing for a pyrolysis or gasification facility in accordance with this Section is

permitted for a locally zoned and approved site in either Will County or Grundy County.

(c) To the extent allowed by federal law, uncontaminated plastics that have been processed into a feedstock meeting feedstock specifications for a plastics gasification facility or plastics pyrolysis facility, and that are further processed by such a facility and returned to the economic mainstream in the form of raw materials or products, are considered recycled and are not subject to regulation as waste.

(d) The Agency may propose to the Board for adoption, and the Board may adopt, rules establishing standards for materials accepted as feedstocks by plastics gasification facilities and plastics pyrolysis facilities, rules establishing standards for the management of feedstocks at plastics gasification facilities and plastics pyrolysis facilities, and any other rules, as may be necessary to implement and administer this Section.

(e) If permitting and construction for the pilot project under subsection (b) has not commenced by July 1, 2025, this Section is repealed.

(Source: P.A. 101-141, eff. 7-1-20; 102-558, eff. 8-20-21.)

(415 ILCS 5/22.61)

Sec. 22.61. Regulation of bisphenol A in business transaction paper.

(a) For purposes of this Section, "thermal paper" means paper with bisphenol A added to the coating.

(b) Beginning January 1, 2020, no person shall manufacture, for sale in this State, thermal paper.

(c) No person shall distribute or use any thermal paper for the making of business or banking records, including, but not limited to, records of receipts, credits, withdrawals, deposits, or credit or debit card transactions. This subsection shall not apply to thermal paper that was manufactured prior to January 1, 2020.

(d) The prohibition in subsections (a) and (b) shall not apply to paper containing recycled material.

(Source: P.A. 101-457, eff. 8-23-19; 102-558, eff. 8-20-21.)

(415 ILCS 5/22.62)

Sec. 22.62. TRI-PFAS; incineration.

(a) As used in this Section:

"Incineration" includes, but is not limited to, burning, combustion, pyrolysis, gasification, or the use of an acid recovery furnace or oxidizer, ore roaster, cement kiln, lightweight aggregate kiln, industrial furnace, boiler, or process heater. "Incineration" does not include the use of a thermal oxidizer as a pollution control or resource recovery device at a facility that is using perfluoroalkyl or polyfluoroalkyl substances or chemicals containing perfluoroalkyl or polyfluoroalkyl substances.

"Toxic Release Inventory Perfluoroalkyl and Polyfluoroalkyl Substances" or "TRI-PFAS" means the chemicals on the list of perfluoroalkyl and polyfluoroalkyl substances set forth in the USEPA's Toxic Release Inventory rules, developed under Section 313 of the federal Emergency Planning and Community Right-To-Know Act (EPCRA) and codified in 40 CFR 372.65, excluding liquid or gaseous fluorocarbon or chlorofluorocarbon products used chiefly as refrigerants.

(b) No person shall dispose of any TRI-PFAS by incineration, including, but not limited to, aqueous film-forming foam that contains TRI-PFAS. The Agency may propose, and the Board may adopt, any rules it deems necessary to carry out the provisions of this Section.

(c) Nothing in this Section applies to the incineration of (i) landfill gas from the decomposition of waste that may contain any perfluoroalkyl or polyfluoroalkyl substances at a permitted sanitary landfill, (ii) landfill gas in a landfill gas recovery facility that is located at a sanitary landfill, (iii) waste at a permitted hospital, medical, and infectious waste incinerator that meets the requirements of Subpart HHH of 40 CFR Part 62, Subpart Ec of 40 CFR Part 60, or the Board-adopted State Plan requirements for hospital, medical, and infectious waste incinerators, as applicable, or (iv) sludges, biosolids, or other solids or by-products generated at or by a municipal wastewater treatment plant or facility.
(Source: P.A. 102-1048, eff. 6-8-22.)

(415 ILCS 5/Tit. VI heading)

TITLE VI: NOISE

(415 ILCS 5/23) (from Ch. 111 1/2, par. 1023)

Sec. 23. The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.
(Source: P.A. 76-2429.)

(415 ILCS 5/24) (from Ch. 111 1/2, par. 1024)

Sec. 24. No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.
(Source: P.A. 76-2429.)

(415 ILCS 5/25) (from Ch. 111 1/2, par. 1025)

Sec. 25. The Board, pursuant to the procedures prescribed in Title VII of this Act, may adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.

The Board shall, by regulations under this Section, categorize the types and sources of noise emissions that unreasonably interfere with the enjoyment of life, or with any lawful business, or activity, and shall prescribe for each such category the maximum permissible limits on such noise emissions. The Board shall secure the co-operation of the Department in determining the categories of noise emission and the technological and economic feasibility of such noise level limits.

In establishing such limits, the Board, in addition to considering those factors set forth in Section 27 of this Act, shall consider the adverse ecological effects on and interference with the enjoyment of natural, scenic, wilderness or other outdoor recreational areas, parks, and forests occasioned by noise emissions from automotive, mechanical, and other sources and may establish lower permissible noise levels applicable to sources in such outdoor recreational uses.

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity except as otherwise provided in this Section. Baseball, football or soccer sporting events played during nighttime hours, by professional athletes, in a city with more than 1,000,000 inhabitants, in a stadium at which such nighttime events were not played prior to July 1, 1982, shall be subject to nighttime noise emission regulations promulgated by the Illinois Pollution Control Board; however, the following events shall not be subject to such regulations:

(1) baseball World Series games, league championship series games and other playoff games played after the conclusion of the regular season, and baseball All Star games; and

(2) sporting events or other events held in a stadium which replaces a stadium not subject to such regulations and constructed within 1500 yards of the original stadium by the Illinois Sports Facilities Authority.

For purposes of this Section and Section 24, "beyond the boundaries of his property" or "beyond the boundaries of the property of any person" includes personal property as well as real property.

(Source: P.A. 89-445, eff. 2-7-96.)

(415 ILCS 5/Tit. VI-A heading)

TITLE VI-A: ATOMIC RADIATION

(415 ILCS 5/25a-1) (from Ch. 111 1/2, par. 1025a-1)

Sec. 25a-1. At least 60 days before beginning the decommissioning of any nuclear power plant located in this State, the owner or operator of the plant shall file, for information purposes only, a copy of the decommissioning plan for the plant with the Agency and a copy with the Illinois Emergency Management Agency.

(Source: P.A. 95-777, eff. 8-4-08.)

(415 ILCS 5/25b) (from Ch. 111 1/2, par. 1025b)

Sec. 25b. Any person, corporation or public authority intending to construct a nuclear steam-generating facility or a nuclear fuel reprocessing plant shall file with the Illinois Emergency Management Agency an environmental feasibility report which incorporates the data provided in the preliminary safety analysis required to be filed with the United States Nuclear Regulatory Commission. The Board may by rule prescribe the form of such report. The Board shall have the power to adopt standards to protect the health, safety and welfare of the citizens of Illinois from the hazards of radiation to the extent that such powers are not preempted under the federal constitution.

(Source: P.A. 95-777, eff. 8-4-08.)

(415 ILCS 5/Tit. VI-B heading)

TITLE VI-B: TOXIC CHEMICAL REPORTING

(415 ILCS 5/25b-1) (from Ch. 111 1/2, par. 1025b-1)

Sec. 25b-1. (a) The General Assembly finds:

(1) That many industrial facilities in the State may be emitting or discharging toxic chemicals into the environment on an ongoing basis, and that such releases may

pose a chronic threat to public health and the environment.

(2) That members of the general public have a right to know about the toxic chemical emissions and discharges in their communities so that they can determine the implications on public health from exposure to such chemicals and participate in public policy decision-making.

(3) That the federal Emergency Planning and Community Right-to-Know Act of 1986 requires certain industries to provide information to the State on the types and quantities of toxic chemicals released into the air, ground and water.

(4) That the federal Pollution Prevention Act of 1990 requires that the same industries file an annual source reduction and recycling report to provide information to the State on source reduction, as defined in such Act, and recycling activities which were conducted during the previous calendar year.

(b) It is the purpose of this Title to provide for the coordinated State implementation of the federal programs that require the disclosure of information about routine releases, source reduction, and recycling of toxic chemicals, and to provide an orderly procedure whereby the public may gain access to this information.
(Source: P.A. 87-1213.)

(415 ILCS 5/25b-2) (from Ch. 111 1/2, par. 1025b-2)

Sec. 25b-2. (a) Facilities which are required to file toxic chemical release forms with the State pursuant to Section 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986 shall file such forms with the Illinois Environmental Protection Agency.

(b) The Agency shall make toxic chemical release forms available to the public for inspection and copying during regular business hours and, upon written request, shall send copies of such forms by mail to any resident of the State.
(Source: P.A. 85-927.)

(415 ILCS 5/25b-3) (from Ch. 111 1/2, par. 1025b-3)

Sec. 25b-3. In cooperation with the United States Environmental Protection Agency, the Agency shall provide in a computer data base an Illinois Toxic Chemical Inventory. The Inventory shall be based on the toxic chemical release forms filed pursuant to Section 313 of the federal Emergency Planning and Community Right-to-know Act of 1986 and may include, to the extent practicable, any other information on emissions, discharges, source reduction activities, and recycling of toxic contaminants submitted to the Agency pursuant to this Act. The Agency shall maintain the data in the Inventory by individual facility and company name, standard industrial classification, type of chemical, and geographic location.
(Source: P.A. 94-580, eff. 8-12-05.)

(415 ILCS 5/25b-4)

Sec. 25b-4. (Repealed).
(Source: P.A. 94-580, eff. 8-12-05. Repealed by P.A. 97-220, eff. 7-28-11.)

(415 ILCS 5/25b-5) (from Ch. 111 1/2, par. 1025b-5)

Sec. 25b-5. Review of toxic chemical status. The Agency shall periodically review the status of toxic chemicals and types of facilities covered under the reporting requirements of Section 313 of the federal Emergency Planning and Community Right-to-Know Act of 1986.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/25b-6)

Sec. 25b-6. Failure to receive toxic chemical release form; notice. Prior to taking action pursuant to Title VIII for a violation of Section 25b-2 of this Act, the Agency shall issue, no earlier than August 1 of each year, by certified mail or personal service upon the person complained against, a notice that the Agency has failed to receive from that person all required toxic chemical release forms and provide a period of 30 days to submit the forms to the Agency. In the event that person fails to file the forms with the Agency within the 30 day period, the Agency may proceed with enforcement pursuant to Title VIII of this Act.

(Source: P.A. 88-106.)

TITLE VI-C: OIL SPILL RESPONSE

(415 ILCS 5/25c-1)

Sec. 25c-1. Oil Spill Response Fund.

(a) There is hereby created within the State treasury an interest-bearing special fund to be known as the Oil Spill Response Fund. There shall be deposited into the Fund all monies recovered as reimbursement for response costs incurred by the Agency from parties responsible for releases or threats of release of petroleum, monies provided to the State from the federal Oil Spill Liability Trust Fund, and such other monies as may be received for this purpose through contributions, gifts, or supplemental environmental projects, pursuant to court orders or decrees, or from any other source.

(b) Pursuant to appropriation, all monies in the Oil Spill Response Fund may be used by the Agency for all of the following purposes:

(1) Responding to releases or threats of release of petroleum that may constitute a substantial danger to the environment or human health or welfare.

(2) Contractual expenses and purchases of equipment or supplies necessary to enable prompt response to releases or threats of release of petroleum and to provide effective mitigation of such releases or threats of release.

(3) Costs of investigation and assessment of the source, nature, and extent of a release or threatened release of petroleum and any resulting injuries or damages.

(4) Costs associated with planning and training for response to releases and threats of release of petroleum.

(5) Costs associated with preparing and submitting claims of the Agency to the federal Oil Spill Liability Trust Fund.

(c) For the purposes of implementing this Section, "petroleum" means crude oil, refined petroleum, intermediates, fractions or constituents of petroleum, brine or salt water from oil production, oil sheens, hydrocarbon vapors, and any other form of oil or petroleum.

(d) In addition to any other authority provided by State or federal law, the Agency shall be entitled to recovery of costs incurred by it in response to releases and threats of release of petroleum from any persons who are responsible for causing, allowing, or threatening such releases.

(Source: P.A. 93-152, eff. 7-10-03.)

(415 ILCS 5/Tit. VI-D heading)

TITLE VI-D. RIGHT-TO-KNOW

(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-1)

Sec. 25d-1. Definitions. For the purposes of this Title, the terms "community water system", "non-community water system", "potable", "private water system", and "semi-private water system" have the meanings ascribed to them in the Illinois Groundwater Protection Act. For the purposes of this Title, the term "soil gas" means the air existing in void spaces in the soil between the groundwater table and the ground surface.

(Source: P.A. 96-603, eff. 8-24-09.)

(415 ILCS 5/25d-2)

Sec. 25d-2. Contaminant evaluation. The Agency shall evaluate releases of contaminants whenever it determines that the extent of soil, soil gas, or groundwater contamination may extend beyond the boundary of the site where the release occurred. The Agency shall take appropriate actions in response to the release, which may include, but shall not be limited to, public notices, investigations, administrative orders under Sections 22.2d or 57.12(d) of this Act, and enforcement referrals. Except as provided in Section 25d-3 of this Act, for releases undergoing investigation or remediation under Agency oversight the Agency may determine that no further action is necessary to comply with this Section.

(Source: P.A. 96-603, eff. 8-24-09.)

(415 ILCS 5/25d-3)

Sec. 25d-3. Notices.

(a) Beginning January 1, 2006, if the Agency determines that:

(1) Soil contamination beyond the boundary of the site where the release occurred, soil gas contamination beyond the boundary of the site where the release occurred, or both pose a threat of exposure to the public above the appropriate Tier 1 remediation objectives, based on the current use of the off-site property, adopted by the Board under Title XVII of this Act, the Agency shall give notice of the threat to the owner of the contaminated property; or

(2) Groundwater contamination poses a threat of exposure to the public above the Class I groundwater quality standards adopted by the Board under this Act and the Groundwater Protection Act, the Agency shall give notice of the threat to the following:

(A) for any private, semi-private, or non-community water system, the owners of the properties served by the system; and

(B) for any community water system,

(i) the owners and operators of the system; and

(ii) the residents and owners of premises connected to the affected community water system; and

(iii) the residents and owners of premises connected to water systems receiving water from the affected community water system.

The Agency's determination must be based on the credible, scientific information available to it, and the Agency is not required to perform additional investigations or studies beyond those required by applicable federal or State laws.

For notices required under subparagraph (B) of paragraph (2) of subsection (a), the Agency shall (i) within 2 days after determining that groundwater contamination poses a threat of

exposure to the public above the Class I groundwater quality standards, provide notice of the determination by issuing a press release and posting the press release on the Agency's website and (ii) within 5 days after the determination, provide the owner and operator of the community water system and the owners and operators of all connected community water systems with a notice printed on Agency letterhead that identifies the contaminant posing the threat, the level of contamination found, and possible human health effects associated with exposure to the contaminant. Within 5 business days after receiving a notice from the Agency under this paragraph, the owner or operator of the community water system must send, to all residents and owners of premises connected to the affected community water system: (i) a copy of the notice by first-class mail or by e-mail; or (ii) notification, in a form approved by the Agency, via first-class postcard, text message, or telephone; except that notices to institutional residents, including, but not limited to, residents of school dormitories, nursing homes, and assisted care facilities, may be made to the owners and operators of those institutions, and the owner or operator of those institutions shall notify their residents in the same manner as prescribed in this subsection for owners and operators of community water systems. If the manner for notice selected by the owner or operator of the community water system does not include a written copy of the notice provided by the Agency, the owner or operator shall include a written copy of the notice provided by the Agency in the next water bill sent to the residents and owners of the premises; provided, however, if the water bill is sent on a postcard, no written copy of the notice provided by the Agency is required if the postcard includes the Internet address for the notice posted on the Agency's website. The front of the envelope or postcard in which any such notice is sent to residents and owners of premises connected to the affected community water system shall carry the following text in at least 18 point font: PUBLIC HEALTH NOTICE - READ IMMEDIATELY. For a postcard, text message, or telephonic communication, the Agency shall specify the minimum information that the owner or operator must include in such methods of notice. Within 7 days after the owner or operator of the community water system sends the notices to residents and owners of premises connected to the community water system, the owner or operator shall provide the Agency with proof that the notices have been sent. The notices required under subparagraph (B) of paragraph (2) of subsection (a) shall be provided whether or not the threat of exposure has been eliminated.

(b) Beginning January 1, 2006, if any of the following actions occur: (i) the Agency refers a matter for enforcement under Section 43(a) of this Act; (ii) the Agency issues a seal order under Section 34 of this Act; or (iii) the Agency, the United States Environmental Protection Agency (USEPA), or a third party under Agency or USEPA oversight performs an immediate removal under the federal Comprehensive Environmental Response, Compensation, and Liability Act, as amended, then, within 60 days after the action, the Agency must give notice of the action to the owners of all property within 2,500 feet of the subject contamination or any closer or farther distance that the Agency deems appropriate under the circumstances. Within 30 days after a request by the Agency, the appropriate officials of the county in which the property is located must provide to the Agency the names and addresses of all property owners to whom the Agency is required to give notice under this subsection (b), these owners being the persons or entities that appear from the authentic tax records of the county.

(c) In addition to the notice requirements of subsection (a) of this Section, the methods by which the Agency gives the

notices required under this Section shall be determined in consultation with members of the public and appropriate members of the regulated community and may include, but shall not be limited to, personal notification, public meetings, signs, electronic notification, and print media. For sites at which a responsible party has implemented a community relations plan, the Agency may allow the responsible party to provide Agency-approved notices in lieu of the notices required to be given by the Agency. Notices issued under this Section may contain the following information:

(1) the name and address of the site or facility where the release occurred or is suspected to have occurred;

(2) the identification of the contaminant released or suspected to have been released;

(3) information as to whether the contaminant was released or suspected to have been released into the air, land, or water;

(4) a brief description of the potential adverse health effects posed by the contaminant;

(5) a recommendation that water systems with wells impacted or potentially impacted by the contaminant be appropriately tested; and

(6) the name, business address, and phone number of persons at the Agency from whom additional information about the release or suspected release can be obtained.

(d) Any person who is a responsible party with respect to the release or substantial threat of release for which notice is given under this Section is liable for all reasonable costs incurred by the State in giving the notice. All moneys received by the State under this subsection (d) for costs related to releases and substantial threats of releases of hazardous substances, pesticides, and petroleum other than releases and substantial threats of releases of petroleum from underground storage tanks subject to Title XVI of this Act must be deposited in and used for purposes consistent with the Hazardous Waste Fund. All moneys received by the State under this subsection (d) for costs related to releases and substantial threats of releases of petroleum from underground storage tanks subject to Title XVI of this Act must be deposited in and used for purposes consistent with the Underground Storage Tank Fund.
(Source: P.A. 95-454, eff. 8-27-07; 96-603, eff. 8-24-09.)

(415 ILCS 5/25d-4)

Sec. 25d-4. Agency authority. Whenever the Agency determines that a public notice should be issued under this Title, the Agency has the authority to issue an information demand letter to the owner or operator of the site or facility where the release occurred or is suspected to have occurred that requires the owner or operator to provide the Agency with the information necessary, to the extent practicable, to give the notices required under Section 25d-3 of this Title. In the case of a release or suspected release from an underground storage tank subject to Title XVI of this Act, the Agency has the authority to issue such a letter to the owner or operator of the underground storage tank. Within 30 days after the issuance of a letter under this Section, or within a greater period specified by the Agency, the person who receives the letter shall provide the Agency with the required information. Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any letter issued under this Section is in violation of this Act.
(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-5)

Sec. 25d-5. Contamination information. Beginning July 1, 2006, the Agency shall make all of the following information available on the Internet:

(i) Copies of all notifications given under Section 25d-3 of this Section. The copies must be indexed and the index shall, at a minimum, be searchable by notification date, zip code, site or facility name, and geographic location.

(ii) Appropriate Agency databases containing information about releases or suspected releases of contaminants in the State. The databases must, at a minimum, be searchable by notification date, zip code, site or facility name, and geographic location.

(iii) Links to appropriate USEPA databases containing information about releases or suspected releases of contaminants in the State.

(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-6)

Sec. 25d-6. Agency coordination. Beginning January 1, 2006, the Agency shall coordinate with the Department of Public Health to provide training to regional and local health department staff on the use of the information posted on the Internet under Section 25d-5 of this Title. Also beginning January 1, 2006, the Agency shall coordinate with the Department of Public Health to provide training to licensed water well drillers on the use of the information posted on the Internet under Section 25d-5 of this Title in relation to the location and installation of new wells serving private, semi-private, and non-community water systems.

(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-7)

Sec. 25d-7. Rulemaking.

(a) Within 180 days after the effective date of this amendatory Act of the 94th General Assembly, the Agency shall evaluate the Board's rules and propose amendments to the rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or that may impact offsite potable water supply wells. Within 240 days after receiving the Agency's proposal, the Board shall amend its rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or that may impact offsite potable water supply wells. Community relations activities required by the Board shall include, but shall not be limited to, submitting a community relations plan for Agency approval, maintaining a public information repository that contains timely information about the actions being taken in response to a release, and maintaining dialogue with the community through means such as public meetings, fact sheets, and community advisory groups.

(b) The Agency shall adopt rules setting forth costs for which persons may be liable to the State under Section 25d-3(d) of this Act. In addition, the Agency shall have the authority to adopt other rules as necessary for the administration of this Title.

(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-8)

Sec. 25d-8. Liability. Except for willful and wanton

misconduct, neither the State, the Director, nor any State employee shall be liable for any damages or injuries arising out of or resulting from any act or omission occurring under this amendatory Act of the 94th General Assembly.
(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-9)
Sec. 25d-9. Admissibility. The Agency's giving of notice or failure to give notice under Section 25d-3 of this Title shall not be admissible for any purpose in any administrative or judicial proceeding.
(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/25d-10)
Sec. 25d-10. Avoiding duplication. The Agency shall take whatever steps it deems necessary to eliminate the potential for duplicative notices required by this Title and Section 9.1 of the Illinois Groundwater Protection Act.
(Source: P.A. 94-314, eff. 7-25-05.)

(415 ILCS 5/Tit. VII heading)
TITLE VII: REGULATIONS

(415 ILCS 5/26) (from Ch. 111 1/2, par. 1026)
Sec. 26. The Board may adopt such procedural rules as may be necessary to accomplish the purposes of this Act. In adopting such rules the Board shall follow the rulemaking procedures of the Illinois Administrative Procedure Act.

Without limiting the generality of this grant of authority, and notwithstanding any requirement that hearings be held in actions brought pursuant to Titles VIII and X of the Act, the Board may adopt procedural rules for resolution of such actions by summary judgment prior to hearing upon motion by either party except as otherwise required by federal law, as well as procedural rules requiring the parties to perfect their pleadings to conform to the evidence as presented to the Board.
(Source: P.A. 85-1048.)

(415 ILCS 5/27) (from Ch. 111 1/2, par. 1027)
Sec. 27. Rulemaking.

(a) The Board may adopt substantive regulations as described in this Act. Any such regulations may make different provisions as required by circumstances for different contaminant sources and for different geographical areas; may apply to sources outside this State causing, contributing to, or threatening environmental damage in Illinois; may make special provision for alert and abatement standards and procedures respecting occurrences or emergencies of pollution or on other short-term conditions constituting an acute danger to health or to the environment; and may include regulations specific to individual persons or sites. In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. The generality of this grant of authority shall only be limited by the specifications of particular classes of regulations elsewhere in this Act.

No charge shall be established or assessed by the Board or

Agency against any person for emission of air contaminants from any source, for discharge of water contaminants from any source, or for the sale, offer or use of any article.

Any person filing with the Board a written proposal for the adoption, amendment, or repeal of regulations shall provide information supporting the requested change and shall at the same time file a copy of such proposal with the Agency and the Department of Natural Resources. To aid the Board and to assist the public in determining which facilities will be affected, the person filing a proposal shall describe, to the extent reasonably practicable, the universe of affected sources and facilities and the economic impact of the proposed rule.

(b) Except as provided below and in Section 28.2, before the adoption of any proposed rules not relating to administrative procedures within the Agency or the Board, or amendment to existing rules not relating to administrative procedures within the Agency or the Board, the Board shall:

(1) request that the Department of Commerce and Economic Opportunity conduct a study of the economic impact of the proposed rules. The Department may within 30 to 45 days of such request produce a study of the economic impact of the proposed rules. At a minimum, the economic impact study shall address (A) economic, environmental, and public health benefits that may be achieved through compliance with the proposed rules, (B) the effects of the proposed rules on employment levels, commercial productivity, the economic growth of small businesses with 100 or less employees, and the State's overall economy, and (C) the cost per unit of pollution reduced and the variability in cost based on the size of the facility and the percentage of company revenues expected to be used to implement the proposed rules; and

(2) conduct at least one public hearing on the economic impact of those new rules. At least 20 days before the hearing, the Board shall notify the public of the hearing and make the economic impact study, or the Department of Commerce and Economic Opportunity's explanation for not producing an economic impact study, available to the public. Such public hearing may be held simultaneously or as a part of any Board hearing considering such new rules.

In adopting any such new rule, the Board shall, in its written opinion, make a determination, based upon the evidence in the public hearing record, including but not limited to the economic impact study, as to whether the proposed rule has any adverse economic impact on the people of the State of Illinois.

(c) On proclamation by the Governor, pursuant to Section 8 of the Illinois Emergency Services and Disaster Act of 1975, that a disaster emergency exists, or when the Board finds that a severe public health emergency exists, the Board may, in relation to any proposed regulation, order that such regulation shall take effect without delay and the Board shall proceed with the hearings and studies required by this Section while the regulation continues in effect.

When the Board finds that a situation exists which reasonably constitutes a threat to the public interest, safety or welfare, the Board may adopt regulations pursuant to and in accordance with Section 5-45 of the Illinois Administrative Procedure Act.

(d) To the extent consistent with any deadline for adoption of any regulations mandated by State or federal law, prior to initiating any hearing on a regulatory proposal, the Board may assign a qualified hearing officer who may schedule a prehearing conference between the proponents and any or all of the potentially affected persons. The notice requirements of Section

28 shall not apply to such prehearing conferences. The purposes of such conference shall be to maximize understanding of the intent and application of the proposal, to reach agreement on aspects of the proposal, if possible, and to attempt to identify and limit the issues of disagreement among the participants to promote efficient use of time at hearing. No record need be kept of the prehearing conference, nor shall any participant or the Board be bound by any discussions conducted at the prehearing conference. However, with the consent of all participants in the prehearing conference, a prehearing order delineating issues to be heard, agreed facts, and other matters may be entered by the hearing officer. Such an order will not be binding on nonparticipants in the prehearing conference.
(Source: P.A. 94-793, eff. 5-19-06.)

(415 ILCS 5/28) (from Ch. 111 1/2, par. 1028)

Sec. 28. Proposal of regulations; procedure.

(a) Any person may present written proposals for the adoption, amendment, or repeal of the Board's regulations, and the Board may make such proposals on its own motion. If the Board finds that any such proposal is supported by an adequate statement of reasons, is accompanied by a petition signed by at least 200 persons, is not plainly devoid of merit and does not deal with a subject on which a hearing has been held within the preceding 6 months, the Board shall schedule a public hearing for consideration of the proposal. If such proposal is made by the Agency or by the Department, the Board shall schedule a public hearing without regard to the above conditions. The Board may hold one or more hearings to consider both the merits and the economics of the proposal. The Board may also in its discretion schedule a public hearing upon any proposal without regard to the above conditions.

No substantive regulation shall be adopted, amended, or repealed until after a public hearing within the area of the State concerned. In the case of state-wide regulations hearings shall be held in at least two areas. At least 20 days prior to the scheduled date of the hearing the Board shall give notice of such hearing by public advertisement in a newspaper of general circulation in the area of the state concerned of the date, time, place and purpose of such hearing; give written notice to any person in the area concerned who has in writing requested notice of public hearings; and make available to any person upon request copies of the proposed regulations, together with summaries of the reasons supporting their adoption.

Any public hearing relating to the adoption, amendment, or repeal of Board regulations under this subsection shall be held before a qualified hearing officer, who shall be attended by at least one member of the Board, designated by the Chairman. All such hearings shall be open to the public, and reasonable opportunity to be heard with respect to the subject of the hearing shall be afforded to any person. All testimony taken before the Board shall be recorded stenographically. The transcript so recorded, and any written submissions to the Board in relation to such hearings, shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.

After such hearing the Board may revise the proposed regulations before adoption in response to suggestions made at the hearing, without conducting a further hearing on the revisions.

In addition, the Board may revise the proposed regulations after hearing in response to objections or suggestions made by the Joint Committee on Administrative Rules pursuant to

subsection (b) of Section 5-40 and subsection (a) of Section 5-110 of the Illinois Administrative Procedure Act, where the Board finds (1) that such objections or suggestions relate to the statutory authority upon which the regulation is based, whether the regulation is in proper form, or whether adequate notice was given, and (2) that the record before the Board is sufficient to support such a change without further hearing.

Any person heard or represented at a hearing or requesting notice shall be given written notice of the action of the Board with respect to the subject thereof.

No rule or regulation, or amendment or repeal thereof, shall become effective until a certified copy thereof has been filed with the Secretary of State, and thereafter as provided in the Illinois Administrative Procedure Act as amended.

Any person who files a petition for adoption of a regulation specific to that person shall pay a filing fee.

(b) The Board shall not, on its own motion, propose regulations pursuant to subsection (a) of this Section or Sections 28.2, 28.4 or 28.5 of this Act to implement the provisions required by or related to the Clean Air Act Amendments of 1990, as now or hereafter amended. However, nothing herein shall preclude the Board from, on its own motion:

(1) making technical corrections to adopted rules pursuant to Section 100.240 of Title 1 of the Illinois Administrative Code;

(2) modifying a proposed rule following receipt of comments, objections, or suggestions without agreement of the proponent after the end of the hearing and comment period;

(3) initiating procedural rulemaking in accordance with Section 26 of this Act; or

(4) initiating rulemaking necessitated by a court order directed to the Board.

(Source: P.A. 87-860; 87-1213; 88-45.)

(415 ILCS 5/28.1) (from Ch. 111 1/2, par. 1028.1)

Sec. 28.1. (a) After adopting a regulation of general applicability, the Board may grant, in a subsequent adjudicatory determination, an adjusted standard for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of this Act. In granting such adjusted standards, the Board may impose such conditions as may be necessary to accomplish the purposes of this Act. The rule-making provisions of the Illinois Administrative Procedure Act and Title VII of this Act shall not apply to such subsequent determinations.

(b) In adopting a rule of general applicability, the Board may specify the level of justification required of a petitioner for an adjusted standard consistent with this Section.

(c) If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:

(1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

(2) the existence of those factors justifies an adjusted standard;

(3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

(4) the adjusted standard is consistent with any applicable

federal law.

(d) The Board shall adopt procedures applicable to such adjusted standards determinations which, at a minimum, shall provide: (1) that the petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected, including the nature of the relief sought and advising of the right of any person to request a hearing within 21 days of the publication of the notice; (2) that if the Board in its discretion determines that a hearing would be advisable, or upon the request of any person received by the Board within 21 days after publication of the notice of the filing of the petition, the Board shall hold a public hearing on the petition, and at least 20 days before the hearing the Board shall publish notice of the hearing by advertisement in a newspaper of general circulation in the area likely to be affected; and (3) that the Board shall issue an order and opinion stating the facts and reasons leading to the final Board determination. Such Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to this Section shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year. The Agency shall participate in proceedings pursuant to this Section. The Board may grant adjusted standards under this Section prior to adopting procedures applicable to such adjusted standard determinations.

(e) If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation and Liability Act, or the State RCRA, UIC or NPDES programs. The Board may, at any time after the petition is filed, dismiss the petition if it determines that the petition is frivolous or duplicative, or that the petitioner is not pursuing disposition of the petition in a timely manner.

(f) Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. In its final action on the petition, the Board shall either establish an adjusted standard for the source or adopt a standard for the source that is the same as that contained in the regulation from which the adjusted standard was sought.

(g) A final Board determination made under this Section may be appealed pursuant to Section 41 of this Act.

(h) This Section shall not be construed so as to affect or limit the authority of the Board to adopt, amend or repeal regulations specific to individual persons, geographic areas or sites pursuant to Sections 27 and 28 of this Act, or so as to affect or impair the validity of any existing regulations.

(i) Any person who files a petition for an adjusted standard under this Section shall pay a filing fee.
(Source: P.A. 85-1440.)

(415 ILCS 5/28.2) (from Ch. 111 1/2, par. 1028.2)

Sec. 28.2. Federally required rules.

(a) For the purposes of this Section, "required rule" means a rule that is needed to meet the requirements of the federal Clean Water Act, Safe Drinking Water Act, Clean Air Act (including required submission of a State Implementation Plan), or Resource Conservation and Recovery Act, other than a rule required to be adopted under subsection (c) of Section 13, Section 13.3, Section 17.5, subsection (a) or (d) of Section 22.4, subsection (a) of Section 22.7, or subsection (a) of Section 22.40.

(b) When the Agency proposes a rule that it believes to be a required rule, the Agency shall so certify in its proposal, identifying the federal law to which the proposed rule will respond and the rationale upon which the certification is based. If the certification is accompanied by a written confirmation from USEPA, the certification shall be under the signature of the regional administrator, the deputy regional administrator, the appropriate division director or a responsible senior official from USEPA headquarters. The Board shall either accept or reject the certification within 45 days and shall reference the certification in the first notice of the proposal published in the Illinois Register as provided by the Illinois Administrative Procedure Act. First notice of the proposal shall be submitted for publication in the Illinois Register as expeditiously as is practicable, but in no event later than 6 months from the date the Board determines whether an economic impact study should be conducted. Should the Board reject an Agency certification, the proposal shall not be considered a required rule. If the Board fails to act within the requisite 45 day period, the certification shall be deemed granted.

(c) Whenever a required rule is needed, the Board shall adopt a rule (i) that fully meets the applicable federal law and (ii) that is not inconsistent with any substantive environmental standard or prohibition that is specifically and completely contained and fully set forth within any Illinois statute, except as authorized by this Act. In determining whether the rule fully meets the applicable federal law, the Board shall consider all relevant evidence in the record.
(Source: P.A. 87-860; 88-496.)

(415 ILCS 5/28.3) (from Ch. 111 1/2, par. 1028.3)

Sec. 28.3. (a) Utilizing the provisions of Section 28.1 and this Section alternative requirements may be established by the Board in an adjusted standards proceeding for the direct discharge of waste solids to the Mississippi or Ohio Rivers from clarifier sludge and filter backwash generated in the water purification process. Any public water supply utilizing the Mississippi or Ohio Rivers as its raw water source may initiate such a proceeding provided that its waste solids are generated as described herein and it does not utilize lime softening in the purification process. An adjusted standard granted by the Board in an adjusted standard proceeding shall be based upon water quality effects, actual and potential stream uses, and economic considerations, including those of the discharger and those affected by the discharge.

(b) No later than January 1, 1991, the public water supply shall make a declaration regarding the intent to pursue an adjusted standard and assemble and submit to the Agency any background information in its possession relevant to current

discharge practices. The Agency, after a review of its files and the submittal, shall request such further information as it deems necessary for its initial determination. The Agency shall promptly notify the public water supply in writing of any discretionary determination that it will not agree with pursuit of an adjusted standard and shall indicate the basis for such determination. Such basis may include but not be limited to a judgment that the information submitted is insufficient, that due to the nature of the discharge an adjusted standard would be environmentally unsound, or that a specific alternative control strategy being considered by the supply is infeasible from either an engineering or pollutant removal standpoint. If the supply and the Agency agree on alternative controls, an adjusted standard proceeding before the Board shall be commenced by the supply by filing jointly with the Agency a petition. If the Agency has declined to agree with an alternate control strategy or if the supply declines to accept an Agency proposal, the supply may commence singly an adjusted standard proceeding before the Board.

(c) If the public water supply and the Agency jointly file an adjusted standard petition, justifications shall be included in the petition. Justification based upon discharge impact shall include, as a minimum, an evaluation of receiving stream ratios, known stream uses, accessibility to stream and side land use activities (residential, commercial, agricultural, industrial, recreational), frequency and extent of discharges, inspections of unnatural bottom deposits, odors, unnatural floating material or color, stream morphology and results of stream chemical analyses. Where minimal impact cannot be established, justification shall also include evaluations of stream sediment analyses, biological surveys (including habitat assessment), and thorough stream chemical analyses that may include but are not limited to analysis of parameters regulated in 35 Ill. Adm. Code 302. Except as otherwise provided in this Section, the petitioner shall adhere to the general procedural rules for adjusted standards petitions as adopted by the Board. If the petitioner files singly, justification shall include all components identified as applicable to instances where minimal impact cannot be established.

(d) Any petition submitted pursuant to this Section shall include the following:

(1) A written statement, signed by the petitioners or their authorized representatives, outlining the scope of the evaluation, the nature of, the reasons for, and the basis for the justification for the adjusted standard;

(2) Citations to any final enforcement actions against the petitioner and any variances granted to the petitioner where compliance has not been achieved;

(3) A description of the proposed alternative control strategy and the discharge limitations associated with said alternative strategy; and

(4) A compliance schedule and effective date for attainment of the adjusted standard. No petition for an adjusted standard filed under this Section shall be accepted by the Board after January 1, 1992.

(e) The Board shall give notice of the petition and shall schedule a hearing in accordance with 35 Ill. Adm. Code 103. The proceedings shall be in accordance with 35 Ill. Adm. Code 103.

(f) In considering the proposed petition and the hearing record, the Board shall take into account the factors contained in subsection (a) of Section 27 of this Act. The Board shall issue and enter a written opinion stating the facts and reasons leading to its decision within 120 days after the filing of the petition. The Board shall issue and enter such orders concerning

a petition for an adjusted standard as are appropriate for the reasons stated in its written opinion. Such decisions may include but are not limited to decisions accepting or rejecting the petition, directing that hearings be held to develop further information or to cure any procedural defects, or remanding the petition to the petitioners with suggested revisions. The Board shall also include a compliance schedule for construction of any treatment works, discharge outfall facilities or operational controls that may be required as a result of its final order.

(g) Application of otherwise applicable discharge limitations to discharges subject to this Section shall be held in abeyance pending Board action for those petitioners pursuing an adjusted standard as long as they have adhered to the filing times in this Section and are making timely and appropriate progress in seeking an adjusted standard. Petitioners must take all reasonable steps to minimize discharge quantities and adverse environmental impacts for the interim operating period during pursuit of an adjusted standard. In no instances shall interim operating procedures be relaxed from previously demonstrated and generally attainable performance levels.
(Source: P.A. 86-1363.)

(415 ILCS 5/28.4) (from Ch 111 1/2, par. 1028.4)
Sec. 28.4. (Repealed).
(Source: P.A. 87-1213. Repealed internally, eff. 12-31-97.)

(415 ILCS 5/28.5)
Sec. 28.5. Clean Air Act rules; fast-track.

(a) This Section applies through December 31, 2026 and applies solely to the adoption of rules proposed by the Agency and required to be adopted by the State under the Clean Air Act as amended by the Clean Air Act Amendments of 1990 (CAAA).

(b) For purposes of this Section, a "fast-track" rulemaking proceeding is a proceeding to promulgate a rule that the CAAA requires to be adopted. For the purposes of this Section, "requires to be adopted" refers only to those regulations or parts of regulations for which the United States Environmental Protection Agency is empowered to impose sanctions against the State for failure to adopt such rules. All fast-track rules must be adopted under procedures set forth in this Section, unless another provision of this Act specifies the method for adopting a specific rule.

(c) When the CAAA requires rules other than identical in substance rules to be adopted, upon request by the Agency, the Board must adopt rules under fast-track rulemaking requirements.

(d) The Agency must submit its fast-track rulemaking proposal in the following form:

(1) The Agency must file the rule in a form that meets the requirements of the Illinois Administrative Procedure Act and regulations promulgated thereunder.

(2) The cover sheet of the proposal shall prominently state that the rule is being proposed under this Section.

(3) The proposal shall clearly identify the provisions and portions of the federal statute, regulations, guidance, policy statement, or other documents upon which the rule is based.

(4) The supporting documentation for the rule shall summarize the basis of the rule.

(5) The Agency must describe in general the alternative selected and the basis for the alternative.

(6) The Agency must file a summary of economic and technical data upon which it relied in drafting the rule.

(7) The Agency must provide a list of any documents

upon which it directly relied in drafting the rule or upon which it intends to rely at the hearings and must provide such documents to the Board. Additionally, the Agency must make such documents available at an appropriate location for inspection and copying at the expense of the interested party.

(8) The Agency must include in its submission a description of the geographical area to which the rule is intended to apply, a description of the process or processes affected, an identification by classes of the entities expected to be affected, and a list of sources expected to be affected by the rule to the extent known to the Agency.

(e) Within 14 days of receipt of the proposal, the Board must file the rule for first notice under the Illinois Administrative Procedure Act and must schedule all required hearings on the proposal and cause public notice to be given in accordance with the Illinois Administrative Procedure Act and the CAAA.

(f) The Board must set 3 hearings on the proposal, each of which shall be scheduled to continue from day to day, excluding weekends and State and federal holidays, until completed. The Board must require the written submission of all testimony at least 10 days before a hearing, with simultaneous service to all participants of record in the proceeding as of 15 days prior to hearing, unless a waiver is granted by the Board for good cause. In order to further expedite the hearings, presubmitted testimony shall be accepted into the record without the reading of the testimony at hearing, provided that the witness swears to the testimony and is available for questioning, and the Board must make every effort to conduct the proceedings expeditiously and avoid duplication and extraneous material.

(1) The first hearing shall be held within 55 days of receipt of the rule and shall be confined to testimony by and questions of the Agency's witnesses concerning the scope, applicability, and basis of the rule. Within 7 days after the first hearing, any person may request that the second hearing be held.

(A) If, after the first hearing, the Agency and affected entities are in agreement on the rule, the United States Environmental Protection Agency has not informed the Board of any unresolved objection to the rule, and no other interested party contests the rule or asks for the opportunity to present additional evidence, the Board may cancel the additional hearings. When the Board adopts the final order under these circumstances, it shall be based on the Agency's proposal as agreed to by the parties.

(B) If, after the first hearing, the Agency and affected entities are in agreement upon a portion of the rule, the United States Environmental Protection Agency has not informed the Board of any unresolved objections to that agreed portion of the rule, and no other interested party contests that agreed portion of the rule or asks for the opportunity to present additional evidence, the Board must proceed to the second hearing, as provided in paragraph (2) of subsection (g) of this Section, but the hearing shall be limited in scope to the unresolved portion of the proposal. When the Board adopts the final order under these circumstances, it shall be based on such portion of the Agency's proposal as agreed to by the parties.

(2) The second hearing shall be scheduled to commence within 30 days of the first day of the first hearing and shall be devoted to presentation of testimony, documents,

and comments by affected entities and all other interested parties.

(3) The third hearing shall be scheduled to commence within 14 days after the first day of the second hearing and shall be devoted solely to any Agency response to the material submitted at the second hearing and to any response by other parties. The third hearing shall be cancelled if the Agency indicates to the Board that it does not intend to introduce any additional material.

(g) In any fast-track rulemaking proceeding, the Board must accept evidence and comments on the economic impact of any provision of the rule and must consider the economic impact of the rule based on the record. The Board may order an economic impact study in a manner that will not prevent adoption of the rule within the time required by subsection (n) of this Section.

(h) In all fast-track rulemakings under this Section, the Board must take into account factors set forth in subsection (a) of Section 27 of this Act.

(i) The Board must adopt rules in the fast-track rulemaking docket under the requirements of this Section that the CAAA requires to be adopted, and may consider a non-required rule in a second docket that shall proceed under Title VII of this Act.

(j) The Board is directed to take whatever measures are available to it to complete fast-track rulemaking as expeditiously as possible consistent with the need for careful consideration. These measures shall include, but not be limited to, having hearings transcribed on an expedited basis.

(k) Following the hearings, the Board must close the record 14 days after the availability of the transcript.

(l) The Board must not revise or otherwise change an Agency fast-track rulemaking proposal without agreement of the Agency until after the end of the hearing and comment period. Any revisions to an Agency proposal shall be based on the record of the proceeding.

(m) All rules adopted by the Board under this Section shall be based solely on the record before it.

(n) The Board must complete a fast-track rulemaking by adopting a second notice order no later than 130 days after receipt of the proposal if no third hearing is held and no later than 150 days if the third hearing is held. If the order includes a rule, the Illinois Board must file the rule for second notice under the Illinois Administrative Procedure Act within 5 days after adoption of the order.

(o) Upon receipt of a statement of no objection to the rule from the Joint Committee on Administrative Rules, the Board must adopt the final order and submit the rule to the Secretary of State for publication and certification within 21 days.

(Source: P.A. 101-645, eff. 6-26-20; 102-243, eff. 8-3-21.)

(415 ILCS 5/28.6)

Sec. 28.6. Rulemaking to update incorporation by reference.

(a) Any person may file a proposal with the Board to update an incorporation by reference included in a Board rule. The Board or the Agency may also make such a proposal on its own initiative.

(b) A rulemaking to update an incorporation by reference under this Section shall be for the sole purpose of replacing a reference to an older or obsolete version of a document with a reference to the current version of that document or its successor document.

(c) A rulemaking to update an incorporation by reference under this Section shall comply with Sections 5-40 and 5-75 of the Illinois Administrative Procedure Act. Sections 27 and 28 of this Act do not apply to rulemaking under this Section.

(d) If an objection to the proposed amendment is filed during the public comment period required under Section 5-40 of the Illinois Administrative Procedure Act, then the proposed amendment shall not be adopted pursuant to this Section. Nothing in this Section precludes the adoption of a change to an incorporation by reference through other lawful rulemaking procedures.

(e) The Board may adopt procedural rules to implement this Section.

(Source: P.A. 93-152, eff. 7-10-03.)

(415 ILCS 5/29) (from Ch. 111 1/2, par. 1029)

Sec. 29. (a) Any person adversely affected or threatened by any rule or regulation of the Board may obtain a determination of the validity or application of such rule or regulation by petition under subsection (a) of Section 41 of this Act for judicial review of the Board's final order adopting the rule or regulation. For purposes of the 35-day appeal period of subsection (a) of Section 41, a person is deemed to have been served with the Board's final order on the date on which the rule or regulation becomes effective pursuant to the Illinois Administrative Procedure Act.

(b) Action by the Board in adopting any regulation for which judicial review could have been obtained under Section 41 of this Act shall not be subject to review regarding the regulation's validity or application in any subsequent proceeding under Title VIII, Title IX, or Section 40 of this Act.

(c) This Section does not apply to orders entered by the Board pursuant to Section 38.5 of this Act. Final orders entered by the Board pursuant to Section 38.5 of this Act are subject to judicial review under subsection (j) of that Section. Interim orders entered by the Board pursuant to Section 38.5 are not subject to judicial review under this Section or Section 38.5.

(Source: P.A. 99-934, eff. 1-27-17; 99-937, eff. 2-24-17; 100-863, eff. 8-14-18.)

(415 ILCS 5/Tit. VIII heading)

TITLE VIII: ENFORCEMENT

(415 ILCS 5/30) (from Ch. 111 1/2, par. 1030)

Sec. 30. Investigations. The Agency shall cause investigations to be made upon the request of the Board or upon receipt of information concerning an alleged violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and may cause to be made such other investigations as it shall deem advisable.

(Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

(415 ILCS 5/31) (from Ch. 111 1/2, par. 1031)

Sec. 31. Notice; complaint; hearing.

(a)(1) Within 180 days after becoming aware of an alleged violation of the Act, any rule adopted under the Act, a permit granted by the Agency, or a condition of such a permit, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency has evidence of the alleged violation. At a minimum, the written notice shall contain:

(A) a notification to the person complained against

of the requirement to submit a written response addressing the violations alleged and the option to meet with appropriate agency personnel to resolve any alleged violations that could lead to the filing of a formal complaint;

(B) a detailed explanation by the Agency of the violations alleged;

(C) an explanation by the Agency of the actions that the Agency believes may resolve the alleged violations, including an estimate of a reasonable time period for the person complained against to complete the suggested resolution; and

(D) an explanation of any alleged violation that the Agency believes cannot be resolved without the involvement of the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred and the basis for the Agency's belief.

(2) A written response to the violations alleged shall be submitted to the Agency, by certified mail, within 45 days after receipt of notice by the person complained against, unless the Agency agrees to an extension. The written response shall include:

(A) information in rebuttal, explanation or justification of each alleged violation;

(B) if the person complained against desires to enter into a Compliance Commitment Agreement, proposed terms for a Compliance Commitment Agreement that includes specified times for achieving each commitment and which may consist of a statement indicating that the person complained against believes that compliance has been achieved; and

(C) a request for a meeting with appropriate Agency personnel if a meeting is desired by the person complained against.

(3) If the person complained against fails to respond in accordance with the requirements of subdivision (2) of this subsection (a), the failure to respond shall be considered a waiver of the requirements of this subsection (a) and nothing in this Section shall preclude the Agency from proceeding pursuant to subsection (b) of this Section.

(4) A meeting requested pursuant to subdivision (2) of this subsection (a) shall be held without a representative of the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred, within 60 days after receipt of notice by the person complained against, unless the Agency agrees to a postponement. At the meeting, the Agency shall provide an opportunity for the person complained against to respond to each alleged violation, suggested resolution, and suggested implementation time frame, and to suggest alternate resolutions.

(5) If a meeting requested pursuant to subdivision (2) of this subsection (a) is held, the person complained against shall, within 21 days following the meeting or within an extended time period as agreed to by the Agency, submit by certified mail to the Agency a written response to the alleged violations. The written response shall include:

(A) additional information in rebuttal, explanation, or justification of each alleged violation;

(B) if the person complained against desires to enter into a Compliance Commitment Agreement, proposed terms for a Compliance Commitment Agreement that includes specified times for achieving each commitment and which may consist of a statement indicating that the person complained against believes that compliance has been achieved; and

(C) a statement indicating that, should the person

complained against so wish, the person complained against chooses to rely upon the initial written response submitted pursuant to subdivision (2) of this subsection (a).

(6) If the person complained against fails to respond in accordance with the requirements of subdivision (5) of this subsection (a), the failure to respond shall be considered a waiver of the requirements of this subsection (a) and nothing in this Section shall preclude the Agency from proceeding pursuant to subsection (b) of this Section.

(7) Within 30 days after the Agency's receipt of a written response submitted by the person complained against pursuant to subdivision (2) of this subsection (a) if a meeting is not requested or pursuant to subdivision (5) of this subsection (a) if a meeting is held, or within a later time period as agreed to by the Agency and the person complained against, the Agency shall issue and serve, by certified mail, upon the person complained against (i) a proposed Compliance Commitment Agreement or (ii) a notice that one or more violations cannot be resolved without the involvement of the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred and that no proposed Compliance Commitment Agreement will be issued by the Agency for those violations. The Agency shall include terms and conditions in the proposed Compliance Commitment Agreement that are, in its discretion, necessary to bring the person complained against into compliance with the Act, any rule adopted under the Act, any permit granted by the Agency, or any condition of such a permit. The Agency shall take into consideration the proposed terms for the proposed Compliance Commitment Agreement that were provided under subdivision (a)(2)(B) or (a)(5)(B) of this Section by the person complained against.

(7.5) Within 30 days after the receipt of the Agency's proposed Compliance Commitment Agreement by the person complained against, the person shall either (i) agree to and sign the proposed Compliance Commitment Agreement provided by the Agency and submit the signed Compliance Commitment Agreement to the Agency by certified mail or (ii) notify the Agency in writing by certified mail of the person's rejection of the proposed Compliance Commitment Agreement. If the person complained against fails to respond to the proposed Compliance Commitment Agreement within 30 days as required under this paragraph, the proposed Compliance Commitment Agreement is deemed rejected by operation of law. Any Compliance Commitment Agreement entered into under item (i) of this paragraph may be amended subsequently in writing by mutual agreement between the Agency and the signatory to the Compliance Commitment Agreement, the signatory's legal representative, or the signatory's agent.

(7.6) No person shall violate the terms or conditions of a Compliance Commitment Agreement entered into under subdivision (a)(7.5) of this Section. Successful completion of a Compliance Commitment Agreement or an amended Compliance Commitment Agreement shall be a factor to be weighed, in favor of the person completing the Agreement, by the Office of the Illinois Attorney General in determining whether to file a complaint for the violations that were the subject of the Agreement.

(7.7) Within 30 days after a Compliance Commitment Agreement takes effect or is amended in accordance with paragraph (7.5), the Agency shall publish a copy of the final executed Compliance Commitment Agreement on the Agency's website. The Agency shall maintain an Internet database of all Compliance Commitment Agreements entered on or after the effective date of this amendatory Act of the 100th General Assembly. At a minimum, the database shall be searchable by the following categories: the county in which the facility that is subject to the Compliance Commitment Agreement is located; the date of final execution of

the Compliance Commitment Agreement; the name of the respondent; and the media involved, including air, water, land, or public water supply.

(8) Nothing in this subsection (a) is intended to require the Agency to enter into Compliance Commitment Agreements for any alleged violation that the Agency believes cannot be resolved without the involvement of the Office of the Attorney General or the State's Attorney of the county in which the alleged violation occurred, for, among other purposes, the imposition of statutory penalties.

(9) The Agency's failure to respond within 30 days to a written response submitted pursuant to subdivision (2) of this subsection (a) if a meeting is not requested or pursuant to subdivision (5) of this subsection (a) if a meeting is held, or within the time period otherwise agreed to in writing by the Agency and the person complained against, shall be deemed an acceptance by the Agency of the proposed terms of the Compliance Commitment Agreement for the violations alleged in the written notice issued under subdivision (1) of this subsection (a) as contained within the written response.

(10) If the person complained against complies with the terms of a Compliance Commitment Agreement accepted pursuant to this subsection (a), the Agency shall not refer the alleged violations which are the subject of the Compliance Commitment Agreement to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred. However, nothing in this subsection is intended to preclude the Agency from continuing negotiations with the person complained against or from proceeding pursuant to the provisions of subsection (b) of this Section for alleged violations that remain the subject of disagreement between the Agency and the person complained against following fulfillment of the requirements of this subsection (a).

(11) Nothing in this subsection (a) is intended to preclude the person complained against from submitting to the Agency, by certified mail, at any time, notification that the person complained against consents to waiver of the requirements of subsections (a) and (b) of this Section.

(12) The Agency shall have the authority to adopt rules for the administration of subsection (a) of this Section. The rules shall be adopted in accordance with the provisions of the Illinois Administrative Procedure Act.

(b) For alleged violations that remain the subject of disagreement between the Agency and the person complained against following fulfillment of the requirements of subsection (a) of this Section, and for alleged violations of the terms or conditions of a Compliance Commitment Agreement entered into under subdivision (a)(7.5) of this Section as well as the alleged violations that are the subject of the Compliance Commitment Agreement, and as a precondition to the Agency's referral or request to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred for legal representation regarding an alleged violation that may be addressed pursuant to subsection (c) or (d) of this Section or pursuant to Section 42 of this Act, the Agency shall issue and serve, by certified mail, upon the person complained against a written notice informing that person that the Agency intends to pursue legal action. Such notice shall notify the person complained against of the violations to be alleged and offer the person an opportunity to meet with appropriate Agency personnel in an effort to resolve any alleged violations that could lead to the filing of a formal complaint. The meeting with Agency personnel shall be held within 30 days after receipt of notice served pursuant to this

subsection upon the person complained against, unless the Agency agrees to a postponement or the person notifies the Agency that he or she will not appear at a meeting within the 30-day time period. Nothing in this subsection is intended to preclude the Agency from following the provisions of subsection (c) or (d) of this Section or from requesting the legal representation of the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violations occurred for alleged violations which remain the subject of disagreement between the Agency and the person complained against after the provisions of this subsection are fulfilled.

(c)(1) For alleged violations which remain the subject of disagreement between the Agency and the person complained against following waiver pursuant to subdivision (10) of subsection (a) of this Section or fulfillment of the requirements of subsections (a) and (b) of this Section, the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred shall issue and serve upon the person complained against a written notice, together with a formal complaint, which shall specify the provision of the Act, rule, regulation, permit, or term or condition thereof under which such person is said to be in violation and a statement of the manner in and the extent to which such person is said to violate the Act, rule, regulation, permit, or term or condition thereof and shall require the person so complained against to answer the charges of such formal complaint at a hearing before the Board at a time not less than 21 days after the date of notice by the Board, except as provided in Section 34 of this Act. Such complaint shall be accompanied by a notification to the defendant that financing may be available, through the Illinois Environmental Facilities Financing Act, to correct such violation. A copy of such notice of such hearings shall also be sent to any person that has complained to the Agency respecting the respondent within the six months preceding the date of the complaint, and to any person in the county in which the offending activity occurred that has requested notice of enforcement proceedings; 21 days notice of such hearings shall also be published in a newspaper of general circulation in such county. The respondent may file a written answer, and at such hearing the rules prescribed in Sections 32 and 33 of this Act shall apply. In the case of actual or threatened acts outside Illinois contributing to environmental damage in Illinois, the extraterritorial service-of-process provisions of Sections 2-208 and 2-209 of the Code of Civil Procedure shall apply.

With respect to notices served pursuant to this subsection (c)(1) that involve hazardous material or wastes in any manner, the Agency shall annually publish a list of all such notices served. The list shall include the date the investigation commenced, the date notice was sent, the date the matter was referred to the Attorney General, if applicable, and the current status of the matter.

(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written

demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

(3) Notwithstanding the provisions of subdivision (1) of this subsection (c), if the Agency becomes aware of a violation of this Act arising from, or as a result of, voluntary pollution prevention activities, the Agency shall not proceed with the written notice required by subsection (a) of this Section unless:

(A) the person fails to take corrective action or eliminate the reported violation within a reasonable time; or

(B) the Agency believes that the violation poses a substantial and imminent danger to the public health or welfare or the environment. For the purposes of this item (B), "substantial and imminent danger" means a danger with a likelihood of serious or irreversible harm.

(d)(1) Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order. The complainant shall immediately serve a copy of such complaint upon the person or persons named therein. Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein, in accord with subsection (c) of this Section.

(2) Whenever a complaint has been filed by a person other than the Attorney General or the State's Attorney, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the hearing requirement of subdivision (c)(1) of this Section. Unless the Board, in its discretion, concludes that a hearing should be held, no hearing on the stipulation and proposal for settlement is required.

(e) In hearings before the Board under this Title the burden shall be on the Agency or other complainant to show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof. If such proof has been made, the burden shall be on the respondent to show that compliance with the Board's regulations would impose an arbitrary or unreasonable hardship.

(f) The provisions of this Section shall not apply to administrative citation actions commenced under Section 31.1 of this Act.

(Source: P.A. 100-1080, eff. 8-24-18.)

(415 ILCS 5/31.1) (from Ch. 111 1/2, par. 1031.1)

Sec. 31.1. Administrative citation.

(a) The prohibitions specified in subsections (o) and (p) of Section 21 and subsection (k) of Section 55 of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act. Violations of Sections 22.38, 22.51, and 22.51a of this Act shall be enforceable either by administrative citation under this Section or as otherwise provided by this Act.

(b) Whenever Agency personnel or personnel of a unit of local government to which the Agency has delegated its functions pursuant to subsection (r) of Section 4 of this Act, on the basis of direct observation, determine that any person has violated any provision of subsection (o) or (p) of Section 21,

Section 22.38, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of this Act, the Agency or such unit of local government may issue and serve an administrative citation upon such person within not more than 60 days after the date of the observed violation. Each such citation issued shall be served upon the person named therein or such person's authorized agent for service of process, and shall include the following information:

(1) a statement specifying the provisions of subsection (o) or (p) of Section 21, Section 22.38, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of which the person was observed to be in violation;

(2) a copy of the inspection report in which the Agency or local government recorded the violation, which report shall include the date and time of inspection, and weather conditions prevailing during the inspection;

(3) the penalty imposed by subdivision (b)(4) or (b)(4-5) of Section 42 for such violation;

(4) instructions for contesting the administrative citation findings pursuant to this Section, including notification that the person has 35 days within which to file a petition for review before the Board to contest the administrative citation; and

(5) an affidavit by the personnel observing the violation, attesting to their material actions and observations.

(c) The Agency or unit of local government shall file a copy of each administrative citation served under subsection (b) of this Section with the Board no later than 10 days after the date of service.

(d) (1) If the person named in the administrative citation fails to petition the Board for review within 35 days from the date of service, the Board shall adopt a final order, which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42.

(2) If a petition for review is filed before the Board to contest an administrative citation issued under subsection (b) of this Section, the Agency or unit of local government shall appear as a complainant at a hearing before the Board to be conducted pursuant to Section 32 of this Act at a time not less than 21 days after notice of such hearing has been sent by the Board to the Agency or unit of local government and the person named in the citation. In such hearings, the burden of proof shall be on the Agency or unit of local government. If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) or (b)(4-5) of Section 42. However, if the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.

(e) Sections 10-25 through 10-60 of the Illinois Administrative Procedure Act shall not apply to any administrative citation issued under subsection (b) of this Section.

(f) The other provisions of this Section shall not apply to a sanitary landfill operated by a unit of local government solely for the purpose of disposing of water and sewage treatment plant sludges, including necessary stabilizing materials.

(g) All final orders issued and entered by the Board pursuant to this Section shall be enforceable by injunction, mandamus or other appropriate remedy, in accordance with Section 42 of this Act.
(Source: P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/31.2) (from Ch. 111 1/2, par. 1031.2)

Sec. 31.2. A landowner who provides information to the Agency in good faith concerning a name, address or other evidence of a person's identity found in garbage or other solid waste illegally dumped on the landowner's land shall have no liability to that person for any action taken by the Agency against the person as a result of the information provided by the landowner.
(Source: P.A. 86-1195.)

(415 ILCS 5/32) (from Ch. 111 1/2, par. 1032)

Sec. 32. All hearings under this Title shall be held before a qualified hearing officer, who may be attended by at least one member of the Board, designated by the Chairman. All such hearings shall be open to the public, and any person may submit written statements to the Board in connection with the subject thereof. In addition, the Board may permit any person to offer oral testimony.

Any party to a hearing under this subsection may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions. All testimony taken before the Board shall be recorded stenographically. The transcript so recorded, and any additional matter accepted for the record, shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original.
(Source: P.A. 76-2429.)

(415 ILCS 5/33) (from Ch. 111 1/2, par. 1033)

Sec. 33. Board orders.

(a) After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at the hearing, or upon default in appearance of the respondent on return day specified in the notice, the Board shall issue and enter such final order, or make such final determination, as it shall deem appropriate under the circumstances. It shall not be a defense to findings of violations of the provisions of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or a bar to the assessment of civil penalties that the person has come into compliance subsequent to the violation, except where such action is barred by any applicable State or federal statute of limitation. In all such matters the Board shall file and publish a written opinion stating the facts and reasons leading to its decision. The Board shall immediately notify the respondent of such order in writing by registered mail.

(b) Such order may include a direction to cease and desist from violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, and/or the imposition by the Board of civil penalties in accord with Section 42 of this Act. The Board may also revoke the permit as a penalty for violation. If such order includes a reasonable delay during which to correct a violation, the Board may require the posting of sufficient performance bond or other security to assure the correction of such violation within the time prescribed.

(c) In making its orders and determinations, the Board shall

take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

(i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

(ii) the social and economic value of the pollution source;

(iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

(iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

(v) any subsequent compliance.

Whenever a proceeding before the Board may affect the right of the public individually or collectively to the use of community sewer or water facilities provided by a municipally owned or publicly regulated company, the Board shall at least 30 days prior to the scheduled date of the first hearing in such proceeding, give notice of the date, time, place, and purpose of such hearing by public advertisement in a newspaper of general circulation in the area of the State concerned. The Board shall conduct a full and complete hearing into the social and economic impact which would result from restriction or denial of the right to use such facilities and allow all persons claiming an interest to intervene as parties and present evidence of such social and economic impact.

(d) All orders issued and entered by the Board pursuant to this Section shall be enforceable by injunction, mandamus, or other appropriate remedy, in accordance with Section 42 of this Act.

(Source: P.A. 93-152, eff. 7-10-03.)

(415 ILCS 5/34) (from Ch. 111 1/2, par. 1034)

Sec. 34. (a) Upon a finding that episode or emergency conditions specified in Board regulations exist, the Agency shall declare such alerts or emergencies as provided by those regulations. While such an alert or emergency is in effect, the Agency may seal any equipment, vehicle, vessel, aircraft, or other facility operated in violation of such regulations.

(b) In cases other than those identified in subsection (a) of this Section:

(1) At any pollution control facility where the Agency finds that an emergency condition exists creating an immediate danger to public health or welfare or the environment, the Agency may seal any equipment, vehicle, vessel, aircraft, or other facility contributing to the emergency condition; and

(2) At any other site or facility where the Agency finds that an imminent and substantial endangerment to the public health or welfare or the environment exists, the Agency may seal any equipment, vehicle, vessel, aircraft, or other facility contributing to the imminent and substantial endangerment.

(c) It shall be a Class A misdemeanor to break any seal affixed under this section, or to operate any sealed equipment, vehicle, vessel, aircraft, or other facility until the seal is removed according to law.

(d) The owner or operator of any equipment, vehicle, vessel, aircraft or other facility sealed pursuant to this section is entitled to a hearing in accord with Section 32 of this Act to

determine whether the seal should be removed; except that in such hearing at least one Board member shall be present, and those Board members present may render a final decision without regard to the requirements of paragraph (a) of Section 5 of this Act. The petitioner may also seek immediate injunctive relief.
(Source: P.A. 94-272, eff. 7-19-05.)

(415 ILCS 5/Tit. IX heading)
TITLE IX: VARIANCES AND TIME-LIMITED WATER QUALITY STANDARDS
(Source: P.A. 99-937, eff. 2-24-17.)

(415 ILCS 5/35) (from Ch. 111 1/2, par. 1035)

Sec. 35. Variances; general provisions. To the extent consistent with applicable provisions of the Federal Water Pollution Control Act, as now or hereafter amended, the Federal Safe Drinking Water Act (P.L. 93-523), as now or hereafter amended, the Clean Air Act as amended in 1977 (P.L. 95-95), and regulations pursuant thereto, and to the extent consistent with applicable provisions of the Federal Resource Conservation and Recovery Act of 1976 (P.L. 94-580), and regulations pursuant thereto:

(a) The Board may grant individual variances beyond the limitations prescribed in this Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. However, the Board is not required to find that an arbitrary or unreasonable hardship exists exclusively because the regulatory standard is under review and the costs of compliance are substantial and certain. In granting or denying a variance the Board shall file and publish a written opinion stating the facts and reasons leading to its decision.

(b) The Agency shall grant provisional variances whenever it is found, upon presentation of adequate proof, that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement, would impose an arbitrary or unreasonable hardship.
(Source: P.A. 93-152, eff. 7-10-03.)

(415 ILCS 5/36) (from Ch. 111 1/2, par. 1036)

Sec. 36. Variances and provisional variances.

(a) In granting a variance the Board may impose such conditions as the policies of this Act may require. If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of this Act or of the Board regulations, the Board shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the completion of the work covered by the variance. The Board shall have no authority to delegate to the Agency its powers to require such performance bond. The original amount of such performance bond shall not exceed the reasonable cost of the work to be completed pursuant to the variance. The obligation under such bond shall at no time exceed the reasonable cost of work remaining pursuant to the variance.

(b) Except as provided by Section 38 of this Act, any variance granted pursuant to the provisions of this Section shall be granted for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board,

but only if satisfactory progress has been shown.

(c) Any provisional variance granted by the Agency pursuant to subsection (b) of Section 35 shall be for a period of time not to exceed 45 days. A provisional variance may be extended up to an additional 45 days by written decision of the Agency. The provisional variances granted to any one person shall not exceed a total of 90 days during any calendar year.
(Source: P.A. 93-152, eff. 7-10-03.)

(415 ILCS 5/37) (from Ch. 111 1/2, par. 1037)

Sec. 37. Variances; procedures.

(a) Any person seeking a variance pursuant to subsection (a) of Section 35 shall do so by filing a petition for variance with the Board and providing a copy of the petition to the Agency. Any person filing such a petition shall (i) pay a filing fee, (ii) promptly give written notice of such petition to any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions, the State's attorney of such county, the Chairman of the County Board of such county, and to each member of the General Assembly from the legislative district in which that installation or property is located, and (iii) publish a single notice of such petition in a newspaper of general circulation in such county. The notices required by this Section shall be in a format prescribed by the Board and shall include the street address, and if there is no street address then the legal description or the location with reference to any well known landmark, highway, road, thoroughfare or intersection.

The Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance. The Agency shall make a recommendation to the Board as to the disposition of the petition. If the Board, in its discretion, concludes that a hearing would be advisable, or if the Agency or any other person files a written objection to the grant of such variance within 21 days, together with a written request for hearing, then a hearing shall be held, under the rules prescribed in Sections 32 and 33 (a) of this Act, and the burden of proof shall be on the petitioner.

(b) Any person seeking a provisional variance pursuant to subsection (b) of Section 35 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. If the Agency fails to take final action within 30 days after receipt of the request for a provisional variance, or if the Agency denies the request, the person may initiate a proceeding with the Board under subsection (a) of Section 35.

If the Agency grants a provisional variance, the Agency must promptly file a copy of its written decision with the Board, and shall give prompt notice of its action to the public by issuing a press release for distribution to newspapers of general circulation in the county. The Board must maintain for public inspection copies of all provisional variances filed with it by the Agency.
(Source: P.A. 98-822, eff. 8-1-14.)

(415 ILCS 5/38) (from Ch. 111 1/2, par. 1038)

Sec. 38. (a) Except as otherwise provided in subsection (c), if the Board fails to take final action upon a variance request within 120 days after the filing of the petition or the receipt of a request for hearing pursuant to subsection (a) of Section 37, whichever is later, the petitioner may deem the request granted under this Act, for a period not to exceed one year. However, the period of 120 days shall not run for any such period of time, not to exceed 30 days, during which the Board is

without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act, provided that such 120 day period shall not be stayed for lack of quorum beyond 30 days regardless of whether the lack of quorum exists at the beginning of such 120 day period or occurs during the running of such 120 day period.

(b) If any person files a petition for a variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, UIC, or NPDES program shall not be stayed.

The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter. All the provisions of this Title shall apply to petitions for extension of existing variances and to proposed Contaminant Reduction programs designed to secure delayed compliance with the Act or with Board regulations.

(c) Subsection (a) shall not apply to a request for a variance from any provision of this Act or any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, UIC, or NPDES program. If the Board fails to take final action on any request for a variance from any such rule or regulation within 120 days of the filing of the petition, the Petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act.
(Source: P.A. 87-914.)

(415 ILCS 5/38.5)

Sec. 38.5. Time-limited water quality standards.

(a) To the extent consistent with the Federal Water Pollution Control Act, rules adopted by the United States Environmental Protection Agency under that Act, this Section, and rules adopted by the Board under this Section, the Board may adopt, and may conduct non-adjudicatory proceedings to adopt, a time-limited water quality standard for a watershed or one or more of the following:

(1) water bodies;

(2) waterbody segments; or

(3) dischargers.

(b) A time-limited water quality standard may be sought by:

(1) persons who file with the Board a petition for a time-limited water quality standard under this Section; and

(2) persons who have a petition for a variance from a water quality standard under Section 35 of this Act converted into a petition for a time-limited water quality standard under subsection (c) of this Section.

(c) Any petition for a variance from a water quality standard under Section 35 of this Act that was filed with the Board before the effective date of this amendatory Act of the 99th General Assembly and that has not been disposed of by the Board shall be converted, by operation of law, into a petition for a time-limited water quality standard under this Section on the effective date of this amendatory Act of the 99th General Assembly.

(d) The Board's hearings concerning the adoption of time-limited water quality standards shall be open to the public and must be held in compliance with 40 CFR 131.14, including, but not limited to, the public notice and participation requirements referenced in 40 CFR 25 and 40 CFR 131.20(b); this Section; and rules adopted by the Board under this Section.

(e) Within 21 days after any petition for a time-limited

water quality standard is filed with the Board under this Section, or within 21 days after the effective date of this amendatory Act of the 99th General Assembly in the case of a petition for time-limited water quality standard created under subsection (c) of this Section, the Agency shall file with the Board a response that:

(1) identifies the discharger or classes of dischargers affected by the water quality standard from which relief is sought;

(2) identifies the watershed, water bodies, or waterbody segments affected by the water quality standard from which relief is sought;

(3) identifies the appropriate type of time-limited water quality standard, based on factors, such as the nature of the pollutant, the condition of the affected water body, and the number and type of dischargers; and

(4) recommends, for the purposes of subsection (h), prompt deadlines for the classes of dischargers to file a substantially compliant petition.

(f) Within 30 days after receipt of a response from the Agency under subsection (e) of this Section, the Board shall enter a final order that establishes the discharger or classes of dischargers that may be covered by the time-limited water quality standard and prompt deadlines by which the discharger and dischargers in the identified classes must, for the purposes of subsection (h), file with the Board either:

(1) a petition for a time-limited water quality standard, if the petition has not been previously filed; or

(2) an amended petition for a time-limited water quality standard, if the petition has been previously filed and it is necessary to file an amended petition to maintain a stay under paragraph (3) of subsection (h) of this Section.

(g) As soon as practicable after entering an order under subsection (f), the Board shall conduct an evaluation of the petition to assess its substantial compliance with 40 CFR 131.14, this Section, and rules adopted pursuant to this Section. After the Board determines that a petition is in substantial compliance with those requirements, the Agency shall file a recommendation concerning the petition.

(h)(1) The effectiveness of a water quality standard from which relief is sought shall be stayed as to the following persons from the effective date of the water quality standard until the stay is terminated as provided in this subsection:

(A) any person who has a petition for a variance seeking relief from a water quality standard under Section 35 of this Act converted into a petition for a time-limited water quality standard under subsection (c) of this Section;

(B) any person who files a petition for a time-limited water quality standard within 35 days after the effective date of the water quality standard from which relief is sought; and

(C) any person, not covered by subparagraph (B) of this subsection, who is a member of a class of dischargers that is identified in a Board order under subsection (f) that concerns a petition for a time-limited water quality standard that was filed within 35 days after the effective date of the water quality standard from which relief is sought and who files a petition for a time-limited water quality standard before the deadline established for that class under subsection (f) of this Section.

(2) If the Board determines that the petition of a

person described in paragraph (1) of this subsection is in substantial compliance, then the stay shall continue until the Board:

(A) denies the petition and all rights to judicial review of the Board order denying the petition are exhausted; or

(B) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:

(i) approves the time-limited water quality standard; or

(ii) disapproves the time-limited water quality standard for failure to comply with 40 CFR 131.14.

(3) If the Board determines that the petition of a person described in paragraph (1) of this subsection is not in substantial compliance, then the Board shall enter an interim order that identifies the deficiencies in the petition that must be corrected for the petition to be in substantial compliance. The petitioner must file an amended petition by the deadlines adopted by the Board pursuant to subsection (f), and the Board shall enter, after the applicable Board-established deadline, a final order that determines whether the amended petition is in substantial compliance.

(4) If the Board determines that the amended petition described in paragraph (3) of this subsection is in substantial compliance, then the stay shall continue until the Board:

(A) denies the petition and all rights to judicial review of the Board order denying the petition are exhausted; or

(B) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:

(i) approves the time-limited water quality standard; or

(ii) disapproves the time-limited water quality standard for failure to comply with 40 CFR 131.14.

(5) If the Board determines that the amended petition described in paragraph (3) of this subsection is not in substantial compliance by the Board-established deadline, the Board shall deny the petition and the stay shall continue until all rights to judicial review are exhausted.

(6) If the Board determines that a petition for a time-limited water quality standard is not in substantial compliance and if the person fails to file, on or before the Board-established deadline, an amended petition, the Board shall dismiss the petition and the stay shall continue until all rights to judicial review are exhausted.

(7) If a person other than a person described in paragraph (1) of subsection (h) of this Section files a petition for a time-limited water quality standard, then the effectiveness of the water quality standard from which relief is sought shall not be stayed as to that person. However, the person may seek a time-limited water quality standard from the Board by complying with 40 CFR 131.14, this Section, and rules adopted pursuant to this Section.

(i) Each time-limited water quality standard adopted by the Board for more than one discharger shall set forth criteria that may be used by dischargers or classes of dischargers to obtain coverage under the time-limited water quality standard during its duration. Any discharger that has not obtained a time-

limited water quality standard may obtain coverage under a Board-approved time-limited water quality standard by satisfying, at the time of the renewal or modification of that person's federal National Pollutant Discharge Elimination System (NPDES) permit or at the time the person files an application for certification under Section 401 of the federal Clean Water Act, the Board-approved criteria for coverage under the time-limited water quality standard.

(j) Any person who is adversely affected or threatened by a final Board order entered pursuant to this Section may obtain judicial review of the Board order by filing a petition for review within 35 days after the date the Board order was served on the person affected by the order, under the provisions of the Administrative Review Law, and the rules adopted pursuant thereto, except that review shall be afforded directly in the appellate court for the district in which the cause of action arose and not in the circuit court. For purposes of judicial review under this subsection, a person is deemed to have been served with the Board's final order on the date on which the order is first published by the Board on its website.

No challenge to the validity of a final Board order under this Section shall be made in any enforcement proceeding under Title XII of this Act as to any issue that could have been raised in a timely petition for review under this subsection.

(k) Not later than 6 months after the effective date of this amendatory Act of the 99th General Assembly, the Agency shall propose, and not later than 9 months thereafter the Board shall adopt, rules that prescribe specific procedures and standards to be used by the Board when adopting time-limited water quality standards. The public notice and participation requirements in 40 CFR 25 and 40 CFR 131.20(b) shall be incorporated into the rules adopted under this subsection.

Until the rules adopted under this subsection are effective, the Board may adopt time-limited water quality standards to the full extent allowed under this Section and 40 C.F.R. 131.14.

(l) Section 5-35 of the Illinois Administrative Procedure Act, Title VII of this Act, and the other Sections in Title IX of this Act do not apply to Board proceedings under this Section.

(Source: P.A. 99-937, eff. 2-24-17.)

(415 ILCS 5/Tit. X heading)

TITLE X: PERMITS

(415 ILCS 5/39) (from Ch. 111 1/2, par. 1039)

Sec. 39. Issuance of permits; procedures.

(a) When the Board has by regulation required a permit for the construction, installation, or operation of any type of facility, equipment, vehicle, vessel, or aircraft, the applicant shall apply to the Agency for such permit and it shall be the duty of the Agency to issue such a permit upon proof by the applicant that the facility, equipment, vehicle, vessel, or aircraft will not cause a violation of this Act or of regulations hereunder. The Agency shall adopt such procedures as are necessary to carry out its duties under this Section. In making its determinations on permit applications under this Section the Agency may consider prior adjudications of noncompliance with this Act by the applicant that involved a release of a contaminant into the environment. In granting permits, the Agency may impose reasonable conditions specifically related to the applicant's past compliance history with this Act as necessary to correct, detect, or prevent

noncompliance. The Agency may impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit under this Section, the Agency shall transmit to the applicant within the time limitations of this Section specific, detailed statements as to the reasons the permit application was denied. Such statements shall include, but not be limited to, the following:

(i) the Sections of this Act which may be violated if the permit were granted;

(ii) the provision of the regulations, promulgated under this Act, which may be violated if the permit were granted;

(iii) the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(iv) a statement of specific reasons why the Act and the regulations might not be met if the permit were granted.

If there is no final action by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued; except that this time period shall be extended to 180 days when (1) notice and opportunity for public hearing are required by State or federal law or regulation, (2) the application which was filed is for any permit to develop a landfill subject to issuance pursuant to this subsection, or (3) the application that was filed is for a MSWLF unit required to issue public notice under subsection (p) of Section 39. The 90-day and 180-day time periods for the Agency to take final action do not apply to NPDES permit applications under subsection (b) of this Section, to RCRA permit applications under subsection (d) of this Section, to UIC permit applications under subsection (e) of this Section, or to CCR surface impoundment applications under subsection (y) of this Section.

The Agency shall publish notice of all final permit determinations for development permits for MSWLF units and for significant permit modifications for lateral expansions for existing MSWLF units one time in a newspaper of general circulation in the county in which the unit is or is proposed to be located.

After January 1, 1994 and until July 1, 1998, operating permits issued under this Section by the Agency for sources of air pollution permitted to emit less than 25 tons per year of any combination of regulated air pollutants, as defined in Section 39.5 of this Act, shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and regulations promulgated hereunder. Such operating permits shall expire 180 days after the date of such a request. The Board shall revise its regulations for the existing State air pollution operating permit program consistent with this provision by January 1, 1994.

After June 30, 1998, operating permits issued under this Section by the Agency for sources of air pollution that are not subject to Section 39.5 of this Act and are not required to have a federally enforceable State operating permit shall be required to be renewed only upon written request by the Agency consistent with applicable provisions of this Act and its rules. Such operating permits shall expire 180 days after the date of such a request. Before July 1, 1998, the Board shall revise its rules for the existing State air pollution operating permit program consistent with this paragraph and shall adopt rules that

require a source to demonstrate that it qualifies for a permit under this paragraph.

(b) The Agency may issue NPDES permits exclusively under this subsection for the discharge of contaminants from point sources into navigable waters, all as defined in the Federal Water Pollution Control Act, as now or hereafter amended, within the jurisdiction of the State, or into any well.

All NPDES permits shall contain those terms and conditions, including, but not limited to, schedules of compliance, which may be required to accomplish the purposes and provisions of this Act.

The Agency may issue general NPDES permits for discharges from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications and shall conform to regulations promulgated under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended.

The Agency may include, among such conditions, effluent limitations and other requirements established under this Act, Board regulations, the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto, and schedules for achieving compliance therewith at the earliest reasonable date.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

The Agency, subject to any conditions which may be prescribed by Board regulations, may issue NPDES permits to allow discharges beyond deadlines established by this Act or by regulations of the Board without the requirement of a variance, subject to the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

(c) Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act, no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the county board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act. For purposes of this subsection (c), and for purposes of Section 39.2 of this Act, the appropriate county board or governing body of the municipality shall be the county board of the county or the governing body of the municipality in which the facility is to be located as of the date when the application for siting approval is filed.

In the event that siting approval granted pursuant to Section 39.2 has been transferred to a subsequent owner or operator, that subsequent owner or operator may apply to the Agency for, and the Agency may grant, a development or construction permit for the facility for which local siting approval was granted. Upon application to the Agency for a development or construction permit by that subsequent owner or operator, the permit applicant shall cause written notice of the permit application to be served upon the appropriate county board or governing body of the municipality that granted siting approval for that facility and upon any party to the siting proceeding pursuant to which siting approval was granted. In that event, the Agency shall conduct an evaluation of the subsequent owner or operator's prior experience in waste

management operations in the manner conducted under subsection (i) of Section 39 of this Act.

Beginning August 20, 1993, if the pollution control facility consists of a hazardous or solid waste disposal facility for which the proposed site is located in an unincorporated area of a county with a population of less than 100,000 and includes all or a portion of a parcel of land that was, on April 1, 1993, adjacent to a municipality having a population of less than 5,000, then the local siting review required under this subsection (c) in conjunction with any permit applied for after that date shall be performed by the governing body of that adjacent municipality rather than the county board of the county in which the proposed site is located; and for the purposes of that local siting review, any references in this Act to the county board shall be deemed to mean the governing body of that adjacent municipality; provided, however, that the provisions of this paragraph shall not apply to any proposed site which was, on April 1, 1993, owned in whole or in part by another municipality.

In the case of a pollution control facility for which a development permit was issued before November 12, 1981, if an operating permit has not been issued by the Agency prior to August 31, 1989 for any portion of the facility, then the Agency may not issue or renew any development permit nor issue an original operating permit for any portion of such facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved by the appropriate county board or municipal governing body pursuant to Section 39.2 of this Act.

After January 1, 1994, if a solid waste disposal facility, any portion for which an operating permit has been issued by the Agency, has not accepted waste disposal for 5 or more consecutive calendar years, before that facility may accept any new or additional waste for disposal, the owner and operator must obtain a new operating permit under this Act for that facility unless the owner and operator have applied to the Agency for a permit authorizing the temporary suspension of waste acceptance. The Agency may not issue a new operation permit under this Act for the facility unless the applicant has submitted proof to the Agency that the location of the facility has been approved or re-approved by the appropriate county board or municipal governing body under Section 39.2 of this Act after the facility ceased accepting waste.

Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act, and except for new pollution control facilities governed by Section 39.2, and except for fossil fuel mining facilities, the granting of a permit under this Act shall not relieve the applicant from meeting and securing all necessary zoning approvals from the unit of government having zoning jurisdiction over the proposed facility.

Before beginning construction on any new sewage treatment plant or sludge drying site to be owned or operated by a sanitary district organized under the Metropolitan Water Reclamation District Act for which a new permit (rather than the renewal or amendment of an existing permit) is required, such sanitary district shall hold a public hearing within the municipality within which the proposed facility is to be located, or within the nearest community if the proposed facility is to be located within an unincorporated area, at which information concerning the proposed facility shall be made available to the public, and members of the public shall be given the opportunity to express their views concerning the proposed facility.

The Agency may issue a permit for a municipal waste transfer station without requiring approval pursuant to Section 39.2 provided that the following demonstration is made:

(1) the municipal waste transfer station was in existence on or before January 1, 1979 and was in continuous operation from January 1, 1979 to January 1, 1993;

(2) the operator submitted a permit application to the Agency to develop and operate the municipal waste transfer station during April of 1994;

(3) the operator can demonstrate that the county board of the county, if the municipal waste transfer station is in an unincorporated area, or the governing body of the municipality, if the station is in an incorporated area, does not object to resumption of the operation of the station; and

(4) the site has local zoning approval.

(d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste as defined under this Act. Subsection (y) of this Section, rather than this subsection (d), shall apply to permits issued for CCR surface impoundments.

All RCRA permits shall contain those terms and conditions, including, but not limited to, schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a RCRA permit.

In the case of a permit to operate a hazardous waste or PCB incinerator as defined in subsection (k) of Section 44, the Agency shall require, as a condition of the permit, that the operator of the facility perform such analyses of the waste to be incinerated as may be necessary and appropriate to ensure the safe operation of the incinerator.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of RCRA permits, and which are consistent with the Act or regulations adopted by the Board, and with the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(e) The Agency may issue UIC permits exclusively under this subsection to persons owning or operating a facility for the underground injection of contaminants as defined under this Act.

All UIC permits shall contain those terms and conditions, including, but not limited to, schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto, and may include

schedules for achieving compliance therewith. The Agency shall require that a performance bond or other security be provided as a condition for the issuance of a UIC permit.

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of UIC permits, and which are consistent with the Act or regulations adopted by the Board, and with the Safe Drinking Water Act (P.L. 93-523), as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, at the office of the county board or governing body of the municipality. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office. The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(f) In making any determination pursuant to Section 9.1 of this Act:

(1) The Agency shall have authority to make the determination of any question required to be determined by the Clean Air Act, as now or hereafter amended, this Act, or the regulations of the Board, including the determination of the Lowest Achievable Emission Rate, Maximum Achievable Control Technology, or Best Available Control Technology, consistent with the Board's regulations, if any.

(2) The Agency shall adopt requirements as necessary to implement public participation procedures, including, but not limited to, public notice, comment, and an opportunity for hearing, which must accompany the processing of applications for PSD permits. The Agency shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The Agency may group related comments together and provide one unified response for each issue raised.

(3) Any complete permit application submitted to the Agency under this subsection for a PSD permit shall be granted or denied by the Agency not later than one year after the filing of such completed application.

(4) The Agency shall, after conferring with the applicant, give written notice to the applicant of its proposed decision on the application, including the terms and conditions of the permit to be issued and the facts, conduct, or other basis upon which the Agency will rely to support its proposed action.

(g) The Agency shall include as conditions upon all permits issued for hazardous waste disposal sites such restrictions upon the future use of such sites as are reasonably necessary to protect public health and the environment, including permanent prohibition of the use of such sites for purposes which may create an unreasonable risk of injury to human health or to the environment. After administrative and judicial challenges to such restrictions have been exhausted, the Agency shall file such restrictions of record in the Office of the Recorder of the county in which the hazardous waste disposal site is located.

(h) A hazardous waste stream may not be deposited in a permitted hazardous waste site unless specific authorization is obtained from the Agency by the generator and disposal site owner and operator for the deposit of that specific hazardous waste stream. The Agency may grant specific authorization for disposal of hazardous waste streams only after the generator has reasonably demonstrated that, considering technological feasibility and economic reasonableness, the hazardous waste

cannot be reasonably recycled for reuse, nor incinerated or chemically, physically, or biologically treated so as to neutralize the hazardous waste and render it nonhazardous. In granting authorization under this Section, the Agency may impose such conditions as may be necessary to accomplish the purposes of the Act and are consistent with this Act and regulations promulgated by the Board hereunder. If the Agency refuses to grant authorization under this Section, the applicant may appeal as if the Agency refused to grant a permit, pursuant to the provisions of subsection (a) of Section 40 of this Act. For purposes of this subsection (h), the term "generator" has the meaning given in Section 3.205 of this Act, unless: (1) the hazardous waste is treated, incinerated, or partially recycled for reuse prior to disposal, in which case the last person who treats, incinerates, or partially recycles the hazardous waste prior to disposal is the generator; or (2) the hazardous waste is from a response action, in which case the person performing the response action is the generator. This subsection (h) does not apply to any hazardous waste that is restricted from land disposal under 35 Ill. Adm. Code 728.

(i) Before issuing any RCRA permit, any permit for a waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, waste incinerator, or any waste-transportation operation, any permit or interim authorization for a clean construction or demolition debris fill operation, or any permit required under subsection (d-5) of Section 55, the Agency shall conduct an evaluation of the prospective owner's or operator's prior experience in waste management operations, clean construction or demolition debris fill operations, and tire storage site management. The Agency may deny such a permit, or deny or revoke interim authorization, if the prospective owner or operator or any employee or officer of the prospective owner or operator has a history of:

(1) repeated violations of federal, State, or local laws, regulations, standards, or ordinances in the operation of waste management facilities or sites, clean construction or demolition debris fill operation facilities or sites, or tire storage sites; or

(2) conviction in this or another State of any crime which is a felony under the laws of this State, or conviction of a felony in a federal court; or conviction in this or another state or federal court of any of the following crimes: forgery, official misconduct, bribery, perjury, or knowingly submitting false information under any environmental law, regulation, or permit term or condition; or

(3) proof of gross carelessness or incompetence in handling, storing, processing, transporting, or disposing of waste, clean construction or demolition debris, or used or waste tires, or proof of gross carelessness or incompetence in using clean construction or demolition debris as fill.

(i-5) Before issuing any permit or approving any interim authorization for a clean construction or demolition debris fill operation in which any ownership interest is transferred between January 1, 2005, and the effective date of the prohibition set forth in Section 22.52 of this Act, the Agency shall conduct an evaluation of the operation if any previous activities at the site or facility may have caused or allowed contamination of the site. It shall be the responsibility of the owner or operator seeking the permit or interim authorization to provide to the Agency all of the information necessary for the Agency to conduct its evaluation. The Agency may deny a permit or interim authorization if previous activities at the site may have caused or allowed contamination at the site, unless such contamination is authorized under any permit issued by the Agency.

(j) The issuance under this Act of a permit to engage in the surface mining of any resources other than fossil fuels shall not relieve the permittee from its duty to comply with any applicable local law regulating the commencement, location, or operation of surface mining facilities.

(k) A development permit issued under subsection (a) of Section 39 for any facility or site which is required to have a permit under subsection (d) of Section 21 shall expire at the end of 2 calendar years from the date upon which it was issued, unless within that period the applicant has taken action to develop the facility or the site. In the event that review of the conditions of the development permit is sought pursuant to Section 40 or 41, or permittee is prevented from commencing development of the facility or site by any other litigation beyond the permittee's control, such two-year period shall be deemed to begin on the date upon which such review process or litigation is concluded.

(l) No permit shall be issued by the Agency under this Act for construction or operation of any facility or site located within the boundaries of any setback zone established pursuant to this Act, where such construction or operation is prohibited.

(m) The Agency may issue permits to persons owning or operating a facility for composting landscape waste. In granting such permits, the Agency may impose such conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with applicable regulations promulgated by the Board. Except as otherwise provided in this Act, a bond or other security shall not be required as a condition for the issuance of a permit. If the Agency denies any permit pursuant to this subsection, the Agency shall transmit to the applicant within the time limitations of this subsection specific, detailed statements as to the reasons the permit application was denied. Such statements shall include but not be limited to the following:

(1) the Sections of this Act that may be violated if the permit were granted;

(2) the specific regulations promulgated pursuant to this Act that may be violated if the permit were granted;

(3) the specific information, if any, the Agency deems the applicant did not provide in its application to the Agency; and

(4) a statement of specific reasons why the Act and the regulations might be violated if the permit were granted.

If no final action is taken by the Agency within 90 days after the filing of the application for permit, the applicant may deem the permit issued. Any applicant for a permit may waive the 90-day limitation by filing a written statement with the Agency.

The Agency shall issue permits for such facilities upon receipt of an application that includes a legal description of the site, a topographic map of the site drawn to the scale of 200 feet to the inch or larger, a description of the operation, including the area served, an estimate of the volume of materials to be processed, and documentation that:

(1) the facility includes a setback of at least 200 feet from the nearest potable water supply well;

(2) the facility is located outside the boundary of the 10-year floodplain or the site will be floodproofed;

(3) the facility is located so as to minimize incompatibility with the character of the surrounding area, including at least a 200 foot setback from any residence, and in the case of a facility that is developed or the permitted composting area of which is expanded after

November 17, 1991, the composting area is located at least 1/8 mile from the nearest residence (other than a residence located on the same property as the facility);

(4) the design of the facility will prevent any compost material from being placed within 5 feet of the water table, will adequately control runoff from the site, and will collect and manage any leachate that is generated on the site;

(5) the operation of the facility will include appropriate dust and odor control measures, limitations on operating hours, appropriate noise control measures for shredding, chipping and similar equipment, management procedures for composting, containment and disposal of non-compostable wastes, procedures to be used for terminating operations at the site, and recordkeeping sufficient to document the amount of materials received, composted, and otherwise disposed of; and

(6) the operation will be conducted in accordance with any applicable rules adopted by the Board.

The Agency shall issue renewable permits of not longer than 10 years in duration for the composting of landscape wastes, as defined in Section 3.155 of this Act, based on the above requirements.

The operator of any facility permitted under this subsection (m) must submit a written annual statement to the Agency on or before April 1 of each year that includes an estimate of the amount of material, in tons, received for composting.

(n) The Agency shall issue permits jointly with the Department of Transportation for the dredging or deposit of material in Lake Michigan in accordance with Section 18 of the Rivers, Lakes, and Streams Act.

(o) (Blank).

(p) (1) Any person submitting an application for a permit for a new MSWLF unit or for a lateral expansion under subsection (t) of Section 21 of this Act for an existing MSWLF unit that has not received and is not subject to local siting approval under Section 39.2 of this Act shall publish notice of the application in a newspaper of general circulation in the county in which the MSWLF unit is or is proposed to be located. The notice must be published at least 15 days before submission of the permit application to the Agency. The notice shall state the name and address of the applicant, the location of the MSWLF unit or proposed MSWLF unit, the nature and size of the MSWLF unit or proposed MSWLF unit, the nature of the activity proposed, the probable life of the proposed activity, the date the permit application will be submitted, and a statement that persons may file written comments with the Agency concerning the permit application within 30 days after the filing of the permit application unless the time period to submit comments is extended by the Agency.

When a permit applicant submits information to the Agency to supplement a permit application being reviewed by the Agency, the applicant shall not be required to reissue the notice under this subsection.

(2) The Agency shall accept written comments concerning the permit application that are postmarked no later than 30 days after the filing of the permit application, unless the time period to accept comments is extended by the Agency.

(3) Each applicant for a permit described in part (1) of this subsection shall file a copy of the permit application with the county board or governing body of the municipality in which the MSWLF unit is or is proposed to be located at the same time the application is submitted to the Agency. The permit application filed with the county board or governing body of the

municipality shall include all documents submitted to or to be submitted to the Agency, except trade secrets as determined under Section 7.1 of this Act. The permit application and other documents on file with the county board or governing body of the municipality shall be made available for public inspection during regular business hours at the office of the county board or the governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

(q) Within 6 months after July 12, 2011 (the effective date of Public Act 97-95), the Agency, in consultation with the regulated community, shall develop a web portal to be posted on its website for the purpose of enhancing review and promoting timely issuance of permits required by this Act. At a minimum, the Agency shall make the following information available on the web portal:

(1) Checklists and guidance relating to the completion of permit applications, developed pursuant to subsection (s) of this Section, which may include, but are not limited to, existing instructions for completing the applications and examples of complete applications. As the Agency develops new checklists and develops guidance, it shall supplement the web portal with those materials.

(2) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), permit application forms or portions of permit applications that can be completed and saved electronically, and submitted to the Agency electronically with digital signatures.

(3) Within 2 years after July 12, 2011 (the effective date of Public Act 97-95), an online tracking system where an applicant may review the status of its pending application, including the name and contact information of the permit analyst assigned to the application. Until the online tracking system has been developed, the Agency shall post on its website semi-annual permitting efficiency tracking reports that include statistics on the timeframes for Agency action on the following types of permits received after July 12, 2011 (the effective date of Public Act 97-95): air construction permits, new NPDES permits and associated water construction permits, and modifications of major NPDES permits and associated water construction permits. The reports must be posted by February 1 and August 1 each year and shall include:

(A) the number of applications received for each type of permit, the number of applications on which the Agency has taken action, and the number of applications still pending; and

(B) for those applications where the Agency has not taken action in accordance with the timeframes set forth in this Act, the date the application was received and the reasons for any delays, which may include, but shall not be limited to, (i) the application being inadequate or incomplete, (ii) scientific or technical disagreements with the applicant, USEPA, or other local, state, or federal agencies involved in the permitting approval process, (iii) public opposition to the permit, or (iv) Agency staffing shortages. To the extent practicable, the tracking report shall provide approximate dates when cause for delay was identified by the Agency, when the Agency informed the applicant of the problem leading to the delay, and when the applicant remedied the reason for the delay.

(r) Upon the request of the applicant, the Agency shall notify the applicant of the permit analyst assigned to the

application upon its receipt.

(s) The Agency is authorized to prepare and distribute guidance documents relating to its administration of this Section and procedural rules implementing this Section. Guidance documents prepared under this subsection shall not be considered rules and shall not be subject to the Illinois Administrative Procedure Act. Such guidance shall not be binding on any party.

(t) Except as otherwise prohibited by federal law or regulation, any person submitting an application for a permit may include with the application suggested permit language for Agency consideration. The Agency is not obligated to use the suggested language or any portion thereof in its permitting decision. If requested by the permit applicant, the Agency shall meet with the applicant to discuss the suggested language.

(u) If requested by the permit applicant, the Agency shall provide the permit applicant with a copy of the draft permit prior to any public review period.

(v) If requested by the permit applicant, the Agency shall provide the permit applicant with a copy of the final permit prior to its issuance.

(w) An air pollution permit shall not be required due to emissions of greenhouse gases, as specified by Section 9.15 of this Act.

(x) If, before the expiration of a State operating permit that is issued pursuant to subsection (a) of this Section and contains federally enforceable conditions limiting the potential to emit of the source to a level below the major source threshold for that source so as to exclude the source from the Clean Air Act Permit Program, the Agency receives a complete application for the renewal of that permit, then all of the terms and conditions of the permit shall remain in effect until final administrative action has been taken on the application for the renewal of the permit.

(y) The Agency may issue permits exclusively under this subsection to persons owning or operating a CCR surface impoundment subject to Section 22.59.

(z) If a mass animal mortality event is declared by the Department of Agriculture in accordance with the Animal Mortality Act:

(1) the owner or operator responsible for the disposal of dead animals is exempted from the following:

(i) obtaining a permit for the construction, installation, or operation of any type of facility or equipment issued in accordance with subsection (a) of this Section;

(ii) obtaining a permit for open burning in accordance with the rules adopted by the Board; and

(iii) registering the disposal of dead animals as an eligible small source with the Agency in accordance with Section 9.14 of this Act;

(2) as applicable, the owner or operator responsible for the disposal of dead animals is required to obtain the following permits:

(i) an NPDES permit in accordance with subsection (b) of this Section;

(ii) a PSD permit or an NA NSR permit in accordance with Section 9.1 of this Act;

(iii) a lifetime State operating permit or a federally enforceable State operating permit, in accordance with subsection (a) of this Section; or

(iv) a CAAPP permit, in accordance with Section 39.5 of this Act.

All CCR surface impoundment permits shall contain those terms and conditions, including, but not limited to, schedules

of compliance, which may be required to accomplish the purposes and provisions of this Act, Board regulations, the Illinois Groundwater Protection Act and regulations pursuant thereto, and the Resource Conservation and Recovery Act and regulations pursuant thereto, and may include schedules for achieving compliance therewith as soon as possible.

The Board shall adopt filing requirements and procedures that are necessary and appropriate for the issuance of CCR surface impoundment permits and that are consistent with this Act or regulations adopted by the Board, and with the RCRA, as amended, and regulations pursuant thereto.

The applicant shall make available to the public for inspection all documents submitted by the applicant to the Agency in furtherance of an application, with the exception of trade secrets, on its public internet website as well as at the office of the county board or governing body of the municipality where CCR from the CCR surface impoundment will be permanently disposed. Such documents may be copied upon payment of the actual cost of reproduction during regular business hours of the local office.

The Agency shall issue a written statement concurrent with its grant or denial of the permit explaining the basis for its decision.

(Source: P.A. 101-171, eff. 7-30-19; 102-216, eff. 1-1-22; 102-558, eff. 8-20-21; 102-813, eff. 5-13-22.)

(415 ILCS 5/39.1) (from Ch. 111 1/2, par. 1039.1)

Sec. 39.1. (a) In addition to such other procedures as may be available, owners or operators of emission sources individually or collectively, may apply for and obtain from the Agency permits under this Section authorizing the construction and operation, or both, of a source or sources by use of emission control strategies alternative but environmentally equivalent to emission limitations required of such sources by Board regulations or by the terms of this Act.

The Agency shall issue such a permit or permits upon a finding that: 1) the alternative control strategy in the permit provides for attainment in the aggregate, with respect to each regulated contaminant, of equivalent or less total emissions than would otherwise be required by Board regulations for the sources subject to such permit; and 2) that air quality will otherwise be maintained consistent with Board regulations.

(b) The Agency shall receive and process applications pursuant to subsection (a) of Section 39. The Agency may impose such permit conditions as are necessary and reasonable to assure enforceability of the permit and continuing compliance of the subject sources in the event of a change in ownership or operation of the subject sources.

(c) At least 30 days prior to the issuance of such a permit, the Agency shall give notice of the receipt of the permit application and the Agency's proposed decision in a newspaper of general circulation in the county or counties where any source to be covered by such permit is located and shall make all documents in its record available for public inspection in accordance with and to the extent provided by Sections 7 and 7.1. The Agency shall give such further notice and opportunity for public comment, if any, as is required by the Clean Air Act, for the specific permit application.

(d) The Agency shall, after conferring with the applicant, give detailed written notice to the applicant of the Agency's proposed decision on the application, including the terms and conditions of the permit to be issued and the facts, legal citation, conduct or other basis upon which the Agency will rely to support its proposed action. Following such notice, the

Agency shall give the applicant a reasonable opportunity for a hearing in accordance with procedures adopted by the Agency.

(e) The Agency shall act promptly upon permit applications pursuant to this Section. If the Agency fails to take final action within 180 days of receipt of a complete application, or if the application was amended, within 180 days of receipt of the last amended application, the applicant may deem the application approved as applied for or, if amended, as last amended.

(f) At the request of the applicant, permits approved pursuant to this Section shall be submitted by the Agency to the U.S. Environmental Protection Agency as revisions to the State Implementation Plan required by Section 110 of the Clean Air Act if and when necessary to comply with the Clean Air Act. The permit applicant shall be responsible for providing any information required by the U.S. Environmental Protection Agency to justify federal approval of a State Implementation Plan, except the Agency shall be responsible for provision of information acquired during its review and for provision of any record of the public hearing when applicable.

(g) Disapproval of a permit or approval thereof with conditions shall be subject to review by the Board pursuant to subsection (a) of Section 40, upon timely petition of the applicant.

(h) Except as expressly required by Section 9.3 (c), economic impact analysis, including the study of economic impact provided for in Section 27, shall not be required with respect to action under this Section, nor shall any source issued a permit hereunder be subject to the emission limitations of Board regulations, other than the limitations contained in the permit issued for such source hereunder.

(Source: P.A. 82-540.)

(415 ILCS 5/39.2) (from Ch. 111 1/2, par. 1039.2)

Sec. 39.2. Local siting review.

(a) The county board of the county or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, shall approve or disapprove the request for local siting approval for each pollution control facility which is subject to such review. An applicant for local siting approval shall submit sufficient details describing the proposed facility and evidence to demonstrate compliance, and local siting approval shall be granted only if the proposed facility meets the following criteria:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve;

(ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;

(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property;

(iv) (A) for a facility other than a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100 year flood plain or the site is flood-proofed; (B) for a facility that is a sanitary landfill or waste disposal site, the facility is located outside the boundary of the 100-year floodplain, or if the facility is a facility described in subsection (b)(3) of Section 22.19a, the site is flood-proofed;

(v) the plan of operations for the facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(vi) the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows;

(vii) if the facility will be treating, storing or disposing of hazardous waste, an emergency response plan exists for the facility which includes notification, containment and evacuation procedures to be used in case of an accidental release;

(viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means the plan that is in effect as of the date the application for siting approval is filed; and

(ix) if the facility will be located within a regulated recharge area, any applicable requirements specified by the Board for such areas have been met.

The county board or the governing body of the municipality may also consider as evidence the previous operating experience and past record of convictions or admissions of violations of the applicant (and any subsidiary or parent corporation) in the field of solid waste management when considering criteria (ii) and (v) under this Section.

If the facility is subject to the location restrictions in Section 22.14 of this Act, compliance with that Section shall be determined as of the date the application for siting approval is filed.

(b) No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located; provided, that the number of all feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement; provided further, that in no event shall this requirement exceed 400 feet, including public streets, alleys and other public ways.

Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located.

Such notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided.

(c) An applicant shall file a copy of its request with the county board of the county or the governing body of the municipality in which the proposed site is located. The request shall include (i) the substance of the applicant's proposal and (ii) all documents, if any, submitted as of that date to the Agency pertaining to the proposed facility, except trade secrets as determined under Section 7.1 of this Act. All such documents or other materials on file with the county board or governing

body of the municipality shall be made available for public inspection at the office of the county board or the governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

Any person may file written comment with the county board or governing body of the municipality concerning the appropriateness of the proposed site for its intended purpose. The county board or governing body of the municipality shall consider any comment received or postmarked not later than 30 days after the date of the last public hearing.

(d) At least one public hearing, at which an applicant shall present at least one witness to testify subject to cross-examination, is to be held by the county board or governing body of the municipality no sooner than 90 days but no later than 120 days after the date on which it received the request for site approval. No later than 14 days prior to such hearing, notice shall be published in a newspaper of general circulation published in the county of the proposed site, and delivered by certified mail to all members of the General Assembly from the district in which the proposed site is located, to the governing authority of every municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located, to the county board of the county where the proposed site is to be located, if the proposed site is located within the boundaries of a municipality, and to the Agency. Members or representatives of the governing authority of a municipality contiguous to the proposed site or contiguous to the municipality in which the proposed site is to be located and, if the proposed site is located in a municipality, members or representatives of the county board of a county in which the proposed site is to be located may appear at and participate in public hearings held pursuant to this Section. The public hearing shall develop a record sufficient to form the basis of appeal of the decision in accordance with Section 40.1 of this Act. The fact that a member of the county board or governing body of the municipality has publicly expressed an opinion on an issue related to a site review proceeding shall not preclude the member from taking part in the proceeding and voting on the issue.

(e) Decisions of the county board or governing body of the municipality are to be in writing, confirming a public hearing was held with testimony from at least one witness presented by the applicant, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section. In granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board. Such decision shall be available for public inspection at the office of the county board or governing body of the municipality and may be copied upon payment of the actual cost of reproduction. If there is no final action by the county board or governing body of the municipality within 180 days after the date on which it received the request for site approval, the applicant may deem the request approved.

At the public hearing, at any time prior to completion by the applicant of the presentation of the applicant's factual evidence, testimony, and an opportunity for cross-examination by the county board or governing body of the municipality and any participants, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection (k); in which case the time limitation for final action set forth in this subsection (e) shall be extended for an additional period of 90 days.

If, prior to making a final local siting decision, a county

board or governing body of a municipality has negotiated and entered into a host agreement with the local siting applicant, the terms and conditions of the host agreement, whether written or oral, shall be disclosed and made a part of the hearing record for that local siting proceeding. In the case of an oral agreement, the disclosure shall be made in the form of a written summary jointly prepared and submitted by the county board or governing body of the municipality and the siting applicant and shall describe the terms and conditions of the oral agreement.

(e-5) Siting approval obtained pursuant to this Section is transferable and may be transferred to a subsequent owner or operator. In the event that siting approval has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes and takes subject to any and all conditions imposed upon the prior owner or operator by the county board of the county or governing body of the municipality pursuant to subsection (e). However, any such conditions imposed pursuant to this Section may be modified by agreement between the subsequent owner or operator and the appropriate county board or governing body. Further, in the event that siting approval obtained pursuant to this Section has been transferred to a subsequent owner or operator, that subsequent owner or operator assumes all rights and obligations and takes the facility subject to any and all terms and conditions of any existing host agreement between the prior owner or operator and the appropriate county board or governing body.

(f) A local siting approval granted under this Section shall expire at the end of 2 calendar years from the date upon which it was granted, unless the local siting approval granted under this Section is for a sanitary landfill operation, in which case the approval shall expire at the end of 3 calendar years from the date upon which it was granted, and unless within that period the applicant has made application to the Agency for a permit to develop the site. In the event that the local siting decision has been appealed, such expiration period shall be deemed to begin on the date upon which the appeal process is concluded.

Except as otherwise provided in this subsection, upon the expiration of a development permit under subsection (k) of Section 39, any associated local siting approval granted for the facility under this Section shall also expire.

If a first development permit for a municipal waste incineration facility expires under subsection (k) of Section 39 after September 30, 1989 due to circumstances beyond the control of the applicant, any associated local siting approval granted for the facility under this Section may be used to fulfill the local siting approval requirement upon application for a second development permit for the same site, provided that the proposal in the new application is materially the same, with respect to the criteria in subsection (a) of this Section, as the proposal that received the original siting approval, and application for the second development permit is made before January 1, 1990.

(g) The siting approval procedures, criteria and appeal procedures provided for in this Act for new pollution control facilities shall be the exclusive siting procedures and rules and appeal procedures for facilities subject to such procedures. Local zoning or other local land use requirements shall not be applicable to such siting decisions.

(h) Nothing in this Section shall apply to any existing or new pollution control facility located within the corporate limits of a municipality with a population of over 1,000,000.

(i) (Blank.)

The Board shall adopt regulations establishing the geologic and hydrologic siting criteria necessary to protect usable

groundwater resources which are to be followed by the Agency in its review of permit applications for new pollution control facilities. Such regulations, insofar as they apply to new pollution control facilities authorized to store, treat or dispose of any hazardous waste, shall be at least as stringent as the requirements of the Resource Conservation and Recovery Act and any State or federal regulations adopted pursuant thereto.

(j) Any new pollution control facility which has never obtained local siting approval under the provisions of this Section shall be required to obtain such approval after a final decision on an appeal of a permit denial.

(k) A county board or governing body of a municipality may charge applicants for siting review under this Section a reasonable fee to cover the reasonable and necessary costs incurred by such county or municipality in the siting review process.

(l) The governing Authority as determined by subsection (c) of Section 39 of this Act may request the Department of Transportation to perform traffic impact studies of proposed or potential locations for required pollution control facilities.

(m) An applicant may not file a request for local siting approval which is substantially the same as a request which was disapproved pursuant to a finding against the applicant under any of criteria (i) through (ix) of subsection (a) of this Section within the preceding 2 years.

(n) In any review proceeding of a decision of the county board or governing body of a municipality made pursuant to the local siting review process, the petitioner in the review proceeding shall pay to the county or municipality the cost of preparing and certifying the record of proceedings. Should the petitioner in the review proceeding fail to make payment, the provisions of Section 3-109 of the Code of Civil Procedure shall apply.

In the event the petitioner is a citizens' group that participated in the siting proceeding and is so located as to be affected by the proposed facility, such petitioner shall be exempt from paying the costs of preparing and certifying the record.

(o) Notwithstanding any other provision of this Section, a transfer station used exclusively for landscape waste, where landscape waste is held no longer than 24 hours from the time it was received, is not subject to the requirements of local siting approval under this Section, but is subject only to local zoning approval.

(Source: P.A. 100-382, eff. 8-25-17.)

(415 ILCS 5/39.3) (from Ch. 111 1/2, par. 1039.3)

Sec. 39.3. Hazardous waste facilities.

(a) The provisions of this Section apply to any application for a permit under the Solid Waste Rules of the Board's Rules and Regulations to develop a new pollution control facility for the disposal of hazardous waste, and to any application to modify the development of an existing site or facility which would allow the disposal of hazardous waste for the first time. The requirements of this Section are in addition to any other procedures as may be required by law.

(b) Any application for a permit under this Section shall be made to the Agency, and shall be accompanied by proof that notice of the application has been served upon the Attorney General, the State's Attorney and the Chairman of the County Board of the county in which the facility is proposed to be located, each member of the General Assembly from the legislative district in which the facility is proposed to be

located, and the clerk of each municipality, any portion of which is within three miles of the boundary of the facility. Upon the request of any person upon whom notice is required to be served, the applicant shall promptly furnish a copy of the application to the person making the request.

(c) (i) Not more than 90 days after receipt of a complete application for a permit under this Section, the Agency shall give public notice of its preliminary determination to either issue or deny the permit, and shall give notice of the opportunity for a public hearing on that preliminary determination under this Section. Upon the request of the permit applicant, or of any other person who is admitted as a party pursuant to subsection (d), the Agency shall schedule a public hearing pursuant to subsection (e).

(ii) The Agency notice shall be published in a newspaper of general circulation in the county in which the site is proposed to be located, and shall be served upon the Attorney General, the State's Attorney and the Chairman of the County Board of the county in which the facility is proposed to be located, each member of the General Assembly from the legislative district in which the facility is proposed to be located, and the clerk of each municipality, any portion of which is within three miles of the boundary of the facility.

(iii) The contents, form, and manner of service of the Agency notice shall conform to the requirements of Section 10-25 of the Illinois Administrative Procedure Act.

(d) Within 60 days after the date of the Agency notice required by subsection (c) of this Section, any person who may be adversely affected by an Agency decision on the permit application may petition the Agency to intervene before the Agency as a party. The petition to intervene shall contain a short and plain statement identifying the petitioner and stating the petitioner's interest. The petitioner shall serve the petition upon the applicant for the permit and upon any other persons who have petitioned to intervene. Unless the Agency determines that the petition is duplicative or frivolous, it shall admit the petitioner as a party.

(e) (i) Not less than 60 days nor more than 180 days after the date of the Agency notice required by subsection (c) of this Section, the Agency shall commence the public hearing required by this Section.

(ii) The public hearing and other proceedings required by this Section shall be conducted in accordance with the provisions concerning contested cases of the Illinois Administrative Procedure Act.

(iii) The public hearing required by this Section may, with the concurrence of the Agency, the permit applicant and the County Board of the county or the governing body of the municipality, be conducted jointly with the public hearing required by Section 39.2 of this Act.

(iv) All documents submitted to the Agency in connection with the public hearing shall be reproduced and filed at the office of the county board or governing body of the municipality and may be copied upon payment of the actual cost of reproduction.

(f) Within sixty days of the completion of the public hearing required by this Section the Agency shall render a final decision either granting or denying the permit.

(g) The Agency shall adopt such procedural rules as may be necessary and appropriate to carry out its duties under this Section which are not inconsistent with the requirements of this Section. In adopting such procedural rules the Agency shall follow the requirements concerning rulemaking of the Illinois Administrative Procedure Act.

(h) This Section shall not apply to permits issued by the Agency pursuant to authority delegated from the United States pursuant to the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended, or the Safe Drinking Water Act, P.L. 93-523, as amended.
(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/39.4) (from Ch. 111 1/2, par. 1039.4)

Sec. 39.4. (a) Upon receipt of a joint application transmitted from the Department of Agriculture for an agrichemical facility construction or operation permit or a lawncare containment permit, the Agency may provide a written endorsement of the permit to be issued by the Department for such agrichemical facility or lawncare wash water containment area. The Agency's endorsement may be provided at any time prior to final action by the Department regarding the subject permit.

(b) For all purposes of this Act, an agrichemical facility permit or lawncare containment permit endorsed by the Agency pursuant to this Section shall be deemed to be a permit issued by the Agency pursuant to subsection (b) of Section 9 and subsection (b) of Section 12 of this Act. An agrichemical facility or a lawncare wash water containment area remains subject to all applicable permit requirements under this Act if the Department of Agriculture's agrichemical facility permit or lawncare containment permit has not been endorsed pursuant to subsection (a) of this Section.

(c) An agrichemical facility permit or a lawncare containment permit endorsed by the Agency shall not be subject to the annual fee provisions of Section 9.6 of this Act.
(Source: P.A. 88-474.)

(415 ILCS 5/39.5) (from Ch. 111 1/2, par. 1039.5)

Sec. 39.5. Clean Air Act Permit Program.

1. Definitions. For purposes of this Section:

"Administrative permit amendment" means a permit revision subject to subsection 13 of this Section.

"Affected source for acid deposition" means a source that includes one or more affected units under Title IV of the Clean Air Act.

"Affected States" for purposes of formal distribution of a draft CAAPP permit to other States for comments prior to issuance, means all States:

(1) Whose air quality may be affected by the source covered by the draft permit and that are contiguous to Illinois; or

(2) That are within 50 miles of the source.

"Affected unit for acid deposition" shall have the meaning given to the term "affected unit" in the regulations promulgated under Title IV of the Clean Air Act.

"Applicable Clean Air Act requirement" means all of the following as they apply to emissions units in a source (including regulations that have been promulgated or approved by USEPA pursuant to the Clean Air Act which directly impose requirements upon a source and other such federal requirements which have been adopted by the Board. These may include requirements and regulations which have future effective compliance dates. Requirements and regulations will be exempt if USEPA determines that such requirements need not be contained in a Title V permit):

(1) Any standard or other requirement provided for in the applicable state implementation plan approved or promulgated by USEPA under Title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to the state Implementation Plan

promulgated in 40 CFR Part 52, Subparts A and O and other subparts applicable to Illinois. For purposes of this paragraph (1) of this definition, "any standard or other requirement" means only such standards or requirements directly enforceable against an individual source under the Clean Air Act.

(2)(i) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated by USEPA under Title I of the Clean Air Act, including Part C or D of the Clean Air Act.

(ii) Any term or condition as required pursuant to Section 39.5 of any federally enforceable State operating permit issued pursuant to regulations approved or promulgated by USEPA under Title I of the Clean Air Act, including Part C or D of the Clean Air Act.

(3) Any standard or other requirement under Section 111 of the Clean Air Act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the Clean Air Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Clean Air Act.

(5) Any standard or other requirement of the acid rain program under Title IV of the Clean Air Act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Clean Air Act.

(7) Any standard or other requirement governing solid waste incineration, under Section 129 of the Clean Air Act.

(8) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Clean Air Act.

(9) Any standard or other requirement for tank vessels, under Section 183(f) of the Clean Air Act.

(10) Any standard or other requirement of the program to control air pollution from Outer Continental Shelf sources, under Section 328 of the Clean Air Act.

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless USEPA has determined that such requirements need not be contained in a Title V permit.

(12) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Clean Air Act.

"Applicable requirement" means all applicable Clean Air Act requirements and any other standard, limitation, or other requirement contained in this Act or regulations promulgated under this Act as applicable to sources of air contaminants (including requirements that have future effective compliance dates).

"CAAPP" means the Clean Air Act Permit Program, developed pursuant to Title V of the Clean Air Act.

"CAAPP application" means an application for a CAAPP permit.

"CAAPP Permit" or "permit" (unless the context suggests otherwise) means any permit issued, renewed, amended, modified or revised pursuant to Title V of the Clean Air Act.

"CAAPP source" means any source for which the owner or operator is required to obtain a CAAPP permit pursuant to subsection 2 of this Section.

"Clean Air Act" means the Clean Air Act, as now and hereafter amended, 42 U.S.C. 7401, et seq.

"Designated representative" has the meaning given to it in

Section 402(26) of the Clean Air Act and the regulations promulgated thereunder, which state that the term "designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in all matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

"Draft CAAPP permit" means the version of a CAAPP permit for which public notice and an opportunity for public comment and hearing is offered by the Agency.

"Effective date of the CAAPP" means the date that USEPA approves Illinois' CAAPP.

"Emission unit" means any part or activity of a stationary source that emits or has the potential to emit any air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Clean Air Act.

"Federally enforceable" means enforceable by USEPA.

"Final permit action" means the Agency's granting with conditions, refusal to grant, renewal of, or revision of a CAAPP permit, the Agency's determination of incompleteness of a submitted CAAPP application, or the Agency's failure to act on an application for a permit, permit renewal, or permit revision within the time specified in subsection 13, subsection 14, or paragraph (j) of subsection 5 of this Section.

"General permit" means a permit issued to cover numerous similar sources in accordance with subsection 11 of this Section.

"Major source" means a source for which emissions of one or more air pollutants meet the criteria for major status pursuant to paragraph (c) of subsection 2 of this Section.

"Maximum achievable control technology" or "MACT" means the maximum degree of reductions in emissions deemed achievable under Section 112 of the Clean Air Act.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

"Permit modification" means a revision to a CAAPP permit that cannot be accomplished under the provisions for administrative permit amendments under subsection 13 of this Section.

"Permit revision" means a permit modification or administrative permit amendment.

"Phase II" means the period of the national acid rain program, established under Title IV of the Clean Air Act, beginning January 1, 2000, and continuing thereafter.

"Phase II acid rain permit" means the portion of a CAAPP permit issued, renewed, modified, or revised by the Agency during Phase II for an affected source for acid deposition.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by USEPA. This definition does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term "capacity factor" as used in Title IV of the Clean Air Act or the regulations promulgated thereunder.

"Preconstruction Permit" or "Construction Permit" means a permit which is to be obtained prior to commencing or beginning actual construction or modification of a source or emissions

unit.

"Proposed CAAPP permit" means the version of a CAAPP permit that the Agency proposes to issue and forwards to USEPA for review in compliance with applicable requirements of the Act and regulations promulgated thereunder.

"Regulated air pollutant" means the following:

(1) Nitrogen oxides (NOx) or any volatile organic compound.

(2) Any pollutant for which a national ambient air quality standard has been promulgated.

(3) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act.

(4) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act.

(5) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Clean Air Act, including Sections 112(g), (j) and (r).

(i) Any pollutant subject to requirements under Section 112(j) of the Clean Air Act. Any pollutant listed under Section 112(b) for which the subject source would be major shall be considered to be regulated 18 months after the date on which USEPA was required to promulgate an applicable standard pursuant to Section 112(e) of the Clean Air Act, if USEPA fails to promulgate such standard.

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Clean Air Act have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

(6) Greenhouse gases.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or (ii) the delegation of authority to such representative is approved in advance by the Agency.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively, or in the case of a partnership in which all of the partners are corporations, a duly authorized representative of the partnership if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or (ii) the delegation of authority to such representative is approved in advance by the Agency.

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the

chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of USEPA).

(4) For affected sources for acid deposition:

(i) The designated representative shall be the "responsible official" in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder are concerned.

(ii) The designated representative may also be the "responsible official" for any other purposes with respect to air pollution control.

"Section 502(b)(10) changes" means changes that contravene express permit terms. "Section 502(b)(10) changes" do not include changes that would violate applicable requirements or contravene federally enforceable permit terms or conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

"Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term does not include incinerators or other units required to have a permit under Section 3005 of the Solid Waste Disposal Act. The term also does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard waste and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the USEPA by rule.

"Source" means any stationary source (or any group of stationary sources) that is located on one or more contiguous or adjacent properties that are under common control of the same person (or persons under common control) and that belongs to a single major industrial grouping. For the purposes of defining "source," a stationary source or group of stationary sources shall be considered part of a single major industrial grouping if all of the pollutant emitting activities at such source or group of sources located on contiguous or adjacent properties and under common control belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987, or such pollutant emitting activities at a stationary source (or group of stationary sources) located on contiguous or adjacent properties and under common control constitute a support facility. The determination as to whether any group of stationary sources is located on contiguous or adjacent properties, and/or is under common control, and/or whether the pollutant emitting activities at such group of stationary sources constitute a support facility shall be made on a case by case basis.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air

pollutant or any pollutant listed under Section 112(b) of the Clean Air Act, except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216 of the Clean Air Act.

"Subject to regulation" has the meaning given to it in 40 CFR 70.2, as now or hereafter amended.

"Support facility" means any stationary source (or group of stationary sources) that conveys, stores, or otherwise assists to a significant extent in the production of a principal product at another stationary source (or group of stationary sources). A support facility shall be considered to be part of the same source as the stationary source (or group of stationary sources) that it supports regardless of the 2-digit Standard Industrial Classification code for the support facility.

"USEPA" means the Administrator of the United States Environmental Protection Agency (USEPA) or a person designated by the Administrator.

1.1. Exclusion From the CAAPP.

a. An owner or operator of a source which determines that the source could be excluded from the CAAPP may seek such exclusion prior to the date that the CAAPP application for the source is due but in no case later than 9 months after the effective date of the CAAPP through the imposition of federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph (c) of subsection 2 of this Section, within a State operating permit issued pursuant to subsection (a) of Section 39 of this Act. After such date, an exclusion from the CAAPP may be sought under paragraph (c) of subsection 3 of this Section.

b. An owner or operator of a source seeking exclusion from the CAAPP pursuant to paragraph (a) of this subsection must submit a permit application consistent with the existing State permit program which specifically requests such exclusion through the imposition of such federally enforceable conditions.

c. Upon such request, if the Agency determines that the owner or operator of a source has met the requirements for exclusion pursuant to paragraph (a) of this subsection and other applicable requirements for permit issuance under subsection (a) of Section 39 of this Act, the Agency shall issue a State operating permit for such source under subsection (a) of Section 39 of this Act, as amended, and regulations promulgated thereunder with federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph (c) of subsection 2 of this Section.

d. The Agency shall provide an owner or operator of a source which may be excluded from the CAAPP pursuant to this subsection with reasonable notice that the owner or operator may seek such exclusion.

e. The Agency shall provide such sources with the necessary permit application forms.

2. Applicability.

a. Sources subject to this Section shall include:

i. Any major source as defined in paragraph (c) of this subsection.

ii. Any source subject to a standard or other requirements promulgated under Section 111 (New Source Performance Standards) or Section 112 (Hazardous Air Pollutants) of the Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Clean Air Act.

iii. Any affected source for acid deposition, as defined in subsection 1 of this Section.

iv. Any other source subject to this Section under the Clean Air Act or regulations promulgated thereunder, or applicable Board regulations.

b. Sources exempted from this Section shall include:

i. All sources listed in paragraph (a) of this subsection that are not major sources, affected sources for acid deposition or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Clean Air Act, until the source is required to obtain a CAAPP permit pursuant to the Clean Air Act or regulations promulgated thereunder.

ii. Nonmajor sources subject to a standard or other requirements subsequently promulgated by USEPA under Section 111 or 112 of the Clean Air Act that are determined by USEPA to be exempt at the time a new standard is promulgated.

iii. All sources and source categories that would be required to obtain a permit solely because they are subject to Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters (40 CFR Part 60).

iv. All sources and source categories that would be required to obtain a permit solely because they are subject to Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145 (40 CFR Part 61).

v. Any other source categories exempted by USEPA regulations pursuant to Section 502(a) of the Clean Air Act.

vi. Major sources of greenhouse gas emissions required to obtain a CAAPP permit under this Section if any of the following occurs:

(A) enactment of federal legislation depriving the Administrator of the USEPA of authority to regulate greenhouse gases under the Clean Air Act;

(B) the issuance of any opinion, ruling, judgment, order, or decree by a federal court depriving the Administrator of the USEPA of authority to regulate greenhouse gases under the Clean Air Act; or

(C) action by the President of the United States or the President's authorized agent, including the Administrator of the USEPA, to repeal or withdraw the Greenhouse Gas Tailoring Rule (75 Fed. Reg. 31514, June 3, 2010).

If any event listed in this subparagraph (vi) occurs, CAAPP permits issued after such event shall not impose permit terms or conditions addressing greenhouse gases during the effectiveness of any event listed in subparagraph (vi). If any event listed in this subparagraph (vi) occurs, any owner or operator with a CAAPP permit that includes terms or conditions addressing greenhouse gases may elect to submit an application to the Agency to address a revision or

repeal of such terms or conditions. If any owner or operator submits such an application, the Agency shall expeditiously process the permit application in accordance with applicable laws and regulations. Nothing in this subparagraph (vi) shall relieve an owner or operator of a source from the requirement to obtain a CAAPP permit for its emissions of regulated air pollutants other than greenhouse gases, as required by this Section.

c. For purposes of this Section the term "major source" means any source that is:

i. A major source under Section 112 of the Clean Air Act, which is defined as:

A. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Clean Air Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as USEPA may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such stations are major sources.

B. For radionuclides, "major source" shall have the meaning specified by the USEPA by rule.

ii. A major stationary source of air pollutants, as defined in Section 302 of the Clean Air Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by USEPA). For purposes of this subsection, "fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Clean Air Act, unless the source belongs to one of the following categories of stationary source:

A. Coal cleaning plants (with thermal dryers).

B. Kraft pulp mills.

C. Portland cement plants.

D. Primary zinc smelters.

E. Iron and steel mills.

F. Primary aluminum ore reduction plants.

G. Primary copper smelters.

H. Municipal incinerators capable of charging more than 250 tons of refuse per day.

I. Hydrofluoric, sulfuric, or nitric acid plants.

J. Petroleum refineries.

K. Lime plants.

L. Phosphate rock processing plants.

M. Coke oven batteries.

N. Sulfur recovery plants.

O. Carbon black plants (furnace process).

P. Primary lead smelters.

Q. Fuel conversion plants.

R. Sintering plants.

S. Secondary metal production plants.

T. Chemical process plants.

U. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

V. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

W. Taconite ore processing plants.

X. Glass fiber processing plants.

Y. Charcoal production plants.

Z. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

AA. All other stationary source categories, which as of August 7, 1980 are being regulated by a standard promulgated under Section 111 or 112 of the Clean Air Act.

BB. Any other stationary source category designated by USEPA by rule.

iii. A major stationary source as defined in part D of Title I of the Clean Air Act including:

A. For ozone nonattainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate", 50 tons or more per year in areas classified as "serious", 25 tons or more per year in areas classified as "severe", and 10 tons or more per year in areas classified as "extreme"; except that the references in this clause to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which USEPA has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act, that requirements otherwise applicable to such source under Section 182(f) of the Clean Air Act do not apply. Such sources shall remain subject to the major source criteria of subparagraph (ii) of paragraph (c) of this subsection.

B. For ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with the potential to emit 50 tons or more per year of volatile organic compounds (VOCs).

C. For carbon monoxide nonattainment areas (1) that are classified as "serious", and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by USEPA, sources with the potential to emit 50 tons or more per year of carbon monoxide.

D. For particulate matter (PM-10) nonattainment areas classified as "serious", sources with the potential to emit 70 tons or more per year of PM-10.

3. Agency Authority To Issue CAAPP Permits and Federally Enforceable State Operating Permits.

a. The Agency shall issue CAAPP permits under this Section consistent with the Clean Air Act and regulations promulgated thereunder and this Act and regulations

promulgated thereunder.

b. The Agency shall issue CAAPP permits for fixed terms of 5 years, except CAAPP permits issued for solid waste incineration units combusting municipal waste which shall be issued for fixed terms of 12 years and except CAAPP permits for affected sources for acid deposition which shall be issued for initial terms to expire on December 31, 1999, and for fixed terms of 5 years thereafter.

c. The Agency shall have the authority to issue a State operating permit for a source under subsection (a) of Section 39 of this Act, as amended, and regulations promulgated thereunder, which includes federally enforceable conditions limiting the "potential to emit" of the source to a level below the major source threshold for that source as described in paragraph (c) of subsection 2 of this Section, thereby excluding the source from the CAAPP, when requested by the applicant pursuant to paragraph (u) of subsection 5 of this Section. The public notice requirements of this Section applicable to CAAPP permits shall also apply to the initial issuance of permits under this paragraph.

d. For purposes of this Act, a permit issued by USEPA under Section 505 of the Clean Air Act, as now and hereafter amended, shall be deemed to be a permit issued by the Agency pursuant to Section 39.5 of this Act.

4. Transition.

a. An owner or operator of a CAAPP source shall not be required to renew an existing State operating permit for any emission unit at such CAAPP source once a CAAPP application timely submitted prior to expiration of the State operating permit has been deemed complete. For purposes other than permit renewal, the obligation upon the owner or operator of a CAAPP source to obtain a State operating permit is not removed upon submittal of the complete CAAPP permit application. An owner or operator of a CAAPP source seeking to make a modification to a source prior to the issuance of its CAAPP permit shall be required to obtain a construction permit, operating permit, or both as required for such modification in accordance with the State permit program under subsection (a) of Section 39 of this Act, as amended, and regulations promulgated thereunder. The application for such construction permit, operating permit, or both shall be considered an amendment to the CAAPP application submitted for such source.

b. An owner or operator of a CAAPP source shall continue to operate in accordance with the terms and conditions of its applicable State operating permit notwithstanding the expiration of the State operating permit until the source's CAAPP permit has been issued.

c. An owner or operator of a CAAPP source shall submit its initial CAAPP application to the Agency no later than 12 months after the effective date of the CAAPP. The Agency may request submittal of initial CAAPP applications during this 12-month period according to a schedule set forth within Agency procedures, however, in no event shall the Agency require such submittal earlier than 3 months after such effective date of the CAAPP. An owner or operator may voluntarily submit its initial CAAPP application prior to the date required within this paragraph or applicable procedures, if any, subsequent to the date the Agency submits the CAAPP to USEPA for approval.

d. The Agency shall act on initial CAAPP applications

in accordance with paragraph (j) of subsection 5 of this Section.

e. For purposes of this Section, the term "initial CAAPP application" shall mean the first CAAPP application submitted for a source existing as of the effective date of the CAAPP.

f. The Agency shall provide owners or operators of CAAPP sources with at least 3 months advance notice of the date on which their applications are required to be submitted. In determining which sources shall be subject to early submittal, the Agency shall include among its considerations the complexity of the permit application, and the burden that such early submittal will have on the source.

g. The CAAPP permit shall upon becoming effective supersede the State operating permit.

h. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

5. Applications and Completeness.

a. An owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Act and applicable regulations.

b. An owner or operator of a CAAPP source shall submit a single complete CAAPP application covering all emission units at that source.

c. To be deemed complete, a CAAPP application must provide all information, as requested in Agency application forms, sufficient to evaluate the subject source and its application and to determine all applicable requirements, pursuant to the Clean Air Act, and regulations thereunder, this Act and regulations thereunder. Such Agency application forms shall be finalized and made available prior to the date on which any CAAPP application is required.

d. An owner or operator of a CAAPP source shall submit, as part of its complete CAAPP application, a compliance plan, including a schedule of compliance, describing how each emission unit will comply with all applicable requirements. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

e. Each submitted CAAPP application shall be certified for truth, accuracy, and completeness by a responsible official in accordance with applicable regulations.

f. The Agency shall provide notice to a CAAPP applicant as to whether a submitted CAAPP application is complete. Unless the Agency notifies the applicant of incompleteness, within 60 days after receipt of the CAAPP application, the application shall be deemed complete. The Agency may request additional information as needed to make the completeness determination. The Agency may to the extent practicable provide the applicant with a reasonable opportunity to correct deficiencies prior to a final determination of completeness.

g. If after the determination of completeness the Agency finds that additional information is necessary to evaluate or take final action on the CAAPP application, the Agency may request in writing such information from the source with a reasonable deadline for response.

h. If the owner or operator of a CAAPP source submits a timely and complete CAAPP application, the source's failure to have a CAAPP permit shall not be a violation of this Section until the Agency takes final action on the submitted CAAPP application, provided, however, where the applicant fails to submit the requested information under paragraph (g) of this subsection 5 within the time frame specified by the Agency, this protection shall cease to apply.

i. Any applicant who fails to submit any relevant facts necessary to evaluate the subject source and its CAAPP application or who has submitted incorrect information in a CAAPP application shall, upon becoming aware of such failure or incorrect submittal, submit supplementary facts or correct information to the Agency. In addition, an applicant shall provide to the Agency additional information as necessary to address any requirements which become applicable to the source subsequent to the date the applicant submitted its complete CAAPP application but prior to release of the draft CAAPP permit.

j. The Agency shall issue or deny the CAAPP permit within 18 months after the date of receipt of the complete CAAPP application, with the following exceptions: (i) permits for affected sources for acid deposition shall be issued or denied within 6 months after receipt of a complete application in accordance with subsection 17 of this Section; (ii) the Agency shall act on initial CAAPP applications within 24 months after the date of receipt of the complete CAAPP application; (iii) the Agency shall act on complete applications containing early reduction demonstrations under Section 112(i)(5) of the Clean Air Act within 9 months of receipt of the complete CAAPP application.

Where the Agency does not take final action on the permit within the required time period, the permit shall not be deemed issued; rather, the failure to act shall be treated as a final permit action for purposes of judicial review pursuant to Sections 40.2 and 41 of this Act.

k. The submittal of a complete CAAPP application shall not affect the requirement that any source have a preconstruction permit under Title I of the Clean Air Act.

l. Unless a timely and complete renewal application has been submitted consistent with this subsection, a CAAPP source operating upon the expiration of its CAAPP permit shall be deemed to be operating without a CAAPP permit. Such operation is prohibited under this Act.

m. Permits being renewed shall be subject to the same procedural requirements, including those for public participation and federal review and objection, that apply to original permit issuance.

n. For purposes of permit renewal, a timely application is one that is submitted no less than 9 months prior to the date of permit expiration.

o. The terms and conditions of a CAAPP permit shall remain in effect until the issuance of a CAAPP renewal permit provided a timely and complete CAAPP application has been submitted.

p. The owner or operator of a CAAPP source seeking a permit shield pursuant to paragraph (j) of subsection 7 of this Section shall request such permit shield in the CAAPP application regarding that source.

q. The Agency shall make available to the public all documents submitted by the applicant to the Agency, including each CAAPP application, compliance plan (including

the schedule of compliance), and emissions or compliance monitoring report, with the exception of information entitled to confidential treatment pursuant to Section 7 of this Act.

r. The Agency shall use the standardized forms required under Title IV of the Clean Air Act and regulations promulgated thereunder for affected sources for acid deposition.

s. An owner or operator of a CAAPP source may include within its CAAPP application a request for permission to operate during a startup, malfunction, or breakdown consistent with applicable Board regulations.

t. An owner or operator of a CAAPP source, in order to utilize the operational flexibility provided under paragraph (l) of subsection 7 of this Section, must request such use and provide the necessary information within its CAAPP application.

u. An owner or operator of a CAAPP source which seeks exclusion from the CAAPP through the imposition of federally enforceable conditions, pursuant to paragraph (c) of subsection 3 of this Section, must request such exclusion within a CAAPP application submitted consistent with this subsection on or after the date that the CAAPP application for the source is due. Prior to such date, but in no case later than 9 months after the effective date of the CAAPP, such owner or operator may request the imposition of federally enforceable conditions pursuant to paragraph (b) of subsection 1.1 of this Section.

v. CAAPP applications shall contain accurate information on allowable emissions to implement the fee provisions of subsection 18 of this Section.

w. An owner or operator of a CAAPP source shall submit within its CAAPP application emissions information regarding all regulated air pollutants emitted at that source consistent with applicable Agency procedures. Emissions information regarding insignificant activities or emission levels, as determined by the Agency pursuant to Board regulations, may be submitted as a list within the CAAPP application. The Agency shall propose regulations to the Board defining insignificant activities or emission levels, consistent with federal regulations, if any, no later than 18 months after the effective date of this amendatory Act of 1992, consistent with Section 112(n)(1) of the Clean Air Act. The Board shall adopt final regulations defining insignificant activities or emission levels no later than 9 months after the date of the Agency's proposal.

x. The owner or operator of a new CAAPP source shall submit its complete CAAPP application consistent with this subsection within 12 months after commencing operation of such source. The owner or operator of an existing source that has been excluded from the provisions of this Section under subsection 1.1 or paragraph (c) of subsection 3 of this Section and that becomes subject to the CAAPP solely due to a change in operation at the source shall submit its complete CAAPP application consistent with this subsection at least 180 days before commencing operation in accordance with the change in operation.

y. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary to implement this subsection.

6. Prohibitions.

a. It shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements. All terms and conditions of a permit issued under this Section are enforceable by USEPA and citizens under the Clean Air Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph (m) of subsection 7 of this Section.

b. After the applicable CAAPP permit or renewal application submittal date, as specified in subsection 5 of this Section, no person shall operate a CAAPP source without a CAAPP permit unless the complete CAAPP permit or renewal application for such source has been timely submitted to the Agency.

c. No owner or operator of a CAAPP source shall cause or threaten or allow the continued operation of an emission source during malfunction or breakdown of the emission source or related air pollution control equipment if such operation would cause a violation of the standards or limitations applicable to the source, unless the CAAPP permit granted to the source provides for such operation consistent with this Act and applicable Board regulations.

7. Permit Content.

a. All CAAPP permits shall contain emission limitations and standards and other enforceable terms and conditions, including but not limited to operational requirements, and schedules for achieving compliance at the earliest reasonable date, which are or will be required to accomplish the purposes and provisions of this Act and to assure compliance with all applicable requirements.

b. The Agency shall include among such conditions applicable monitoring, reporting, record keeping and compliance certification requirements, as authorized by paragraphs (d), (e), and (f) of this subsection, that the Agency deems necessary to assure compliance with the Clean Air Act, the regulations promulgated thereunder, this Act, and applicable Board regulations. When monitoring, reporting, record keeping, and compliance certification requirements are specified within the Clean Air Act, regulations promulgated thereunder, this Act, or applicable regulations, such requirements shall be included within the CAAPP permit. The Board shall have authority to promulgate additional regulations where necessary to accomplish the purposes of the Clean Air Act, this Act, and regulations promulgated thereunder.

c. The Agency shall assure, within such conditions, the use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emission limitations, standards, and other requirements contained in the permit.

d. To meet the requirements of this subsection with respect to monitoring, the permit shall:

i. Incorporate and identify all applicable emissions monitoring and analysis procedures or test methods required under the Clean Air Act, regulations promulgated thereunder, this Act, and applicable Board regulations, including any procedures and methods promulgated by USEPA pursuant to Section 504(b) or Section 114 (a)(3) of the Clean Air Act.

ii. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), require periodic monitoring sufficient to yield reliable data from the relevant time period that is representative of the source's compliance with the permit, as reported pursuant to paragraph (f) of this subsection. The Agency may determine that recordkeeping requirements are sufficient to meet the requirements of this subparagraph.

iii. As necessary, specify requirements concerning the use, maintenance, and when appropriate, installation of monitoring equipment or methods.

e. To meet the requirements of this subsection with respect to record keeping, the permit shall incorporate and identify all applicable recordkeeping requirements and require, where applicable, the following:

i. Records of required monitoring information that include the following:

A. The date, place and time of sampling or measurements.

B. The date(s) analyses were performed.

C. The company or entity that performed the analyses.

D. The analytical techniques or methods used.

E. The results of such analyses.

F. The operating conditions as existing at the time of sampling or measurement.

ii. Retention of records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records, original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

f. To meet the requirements of this subsection with respect to reporting, the permit shall incorporate and identify all applicable reporting requirements and require the following:

i. Submittal of reports of any required monitoring every 6 months. More frequent submittals may be requested by the Agency if such submittals are necessary to assure compliance with this Act or regulations promulgated by the Board thereunder. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subsection 5 of this Section.

ii. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.

g. Each CAAPP permit issued under subsection 10 of this Section shall include a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or the regulations promulgated thereunder, consistent with subsection 17 of this Section and applicable regulations, if any.

h. All CAAPP permits shall state that, where another applicable requirement of the Clean Air Act is more stringent than any applicable requirement of regulations

promulgated under Title IV of the Clean Air Act, both provisions shall be incorporated into the permit and shall be State and federally enforceable.

i. Each CAAPP permit issued under subsection 10 of this Section shall include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

j. The following shall apply with respect to owners or operators requesting a permit shield:

i. The Agency shall include in a CAAPP permit, when requested by an applicant pursuant to paragraph (p) of subsection 5 of this Section, a provision stating that compliance with the conditions of the permit shall be deemed compliance with applicable requirements which are applicable as of the date of release of the proposed permit, provided that:

A. The applicable requirement is specifically identified within the permit; or

B. The Agency in acting on the CAAPP application or revision determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes that determination or a concise summary thereof.

ii. The permit shall identify the requirements for which the source is shielded. The shield shall not extend to applicable requirements which are promulgated after the date of release of the proposed permit unless the permit has been modified to reflect such new requirements.

iii. A CAAPP permit which does not expressly indicate the existence of a permit shield shall not provide such a shield.

iv. Nothing in this paragraph or in a CAAPP permit shall alter or affect the following:

A. The provisions of Section 303 (emergency powers) of the Clean Air Act, including USEPA's authority under that section.

B. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance.

C. The applicable requirements of the acid rain program consistent with Section 408(a) of the Clean Air Act.

D. The ability of USEPA to obtain information from a source pursuant to Section 114 (inspections, monitoring, and entry) of the Clean Air Act.

k. Each CAAPP permit shall include an emergency provision providing an affirmative defense of emergency to an action brought for noncompliance with technology-based emission limitations under a CAAPP permit if the following conditions are met through properly signed, contemporaneous operating logs, or other relevant evidence:

i. An emergency occurred and the permittee can identify the cause(s) of the emergency.

ii. The permitted facility was at the time being properly operated.

iii. The permittee submitted notice of the emergency to the Agency within 2 working days after the time when emission limitations were exceeded due to the emergency. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

iv. During the period of the emergency the

permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitations, standards, or requirements in the permit.

For purposes of this subsection, "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, such as an act of God, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operation error.

In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. This provision is in addition to any emergency or upset provision contained in any applicable requirement. This provision does not relieve a permittee of any reporting obligations under existing federal or state laws or regulations.

l. The Agency shall include in each permit issued under subsection 10 of this Section:

i. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application. The permit terms and conditions for each such operating scenario shall meet all applicable requirements and the requirements of this Section.

A. Under this subparagraph, the source must record in a log at the permitted facility a record of the scenario under which it is operating contemporaneously with making a change from one operating scenario to another.

B. The permit shield described in paragraph (j) of subsection 7 of this Section shall extend to all terms and conditions under each such operating scenario.

ii. Where requested by an applicant, all terms and conditions allowing for trading of emissions increases and decreases between different emission units at the CAAPP source, to the extent that the applicable requirements provide for trading of such emissions increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

A. Shall include all terms required under this subsection to determine compliance;

B. Must meet all applicable requirements;

C. Shall extend the permit shield described in paragraph (j) of subsection 7 of this Section to all terms and conditions that allow such increases and decreases in emissions.

m. The Agency shall specifically designate as not being federally enforceable under the Clean Air Act any terms and conditions included in the permit that are not specifically required under the Clean Air Act or federal regulations promulgated thereunder. Terms or conditions so designated shall be subject to all applicable State requirements, except the requirements of subsection 7 (other than this paragraph, paragraph q of subsection 7, subsections 8 through 11, and subsections 13 through 16 of this Section. The Agency shall, however, include such terms and conditions in the CAAPP permit issued to the source.

n. Each CAAPP permit issued under subsection 10 of

this Section shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

o. Each CAAPP permit issued under subsection 10 of this Section shall include provisions stating the following:

i. Duty to comply. The permittee must comply with all terms and conditions of the CAAPP permit. Any permit noncompliance constitutes a violation of the Clean Air Act and the Act, and is grounds for any or all of the following: enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

ii. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

iii. Permit actions. The permit may be modified, revoked, reopened, and reissued, or terminated for cause in accordance with the applicable subsections of Section 39.5 of this Act. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

iv. Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

v. Duty to provide information. The permittee shall furnish to the Agency within a reasonable time specified by the Agency any information that the Agency may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Agency copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to USEPA along with a claim of confidentiality.

vi. Duty to pay fees. The permittee must pay fees to the Agency consistent with the fee schedule approved pursuant to subsection 18 of this Section, and submit any information relevant thereto.

vii. Emissions trading. No permit revision shall be required for increases in emissions allowed under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes that are provided for in the permit and that are authorized by the applicable requirement.

p. Each CAAPP permit issued under subsection 10 of this Section shall contain the following elements with respect to compliance:

i. Compliance certification, testing, monitoring, reporting, and record keeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a CAAPP permit shall contain a certification by a responsible official that meets the requirements of subsection 5 of this Section and applicable regulations.

ii. Inspection and entry requirements that necessitate that, upon presentation of credentials and other documents as may be required by law and in

accordance with constitutional limitations, the permittee shall allow the Agency, or an authorized representative to perform the following:

A. Enter upon the permittee's premises where a CAAPP source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit.

B. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit.

C. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

D. Sample or monitor any substances or parameters at any location:

1. As authorized by the Clean Air Act, at reasonable times, for the purposes of assuring compliance with the CAAPP permit or applicable requirements; or

2. As otherwise authorized by this Act.

iii. A schedule of compliance consistent with subsection 5 of this Section and applicable regulations.

iv. Progress reports consistent with an applicable schedule of compliance pursuant to paragraph (d) of subsection 5 of this Section and applicable regulations to be submitted semiannually, or more frequently if the Agency determines that such more frequent submittals are necessary for compliance with the Act or regulations promulgated by the Board thereunder. Such progress reports shall contain the following:

A. Required dates for achieving the activities, milestones, or compliance required by the schedule of compliance and dates when such activities, milestones or compliance were achieved.

B. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

v. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

A. The frequency (annually or more frequently as specified in any applicable requirement or by the Agency pursuant to written procedures) of submissions of compliance certifications.

B. A means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

C. A requirement that the compliance certification include the following:

1. The identification of each term or condition contained in the permit that is the basis of the certification.

2. The compliance status.

3. Whether compliance was continuous or intermittent.

4. The method(s) used for determining the compliance status of the source, both currently and over the reporting period consistent with subsection 7 of this Section.

D. A requirement that all compliance certifications be submitted to the Agency.

E. Additional requirements as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Clean Air Act.

F. Other provisions as the Agency may require.

q. If the owner or operator of CAAPP source can demonstrate in its CAAPP application, including an application for a significant modification, that an alternative emission limit would be equivalent to that contained in the applicable Board regulations, the Agency shall include the alternative emission limit in the CAAPP permit, which shall supersede the emission limit set forth in the applicable Board regulations, and shall include conditions that insure that the resulting emission limit is quantifiable, accountable, enforceable, and based on replicable procedures.

8. Public Notice; Affected State Review.

a. The Agency shall provide notice to the public, including an opportunity for public comment and a hearing, on each draft CAAPP permit for issuance, renewal or significant modification, subject to Section 7.1 and subsection (a) of Section 7 of this Act.

b. The Agency shall prepare a draft CAAPP permit and a statement that sets forth the legal and factual basis for the draft CAAPP permit conditions, including references to the applicable statutory or regulatory provisions. The Agency shall provide this statement to any person who requests it.

c. The Agency shall give notice of each draft CAAPP permit to the applicant and to any affected State on or before the time that the Agency has provided notice to the public, except as otherwise provided in this Act.

d. The Agency, as part of its submittal of a proposed permit to USEPA (or as soon as possible after the submittal for minor permit modification procedures allowed under subsection 14 of this Section), shall notify USEPA and any affected State in writing of any refusal of the Agency to accept all of the recommendations for the proposed permit that an affected State submitted during the public or affected State review period. The notice shall include the Agency's reasons for not accepting the recommendations. The Agency is not required to accept recommendations that are not based on applicable requirements or the requirements of this Section.

e. The Agency shall make available to the public any CAAPP permit application, compliance plan (including the schedule of compliance), CAAPP permit, and emissions or compliance monitoring report. If an owner or operator of a CAAPP source is required to submit information entitled to protection from disclosure under Section 7.1 and subsection (a) of Section 7 of this Act, the owner or operator shall submit such information separately. The requirements of Section 7.1 and subsection (a) of Section 7 of this Act shall apply to such information, which shall not be included in a CAAPP permit unless required by law. The contents of a CAAPP permit shall not be entitled to protection under Section 7.1 and subsection (a) of Section 7 of this Act.

f. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

g. If requested by the permit applicant, the Agency

shall provide the permit applicant with a copy of the draft CAAPP permit prior to any public review period. If requested by the permit applicant, the Agency shall provide the permit applicant with a copy of the final CAAPP permit prior to issuance of the CAAPP permit.

9. USEPA Notice and Objection.

a. The Agency shall provide to USEPA for its review a copy of each CAAPP application (including any application for permit modification), statement of basis as provided in paragraph (b) of subsection 8 of this Section, proposed CAAPP permit, CAAPP permit, and, if the Agency does not incorporate any affected State's recommendations on a proposed CAAPP permit, a written statement of this decision and its reasons for not accepting the recommendations, except as otherwise provided in this Act or by agreement with USEPA. To the extent practicable, the preceding information shall be provided in computer readable format compatible with USEPA's national database management system.

b. The Agency shall not issue the proposed CAAPP permit if USEPA objects in writing within 45 days after receipt of the proposed CAAPP permit and all necessary supporting information.

c. If USEPA objects in writing to the issuance of the proposed CAAPP permit within the 45-day period, the Agency shall respond in writing and may revise and resubmit the proposed CAAPP permit in response to the stated objection, to the extent supported by the record, within 90 days after the date of the objection. Prior to submitting a revised permit to USEPA, the Agency shall provide the applicant and any person who participated in the public comment process, pursuant to subsection 8 of this Section, with a 10-day period to comment on any revision which the Agency is proposing to make to the permit in response to USEPA's objection in accordance with Agency procedures.

d. Any USEPA objection under this subsection, according to the Clean Air Act, will include a statement of reasons for the objection and a description of the terms and conditions that must be in the permit, in order to adequately respond to the objections. Grounds for a USEPA objection include the failure of the Agency to: (1) submit the items and notices required under this subsection; (2) submit any other information necessary to adequately review the proposed CAAPP permit; or (3) process the permit under subsection 8 of this Section except for minor permit modifications.

e. If USEPA does not object in writing to issuance of a permit under this subsection, any person may petition USEPA within 60 days after expiration of the 45-day review period to make such objection.

f. If the permit has not yet been issued and USEPA objects to the permit as a result of a petition, the Agency shall not issue the permit until USEPA's objection has been resolved. The Agency shall provide a 10-day comment period in accordance with paragraph c of this subsection. A petition does not, however, stay the effectiveness of a permit or its requirements if the permit was issued after expiration of the 45-day review period and prior to a USEPA objection.

g. If the Agency has issued a permit after expiration of the 45-day review period and prior to receipt of a USEPA objection under this subsection in response to a petition submitted pursuant to paragraph e of this subsection, the

Agency may, upon receipt of an objection from USEPA, revise and resubmit the permit to USEPA pursuant to this subsection after providing a 10-day comment period in accordance with paragraph c of this subsection. If the Agency fails to submit a revised permit in response to the objection, USEPA shall modify, terminate or revoke the permit. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

h. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

10. Final Agency Action.

a. The Agency shall issue a CAAPP permit, permit modification, or permit renewal if all of the following conditions are met:

i. The applicant has submitted a complete and certified application for a permit, permit modification, or permit renewal consistent with subsections 5 and 14 of this Section, as applicable, and applicable regulations.

ii. The applicant has submitted with its complete application an approvable compliance plan, including a schedule for achieving compliance, consistent with subsection 5 of this Section and applicable regulations.

iii. The applicant has timely paid the fees required pursuant to subsection 18 of this Section and applicable regulations.

iv. The Agency has received a complete CAAPP application and, if necessary, has requested and received additional information from the applicant consistent with subsection 5 of this Section and applicable regulations.

v. The Agency has complied with all applicable provisions regarding public notice and affected State review consistent with subsection 8 of this Section and applicable regulations.

vi. The Agency has provided a copy of each CAAPP application, or summary thereof, pursuant to agreement with USEPA and proposed CAAPP permit required under subsection 9 of this Section to USEPA, and USEPA has not objected to the issuance of the permit in accordance with the Clean Air Act and 40 CFR Part 70.

b. The Agency shall have the authority to deny a CAAPP permit, permit modification, or permit renewal if the applicant has not complied with the requirements of subparagraphs (i) through (iv) of paragraph (a) of this subsection or if USEPA objects to its issuance.

c. i. Prior to denial of a CAAPP permit, permit modification, or permit renewal under this Section, the Agency shall notify the applicant of the possible denial and the reasons for the denial.

ii. Within such notice, the Agency shall specify an appropriate date by which the applicant shall adequately respond to the Agency's notice. Such date shall not exceed 15 days from the date the notification is received by the applicant. The Agency may grant a reasonable extension for good cause shown.

iii. Failure by the applicant to adequately respond by the date specified in the notification or by any granted extension date shall be grounds for denial of the permit.

For purposes of obtaining judicial review under Sections 40.2 and 41 of this Act, the Agency shall provide to USEPA and each applicant, and, upon request, to affected States, any person who participated in the public comment process, and any other person who could obtain judicial review under Sections 40.2 and 41 of this Act, a copy of each CAAPP permit or notification of denial pertaining to that party.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

11. General Permits.

a. The Agency may issue a general permit covering numerous similar sources, except for affected sources for acid deposition unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act.

b. The Agency shall identify, in any general permit, criteria by which sources may qualify for the general permit.

c. CAAPP sources that would qualify for a general permit must apply for coverage under the terms of the general permit or must apply for a CAAPP permit consistent with subsection 5 of this Section and applicable regulations.

d. The Agency shall comply with the public comment and hearing provisions of this Section as well as the USEPA and affected State review procedures prior to issuance of a general permit.

e. When granting a subsequent request by a qualifying CAAPP source for coverage under the terms of a general permit, the Agency shall not be required to repeat the public notice and comment procedures. The granting of such request shall not be considered a final permit action for purposes of judicial review.

f. The Agency may not issue a general permit to cover any discrete emission unit at a CAAPP source if another CAAPP permit covers emission units at the source.

g. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

12. Operational Flexibility.

a. An owner or operator of a CAAPP source may make changes at the CAAPP source without requiring a prior permit revision, consistent with subparagraphs (i) through (iii) of paragraph (a) of this subsection, so long as the changes are not modifications under any provision of Title I of the Clean Air Act and they do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions), provided that the owner or operator of the CAAPP source provides USEPA and the Agency with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, unless otherwise provided by the Agency in applicable regulations regarding emergencies. The owner or operator of a CAAPP source and the Agency shall each attach such notice to their copy of the relevant permit.

i. An owner or operator of a CAAPP source may

make Section 502 (b) (10) changes without a permit revision, if the changes are not modifications under any provision of Title I of the Clean Air Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

A. For each such change, the written notification required above shall include a brief description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

B. The permit shield described in paragraph (j) of subsection 7 of this Section shall not apply to any change made pursuant to this subparagraph.

ii. An owner or operator of a CAAPP source may trade increases and decreases in emissions in the CAAPP source, where the applicable implementation plan provides for such emission trades without requiring a permit revision. This provision is available in those cases where the permit does not already provide for such emissions trading.

A. Under this subparagraph (ii) of paragraph (a) of this subsection, the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed changes will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions in the applicable implementation plan with which the source will comply and provide for the emissions trade.

B. The permit shield described in paragraph (j) of subsection 7 of this Section shall not apply to any change made pursuant to subparagraph (ii) of paragraph (a) of this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to the requirements of the applicable implementation plan authorizing the emissions trade.

iii. If requested within a CAAPP application, the Agency shall issue a CAAPP permit which contains terms and conditions, including all terms required under subsection 7 of this Section to determine compliance, allowing for the trading of emissions increases and decreases at the CAAPP source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The owner or operator of a CAAPP source shall include in its CAAPP application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permit shall also require compliance with all applicable requirements.

A. Under this subparagraph (iii) of paragraph (a), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how

these increases and decreases in emissions will comply with the terms and conditions of the permit.

B. The permit shield described in paragraph (j) of subsection 7 of this Section shall extend to terms and conditions that allow such increases and decreases in emissions.

b. An owner or operator of a CAAPP source may make changes that are not addressed or prohibited by the permit, other than those which are subject to any requirements under Title IV of the Clean Air Act or are modifications under any provisions of Title I of the Clean Air Act, without a permit revision, in accordance with the following requirements:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the Agency and USEPA of each such change, except for changes that qualify as insignificant under provisions adopted by the Agency or the Board. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield described in paragraph (j) of subsection 7 of this Section; and

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable Clean Air Act requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

c. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary to implement this subsection.

13. Administrative Permit Amendments.

a. The Agency shall take final action on a request for an administrative permit amendment within 60 days after receipt of the request. Neither notice nor an opportunity for public and affected State comment shall be required for the Agency to incorporate such revisions, provided it designates the permit revisions as having been made pursuant to this subsection.

b. The Agency shall submit a copy of the revised permit to USEPA.

c. For purposes of this Section the term "administrative permit amendment" shall be defined as a permit revision that can accomplish one or more of the changes described below:

i. Corrects typographical errors;

ii. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

iii. Requires more frequent monitoring or reporting by the permittee;

iv. Allows for a change in ownership or operational control of a source where the Agency determines that no other change in the permit is necessary, provided that a written agreement containing

a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Agency;

v. Incorporates into the CAAPP permit the requirements from preconstruction review permits authorized under a USEPA-approved program, provided the program meets procedural and compliance requirements substantially equivalent to those contained in this Section;

vi. (Blank); or

vii. Any other type of change which USEPA has determined as part of the approved CAAPP permit program to be similar to those included in this subsection.

d. The Agency shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in paragraph (j) of subsection 7 of this Section for administrative permit amendments made pursuant to subparagraph (v) of paragraph (c) of this subsection which meet the relevant requirements for significant permit modifications.

e. Permit revisions and modifications, including administrative amendments and automatic amendments (pursuant to Sections 408(b) and 403(d) of the Clean Air Act or regulations promulgated thereunder), for purposes of the acid rain portion of the permit shall be governed by the regulations promulgated under Title IV of the Clean Air Act. Owners or operators of affected sources for acid deposition shall have the flexibility to amend their compliance plans as provided in the regulations promulgated under Title IV of the Clean Air Act.

f. The CAAPP source may implement the changes addressed in the request for an administrative permit amendment immediately upon submittal of the request.

g. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

14. Permit Modifications.

a. Minor permit modification procedures.

i. The Agency shall review a permit modification using the "minor permit" modification procedures only for those permit modifications that:

A. Do not violate any applicable requirement;

B. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

C. Do not require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;

D. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying requirement and which avoids an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

1. A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the Clean Air Act; and

2. An alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Clean Air Act;

E. Are not modifications under any provision of Title I of the Clean Air Act; and

F. Are not required to be processed as a significant modification.

ii. Notwithstanding subparagraph (i) of paragraph (a) and subparagraph (ii) of paragraph (b) of this subsection, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by USEPA.

iii. An applicant requesting the use of minor permit modification procedures shall meet the requirements of subsection 5 of this Section and shall include the following in its application:

A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

B. The source's suggested draft permit;

C. Certification by a responsible official, consistent with paragraph (e) of subsection 5 of this Section and applicable regulations, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

D. Completed forms for the Agency to use to notify USEPA and affected States as required under subsections 8 and 9 of this Section.

iv. Within 5 working days after receipt of a complete permit modification application, the Agency shall notify USEPA and affected States of the requested permit modification in accordance with subsections 8 and 9 of this Section. The Agency promptly shall send any notice required under paragraph (d) of subsection 8 of this Section to USEPA.

v. The Agency may not issue a final permit modification until after the 45-day review period for USEPA or until USEPA has notified the Agency that USEPA will not object to the issuance of the permit modification, whichever comes first, although the Agency can approve the permit modification prior to that time. Within 90 days after the Agency's receipt of an application under the minor permit modification procedures or 15 days after the end of USEPA's 45-day review period under subsection 9 of this Section, whichever is later, the Agency shall:

A. Issue the permit modification as proposed;

B. Deny the permit modification application;

C. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

D. Revise the draft permit modification and transmit to USEPA the new proposed permit modification as required by subsection 9 of this Section.

vi. Any CAAPP source may make the change proposed in its minor permit modification application immediately after it files such application. After the CAAPP source

makes the change allowed by the preceding sentence, and until the Agency takes any of the actions specified in items (A) through (C) of subparagraph (v) of paragraph (a) of this subsection, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. If the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions which it seeks to modify may be enforced against it.

vii. The permit shield under paragraph (j) of subsection 7 of this Section may not extend to minor permit modifications.

viii. If a construction permit is required, pursuant to subsection (a) of Section 39 of this Act and regulations thereunder, for a change for which the minor permit modification procedures are applicable, the source may request that the processing of the construction permit application be consolidated with the processing of the application for the minor permit modification. In such cases, the provisions of this Section, including those within subsections 5, 8, and 9, shall apply and the Agency shall act on such applications pursuant to subparagraph (v) of paragraph (a) of subsection 14 of this Section. The source may make the proposed change immediately after filing its application for the minor permit modification. Nothing in this subparagraph shall otherwise affect the requirements and procedures applicable to construction permits.

b. Group Processing of Minor Permit Modifications.

i. Where requested by an applicant within its application, the Agency shall process groups of a source's applications for certain modifications eligible for minor permit modification processing in accordance with the provisions of this paragraph (b).

ii. Permit modifications may be processed in accordance with the procedures for group processing, for those modifications:

A. Which meet the criteria for minor permit modification procedures under subparagraph (i) of paragraph (a) of subsection 14 of this Section; and

B. That collectively are below 10 percent of the emissions allowed by the permit for the emissions unit for which change is requested, 20 percent of the applicable definition of major source set forth in subsection 2 of this Section, or 5 tons per year, whichever is least.

iii. An applicant requesting the use of group processing procedures shall meet the requirements of subsection 5 of this Section and shall include the following in its application:

A. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

B. The source's suggested draft permit.

C. Certification by a responsible official consistent with paragraph (e) of subsection 5 of this Section, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

D. A list of the source's other pending

applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item (B) of subparagraph (ii) of paragraph (b) of this subsection.

E. Certification, consistent with paragraph (e) of subsection 5 of this Section, that the source has notified USEPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

F. Completed forms for the Agency to use to notify USEPA and affected states as required under subsections 8 and 9 of this Section.

iv. On a quarterly basis or within 5 business days after receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set forth within item (B) of subparagraph (ii) of paragraph (b) of this subsection, whichever is earlier, the Agency shall promptly notify USEPA and affected States of the requested permit modifications in accordance with subsections 8 and 9 of this Section. The Agency shall send any notice required under paragraph (d) of subsection 8 of this Section to USEPA.

v. The provisions of subparagraph (v) of paragraph (a) of this subsection shall apply to modifications eligible for group processing, except that the Agency shall take one of the actions specified in items (A) through (D) of subparagraph (v) of paragraph (a) of this subsection within 180 days after receipt of the application or 15 days after the end of USEPA's 45-day review period under subsection 9 of this Section, whichever is later.

vi. The provisions of subparagraph (vi) of paragraph (a) of this subsection shall apply to modifications for group processing.

vii. The provisions of paragraph (j) of subsection 7 of this Section shall not apply to modifications eligible for group processing.

c. Significant Permit Modifications.

i. Significant modification procedures shall be used for applications requesting significant permit modifications and for those applications that do not qualify as either minor permit modifications or as administrative permit amendments.

ii. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping requirements shall be considered significant. A modification shall also be considered significant if in the judgment of the Agency action on an application for modification would require decisions to be made on technically complex issues. Nothing herein shall be construed to preclude the permittee from making changes consistent with this Section that would render existing permit compliance terms and conditions irrelevant.

iii. Significant permit modifications must meet all the requirements of this Section, including those for applications (including completeness review), public participation, review by affected States, and review by USEPA applicable to initial permit issuance and permit renewal. The Agency shall take final action on

significant permit modifications within 9 months after receipt of a complete application.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

15. Reopenings for Cause by the Agency.

a. Each issued CAAPP permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. Such revisions shall be made as expeditiously as practicable. A CAAPP permit shall be reopened and revised under any of the following circumstances, in accordance with procedures adopted by the Agency:

i. Additional requirements under the Clean Air Act become applicable to a major CAAPP source for which 3 or more years remain on the original term of the permit. Such a reopening shall be completed not later than 18 months after the promulgation of the applicable requirement. No such revision is required if the effective date of the requirement is later than the date on which the permit is due to expire.

ii. Additional requirements (including excess emissions requirements) become applicable to an affected source for acid deposition under the acid rain program. Excess emissions offset plans shall be deemed to be incorporated into the permit upon approval by USEPA.

iii. The Agency or USEPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards, limitations, or other terms or conditions of the permit.

iv. The Agency or USEPA determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

b. In the event that the Agency determines that there are grounds for revoking a CAAPP permit, for cause, consistent with paragraph a of this subsection, it shall file a petition before the Board setting forth the basis for such revocation. In any such proceeding, the Agency shall have the burden of establishing that the permit should be revoked under the standards set forth in this Act and the Clean Air Act. Any such proceeding shall be conducted pursuant to the Board's procedures for adjudicatory hearings and the Board shall render its decision within 120 days of the filing of the petition. The Agency shall take final action to revoke and reissue a CAAPP permit consistent with the Board's order.

c. Proceedings regarding a reopened CAAPP permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

d. Reopenings under paragraph (a) of this subsection shall not be initiated before a notice of such intent is provided to the CAAPP source by the Agency at least 30 days in advance of the date that the permit is to be reopened, except that the Agency may provide a shorter time period in the case of an emergency.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

16. Reopenings for Cause by USEPA.

a. When USEPA finds that cause exists to terminate, modify, or revoke and reissue a CAAPP permit pursuant to subsection 15 of this Section, and thereafter notifies the Agency and the permittee of such finding in writing, the Agency shall forward to USEPA and the permittee a proposed determination of termination, modification, or revocation and reissuance as appropriate, in accordance with paragraph (b) of this subsection. The Agency's proposed determination shall be in accordance with the record, the Clean Air Act, regulations promulgated thereunder, this Act and regulations promulgated thereunder. Such proposed determination shall not affect the permit or constitute a final permit action for purposes of this Act or the Administrative Review Law. The Agency shall forward to USEPA such proposed determination within 90 days after receipt of the notification from USEPA. If additional time is necessary to submit the proposed determination, the Agency shall request a 90-day extension from USEPA and shall submit the proposed determination within 180 days after receipt of notification from USEPA.

b. i. Prior to the Agency's submittal to USEPA of a proposed determination to terminate or revoke and reissue the permit, the Agency shall file a petition before the Board setting forth USEPA's objection, the permit record, the Agency's proposed determination, and the justification for its proposed determination. The Board shall conduct a hearing pursuant to the rules prescribed by Section 32 of this Act, and the burden of proof shall be on the Agency.

ii. After due consideration of the written and oral statements, the testimony and arguments that shall be submitted at hearing, the Board shall issue and enter an interim order for the proposed determination, which shall set forth all changes, if any, required in the Agency's proposed determination. The interim order shall comply with the requirements for final orders as set forth in Section 33 of this Act. Issuance of an interim order by the Board under this paragraph, however, shall not affect the permit status and does not constitute a final action for purposes of this Act or the Administrative Review Law.

iii. The Board shall cause a copy of its interim order to be served upon all parties to the proceeding as well as upon USEPA. The Agency shall submit the proposed determination to USEPA in accordance with the Board's Interim Order within 180 days after receipt of the notification from USEPA.

c. USEPA shall review the proposed determination to terminate, modify, or revoke and reissue the permit within 90 days after receipt.

i. When USEPA reviews the proposed determination to terminate or revoke and reissue and does not object, the Board shall, within 7 days after receipt of USEPA's final approval, enter the interim order as a final order. The final order may be appealed as provided by Title XI of this Act. The Agency shall take final action in accordance with the Board's final order.

ii. When USEPA reviews such proposed determination to terminate or revoke and reissue and objects, the Agency shall submit USEPA's objection and the Agency's comments and recommendation on the

objection to the Board and permittee. The Board shall review its interim order in response to USEPA's objection and the Agency's comments and recommendation and issue a final order in accordance with Sections 32 and 33 of this Act. The Agency shall, within 90 days after receipt of such objection, respond to USEPA's objection in accordance with the Board's final order.

iii. When USEPA reviews such proposed determination to modify and objects, the Agency shall, within 90 days after receipt of the objection, resolve the objection and modify the permit in accordance with USEPA's objection, based upon the record, the Clean Air Act, regulations promulgated thereunder, this Act, and regulations promulgated thereunder.

d. If the Agency fails to submit the proposed determination pursuant to paragraph a of this subsection or fails to resolve any USEPA objection pursuant to paragraph c of this subsection, USEPA will terminate, modify, or revoke and reissue the permit.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

17. Title IV; Acid Rain Provisions.

a. The Agency shall act on initial CAAPP applications for affected sources for acid deposition in accordance with this Section and Title V of the Clean Air Act and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act and regulations promulgated thereunder. The Agency shall issue initial CAAPP permits to the affected sources for acid deposition which shall become effective no earlier than January 1, 1995, and which shall terminate on December 31, 1999, in accordance with this Section. Subsequent CAAPP permits issued to affected sources for acid deposition shall be issued for a fixed term of 5 years. Title IV of the Clean Air Act and regulations promulgated thereunder, including but not limited to 40 C.F.R. Part 72, as now or hereafter amended, are applicable to and enforceable under this Act.

b. A designated representative of an affected source for acid deposition shall submit a timely and complete Phase II acid rain permit application and compliance plan to the Agency, not later than January 1, 1996, that meets the requirements of Titles IV and V of the Clean Air Act and regulations. The Agency shall act on the Phase II acid rain permit application and compliance plan in accordance with this Section and Title V of the Clean Air Act and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act and regulations promulgated thereunder. The Agency shall issue the Phase II acid rain permit to an affected source for acid deposition no later than December 31, 1997, which shall become effective on January 1, 2000, in accordance with this Section, except as modified by Title IV and regulations promulgated thereunder; provided that the designated representative of the source submitted a timely and complete Phase II permit application and compliance plan to the Agency that meets the requirements of Title IV and V of the Clean Air Act and regulations.

c. Each Phase II acid rain permit issued in accordance with this subsection shall have a fixed term of 5 years. Except as provided in paragraph b above, the Agency

shall issue or deny a Phase II acid rain permit within 18 months of receiving a complete Phase II permit application and compliance plan.

d. A designated representative of a new unit, as defined in Section 402 of the Clean Air Act, shall submit a timely and complete Phase II acid rain permit application and compliance plan that meets the requirements of Titles IV and V of the Clean Air Act and its regulations. The Agency shall act on the new unit's Phase II acid rain permit application and compliance plan in accordance with this Section and Title V of the Clean Air Act and its regulations, except as modified by Title IV of the Clean Air Act and its regulations. The Agency shall reopen the new unit's CAAPP permit for cause to incorporate the approved Phase II acid rain permit in accordance with this Section. The Phase II acid rain permit for the new unit shall become effective no later than the date required under Title IV of the Clean Air Act and its regulations.

e. A designated representative of an affected source for acid deposition shall submit a timely and complete Title IV NOx permit application to the Agency, not later than January 1, 1998, that meets the requirements of Titles IV and V of the Clean Air Act and its regulations. The Agency shall reopen the Phase II acid rain permit for cause and incorporate the approved NOx provisions into the Phase II acid rain permit not later than January 1, 1999, in accordance with this Section, except as modified by Title IV of the Clean Air Act and regulations promulgated thereunder. Such reopening shall not affect the term of the Phase II acid rain permit.

f. The designated representative of the affected source for acid deposition shall renew the initial CAAPP permit and Phase II acid rain permit in accordance with this Section and Title V of the Clean Air Act and regulations promulgated thereunder, except as modified by Title IV of the Clean Air Act and regulations promulgated thereunder.

g. In the case of an affected source for acid deposition for which a complete Phase II acid rain permit application and compliance plan are timely received under this subsection, the complete permit application and compliance plan, including amendments thereto, shall be binding on the owner, operator and designated representative, all affected units for acid deposition at the affected source, and any other unit, as defined in Section 402 of the Clean Air Act, governed by the Phase II acid rain permit application and shall be enforceable as an acid rain permit for purposes of Titles IV and V of the Clean Air Act, from the date of submission of the acid rain permit application until a Phase II acid rain permit is issued or denied by the Agency.

h. The Agency shall not include or implement any measure which would interfere with or modify the requirements of Title IV of the Clean Air Act or regulations promulgated thereunder.

i. Nothing in this Section shall be construed as affecting allowances or USEPA's decision regarding an excess emissions offset plan, as set forth in Title IV of the Clean Air Act or regulations promulgated thereunder.

i. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

ii. No limit shall be placed on the number of

allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

iii. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act.

j. To the extent that the federal regulations promulgated under Title IV, including but not limited to 40 C.F.R. Part 72, as now or hereafter amended, are inconsistent with the federal regulations promulgated under Title V, the federal regulations promulgated under Title IV shall take precedence.

k. The USEPA may intervene as a matter of right in any permit appeal involving a Phase II acid rain permit provision or denial of a Phase II acid rain permit.

l. It is unlawful for any owner or operator to violate any terms or conditions of a Phase II acid rain permit issued under this subsection, to operate any affected source for acid deposition except in compliance with a Phase II acid rain permit issued by the Agency under this subsection, or to violate any other applicable requirements.

m. The designated representative of an affected source for acid deposition shall submit to the Agency the data and information submitted quarterly to USEPA, pursuant to 40 CFR 75.64, concurrently with the submission to USEPA. The submission shall be in the same electronic format as specified by USEPA.

n. The Agency shall act on any petition for exemption of a new unit or retired unit, as those terms are defined in Section 402 of the Clean Air Act, from the requirements of the acid rain program in accordance with Title IV of the Clean Air Act and its regulations.

o. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary to implement this subsection.

18. Fee Provisions.

a. A source subject to this Section or excluded under subsection 1.1 or paragraph (c) of subsection 3 of this Section, shall pay a fee as provided in this paragraph (a) of subsection 18. However, a source that has been excluded from the provisions of this Section under subsection 1.1 or under paragraph (c) of subsection 3 of this Section because the source emits less than 25 tons per year of any combination of regulated air pollutants, except greenhouse gases, shall pay fees in accordance with paragraph (1) of subsection (b) of Section 9.6.

i. The fee for a source allowed to emit less than 100 tons per year of any combination of regulated air pollutants, except greenhouse gases, shall be $1,800 per year, and that fee shall increase, beginning January 1, 2012, to $2,150 per year.

ii. The fee for a source allowed to emit 100 tons or more per year of any combination of regulated air pollutants, except greenhouse gases and those regulated air pollutants excluded in paragraph (f) of this subsection 18, shall be as follows:

A. The Agency shall assess a fee of $18 per ton, per year for the allowable emissions of regulated air pollutants subject to this subparagraph (ii) of paragraph (a) of subsection 18, and that fee shall increase, beginning January 1,

2012, to $21.50 per ton, per year. These fees shall be used by the Agency and the Board to fund the activities required by Title V of the Clean Air Act including such activities as may be carried out by other State or local agencies pursuant to paragraph (d) of this subsection. The amount of such fee shall be based on the information supplied by the applicant in its complete CAAPP permit application or in the CAAPP permit if the permit has been granted and shall be determined by the amount of emissions that the source is allowed to emit annually, provided however, that the maximum fee for a CAAPP permit under this subparagraph (ii) of paragraph (a) of subsection 18 is $250,000, and increases, beginning January 1, 2012, to $294,000. Beginning January 1, 2012, the maximum fee under this subparagraph (ii) of paragraph (a) of subsection 18 for a source that has been excluded under subsection 1.1 of this Section or under paragraph (c) of subsection 3 of this Section is $4,112. The Agency shall provide as part of the permit application form required under subsection 5 of this Section a separate fee calculation form which will allow the applicant to identify the allowable emissions and calculate the fee. In no event shall the Agency raise the amount of allowable emissions requested by the applicant unless such increases are required to demonstrate compliance with terms of a CAAPP permit.

Notwithstanding the above, any applicant may seek a change in its permit which would result in increases in allowable emissions due to an increase in the hours of operation or production rates of an emission unit or units and such a change shall be consistent with the construction permit requirements of the existing State permit program, under subsection (a) of Section 39 of this Act and applicable provisions of this Section. Where a construction permit is required, the Agency shall expeditiously grant such construction permit and shall, if necessary, modify the CAAPP permit based on the same application.

B. The applicant or permittee may pay the fee annually or semiannually for those fees greater than $5,000. However, any applicant paying a fee equal to or greater than $100,000 shall pay the full amount on July 1, for the subsequent fiscal year, or pay 50% of the fee on July 1 and the remaining 50% by the next January 1. The Agency may change any annual billing date upon reasonable notice, but shall prorate the new bill so that the permittee or applicant does not pay more than its required fees for the fee period for which payment is made.

b. (Blank).

c. (Blank).

d. There is hereby created in the State Treasury a special fund to be known as the Clean Air Act Permit Fund (formerly known as the CAA Permit Fund). All Funds collected by the Agency pursuant to this subsection shall be deposited into the Fund. The General Assembly shall appropriate monies from this Fund to the Agency and to the Board to carry out their obligations under this Section. The General Assembly may also authorize monies to be granted by the Agency from this Fund to other State and local agencies which perform

duties related to the CAAPP. Interest generated on the monies deposited in this Fund shall be returned to the Fund.

e. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary to implement this subsection.

f. For purposes of this subsection, the term "regulated air pollutant" shall have the meaning given to it under subsection 1 of this Section but shall exclude the following:

i. carbon monoxide;

ii. any Class I or II substance which is a regulated air pollutant solely because it is listed pursuant to Section 602 of the Clean Air Act; and

iii. any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Clean Air Act based on the emissions allowed in the permit effective in that calendar year, at the time the applicable bill is generated.

19. Air Toxics Provisions.

a. In the event that the USEPA fails to promulgate in a timely manner a standard pursuant to Section 112(d) of the Clean Air Act, the Agency shall have the authority to issue permits, pursuant to Section 112(j) of the Clean Air Act and regulations promulgated thereunder, which contain emission limitations which are equivalent to the emission limitations that would apply to a source if an emission standard had been promulgated in a timely manner by USEPA pursuant to Section 112(d). Provided, however, that the owner or operator of a source shall have the opportunity to submit to the Agency a proposed emission limitation which it determines to be equivalent to the emission limitations that would apply to such source if an emission standard had been promulgated in a timely manner by USEPA. If the Agency refuses to include the emission limitation proposed by the owner or operator in a CAAPP permit, the owner or operator may petition the Board to establish whether the emission limitation proposal submitted by the owner or operator provides for emission limitations which are equivalent to the emission limitations that would apply to the source if the emission standard had been promulgated by USEPA in a timely manner. The Board shall determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for the level of control required under Section 112 of the Clean Air Act, or shall otherwise establish an appropriate emission limitation, pursuant to Section 112 of the Clean Air Act.

b. Any Board proceeding brought under paragraph (a) or (e) of this subsection shall be conducted according to the Board's procedures for adjudicatory hearings and the Board shall render its decision within 120 days of the filing of the petition. Any such decision shall be subject to review pursuant to Section 41 of this Act. Where USEPA promulgates an applicable emission standard prior to the issuance of the CAAPP permit, the Agency shall include in the permit the promulgated standard, provided that the source shall have the compliance period provided under Section 112(i) of the Clean Air Act. Where USEPA promulgates an applicable standard subsequent to the issuance of the CAAPP permit, the Agency shall revise such permit upon the

next renewal to reflect the promulgated standard, providing a reasonable time for the applicable source to comply with the standard, but no longer than 8 years after the date on which the source is first required to comply with the emissions limitation established under this subsection.

c. The Agency shall have the authority to implement and enforce complete or partial emission standards promulgated by USEPA pursuant to Section 112(d), and standards promulgated by USEPA pursuant to Sections 112(f), 112(h), 112(m), and 112(n), and may accept delegation of authority from USEPA to implement and enforce Section 112(l) and requirements for the prevention and detection of accidental releases pursuant to Section 112(r) of the Clean Air Act.

d. The Agency shall have the authority to issue permits pursuant to Section 112(i)(5) of the Clean Air Act.

e. The Agency has the authority to implement Section 112(g) of the Clean Air Act consistent with the Clean Air Act and federal regulations promulgated thereunder. If the Agency refuses to include the emission limitations proposed in an application submitted by an owner or operator for a case-by-case maximum achievable control technology (MACT) determination, the owner or operator may petition the Board to determine whether the emission limitation proposed by the owner or operator or an alternative emission limitation proposed by the Agency provides for a level of control required by Section 112 of the Clean Air Act, or to otherwise establish an appropriate emission limitation under Section 112 of the Clean Air Act.

20. Small Business.

a. For purposes of this subsection:

"Program" is the Small Business Stationary Source Technical and Environmental Compliance Assistance Program created within this State pursuant to Section 507 of the Clean Air Act and guidance promulgated thereunder, to provide technical assistance and compliance information to small business stationary sources;

"Small Business Assistance Program" is a component of the Program responsible for providing sufficient communications with small businesses through the collection and dissemination of information to small business stationary sources; and

"Small Business Stationary Source" means a stationary source that:

1. is owned or operated by a person that employs 100 or fewer individuals;

2. is a small business concern as defined in the "Small Business Act";

3. is not a major source as that term is defined in subsection 2 of this Section;

4. does not emit 50 tons or more per year of any regulated air pollutant, except greenhouse gases; and

5. emits less than 75 tons per year of all regulated pollutants, except greenhouse gases.

b. The Agency shall adopt and submit to USEPA, after reasonable notice and opportunity for public comment, as a revision to the Illinois state implementation plan, plans for establishing the Program.

c. The Agency shall have the authority to enter into such contracts and agreements as the Agency deems necessary to carry out the purposes of this subsection.

d. The Agency may establish such procedures as it may deem necessary for the purposes of implementing and executing its responsibilities under this subsection.

e. There shall be appointed a Small Business Ombudsman (hereinafter in this subsection referred to as "Ombudsman") to monitor the Small Business Assistance Program. The Ombudsman shall be a nonpartisan designated official, with the ability to independently assess whether the goals of the Program are being met.

f. The State Ombudsman Office shall be located in an existing Ombudsman office within the State or in any State Department.

g. There is hereby created a State Compliance Advisory Panel (hereinafter in this subsection referred to as "Panel") for determining the overall effectiveness of the Small Business Assistance Program within this State.

h. The selection of Panel members shall be by the following method:

1. The Governor shall select two members who are not owners or representatives of owners of small business stationary sources to represent the general public;

2. The Director of the Agency shall select one member to represent the Agency; and

3. The State Legislature shall select four members who are owners or representatives of owners of small business stationary sources. Both the majority and minority leadership in both Houses of the Legislature shall appoint one member of the panel.

i. Panel members should serve without compensation but will receive full reimbursement for expenses including travel and per diem as authorized within this State.

j. The Panel shall select its own Chair by a majority vote. The Chair may meet and consult with the Ombudsman and the head of the Small Business Assistance Program in planning the activities for the Panel.

21. Temporary Sources.

a. The Agency may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations, except for sources which are affected sources for acid deposition under Title IV of the Clean Air Act.

b. The applicant must demonstrate that the operation is temporary and will involve at least one change of location during the term of the permit.

c. Any such permit shall meet all applicable requirements of this Section and applicable regulations, and include conditions assuring compliance with all applicable requirements at all authorized locations and requirements that the owner or operator notify the Agency at least 10 days in advance of each change in location.

22. Solid Waste Incineration Units.

a. A CAAPP permit for a solid waste incineration unit combusting municipal waste subject to standards promulgated under Section 129(e) of the Clean Air Act shall be issued for a period of 12 years and shall be reviewed every 5 years, unless the Agency requires more frequent review through Agency procedures.

b. During the review in paragraph (a) of this

subsection, the Agency shall fully review the previously submitted CAAPP permit application and corresponding reports subsequently submitted to determine whether the source is in compliance with all applicable requirements.

c. If the Agency determines that the source is not in compliance with all applicable requirements it shall revise the CAAPP permit as appropriate.

d. The Agency shall have the authority to adopt procedural rules, in accordance with the Illinois Administrative Procedure Act, as the Agency deems necessary, to implement this subsection.

(Source: P.A. 99-380, eff. 8-17-15; 99-933, eff. 1-27-17; 100-103, eff. 8-11-17.)

(415 ILCS 5/39.8)

Sec. 39.8. Gasification conversion technology demonstration permit.

(a) The purpose of this Section is to provide for the permitting and limited testing of gasification conversion technologies on a pilot scale basis.

(b) For purposes of this Section:

"Gasification conversion technology" or "GCT" means the process of applying heat to municipal waste, chicken litter, distillers grain, or switchgrass in order to convert these materials into a synthetic gas ("syngas") that meets specifications for use as a fuel for the generation of electricity. To qualify as a GCT, the process must not continuously operate at temperatures exceeding an hourly average of 1,400 degrees Fahrenheit in the gasifier unit, must not use fossil fuels in the gasifier unit, and must be designed to produce more energy than it consumes.

"GCTDP" means a gasification conversion technology demonstration permit issued by the Agency under this Section.

(c) The Agency may, under the authority of subsection (b) of Section 9 and subsection (a) of Section 39 of the Act, issue a GCTDP to an applicant for limited field testing of a GCT in order to demonstrate that the GCT can reliably produce syngas meeting specifications for its use as fuel for the generation of electricity. The GCTDP shall be subject to all of the following conditions:

(1) The GCTDP shall be for a period not to exceed 180 consecutive calendar days from the date of issuance of the permit.

(2) The applicant for a GCTDP must demonstrate that, during the permit period, the GCT will not emit more than 500 pounds, in the aggregate, of particulate matter, sulfur dioxide, organic materials, hydrogen chloride, and heavy metals.

(3) The applicant for a GCTDP must perform emissions testing during the permit period, as required by the Agency, and submit the results of that testing to the Agency as specified in the GCTDP within 60 days after the completion of testing.

(4) During the permit period the applicant may not process more than 10 tons per day, in the aggregate, of materials in the gasification process. The applicant may not store on site more than 10 tons, in the aggregate, of waste and other materials of the types set forth in subsection (b) of this Section.

(5) In addition to the GCTDP, the applicant must obtain applicable waste management permits in accordance with subsection (d) of Section 21 and subsection (a) of Section 39 before receiving waste at the facility. All waste

received at the facility must be managed in accordance with the Act, the waste management permits, and applicable regulations adopted pursuant to Section 22 of the Act.

(6) The applicant must demonstrate that the proposed project meets the criteria defining a GCT in subsection (b) of this Section.

(7) The applicant for a GCTDP shall submit application fees in accordance with subsection (c) of Section 9.12 of the Act, excluding the fees under subparagraph (B) of paragraph (2) of subsection (c) of that Section.

(8) A complete application for a GCTDP must be filed in accordance with this Section and submitted to the Agency prior to one year from the effective date of this amendatory Act of the 96th General Assembly.

(9) The GCTDP shall not be granted for use in a nonattainment area.

(Source: P.A. 96-887, eff. 4-9-10.)

(415 ILCS 5/39.9)

Sec. 39.9. Thermochemical conversion technology demonstration permit.

(a) The purpose of this Section is to provide for the permitting and testing of thermochemical conversion technology ("TCT") on a pilot-scale basis.

(b) For purposes of this Section:

"Thermochemical conversion" means the application of heat to woody biomass, collected as landscape waste within the boundaries of the host unit of local government, in order to convert that material to a synthetic gas ("syngas") that can be processed for use as a fuel for the production of electricity and process heat, for the production of ethanol or hydrogen to be used as transportation fuel, or for both of those purposes. To qualify as thermochemical conversion, the thermochemical conversion technology must not continuously operate at temperatures exceeding an hourly average of 2,000°F, must operate at or near atmospheric pressure with no intentional or forced addition of air or oxygen, must use electricity for the source of heat, and must be designed to produce more energy than it consumes.

"Thermochemical conversion technology demonstration permit" or "TCTDP" means a demonstration permit issued by the Agency's Bureau of Air Permit Section under this Section. The TCT will be considered a process emission unit.

"Thermochemical conversion technology processing facility" means a facility constructed and operated for the purpose of conducting thermochemical conversion under this Section.

"Woody biomass" means the fibrous cellular substance consisting largely of cellulose, hemicellulose, and lignin from trees and shrubs collected as landscape waste. "Woody biomass" also includes bark and leaves from trees and shrubs, but does not include other wastes or foreign materials.

(c) The Agency may, under the authority of subsection (b) of Section 9 and subsection (a) of Section 39 of the Act, issue a TCTDP to an applicant for field testing of a thermochemical conversion technology processing facility to demonstrate that the thermochemical conversion technology can reliably produce syngas that can be processed for use as a fuel for the production of electricity and process heat, for the production of ethanol or hydrogen to be used as transportation fuel, or for both purposes. The TCTDP shall be subject to the following conditions:

(1) The application for a TCTDP must demonstrate that

the thermochemical conversion technology processing facility is not a major source of air pollutants but is eligible for an air permit issued pursuant to 35 Ill. Adm. Code 201.169. The application must demonstrate that the potential to emit carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen oxides (NOx), and particulate matter (PM, PM10) individually for each pollutant does not exceed 79.9 tons per year; that the potential to emit volatile organic material (VOM) does not exceed 24.9 tons per year; that the potential to emit individual hazardous air pollutants (HAPs) does not exceed 7.9 tons per year; and that the potential to emit combined total HAPs does not exceed 19.9 tons per year.

(2) The applicant for a TCTDP must perform emissions testing during the permit period, as required by the Agency, and submit the results of that testing to the Agency, as specified in the TCTDP, within 60 days after the completion of testing.

(3) During the permit period the applicant for a TCTDP may not convert more than 4 tons per day of woody biomass in the thermochemical conversion technology processing facility.

(4) The applicant for a TCTDP must demonstrate that the proposed project meets the criteria defining thermochemical conversion in subsection (b) of this Section.

(5) The applicant for a TCTDP must submit application fees in accordance with subsection (c) of Section 9.12 of this Act, excluding the fees under subparagraph (B) of paragraph (2) of subsection (c) of that Section.

(6) A complete application for a TCTDP must be filed in accordance with this Section and submitted to the Agency within one year after the effective date of this amendatory Act of the 96th General Assembly.

(7) In addition to the TCTDP, the applicant for a TCTDP must obtain applicable water pollution control permits before constructing or operating the thermochemical conversion technology processing facility and applicable waste management permits before the facility receives woody biomass collected as landscape waste. In addition to authorizing receipt and treatment by thermochemical conversion of woody biomass, waste management permits may authorize, and establish limits for, storage and pre-processing of woody biomass for the exclusive use of the thermochemical conversion technology processing facility. Woody biomass received at the facility and all mineral ash and other residuals from the thermochemical conversion process must be managed in accordance with applicable provisions of this Act and rules and permit conditions adopted under the authority of this Act. The facility must be closed in accordance with applicable permit conditions.

(Source: P.A. 96-1314, eff. 7-27-10.)

(415 ILCS 5/39.10)

Sec. 39.10. General permits.

(a) Except as otherwise prohibited by federal law or regulation, the Agency may issue general permits for the construction, installation, or operation of categories of facilities for which permits are required under this Act or Board regulation, provided that such general permits are consistent with federal and State laws and regulations. Such general permits shall include, but shall not be limited to, provisions requiring the following as prerequisites to obtaining coverage under a general permit: (i) the submittal of a notice of intent to be covered by the general permit and (ii) the payment of applicable permitting fees. The Agency may include

conditions in such general permits as may be necessary to accomplish the intent of this Act and rules adopted under this Act.

(b) Within 6 months after the effective date of this amendatory Act of the 97th General Assembly, the Agency shall, in consultation with the regulated community, identify types of permits for which general permits would be appropriate and consistent with State and federal law and regulations. The types of permits may include, but shall not be limited to, permits for nonhazardous solid waste activities, discharge of storm water from landfills, and discharge of hydrostatic test waters. Within 18 months after the effective date of this amendatory Act of the 97th General Assembly, the Agency shall, in consultation with the regulated community, develop general permits for the types of permits identified pursuant to this subsection (b).

(c) Persons obtaining coverage under a general permit shall be subject to the same permitting fees that apply to persons obtaining individual permits.

(d) No person obtaining coverage under a general permit shall violate this Act, rules adopted under this Act, or the terms or conditions of the general permit.

(e) This Section does not apply to sources subject to Section 39.5 of this Act.

(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/39.12)

Sec. 39.12. Permits by rule.

(a) Except as otherwise prohibited by federal law or regulation, the Board may adopt rules providing for permits by rule for classes of facilities or equipment, provided that the permits by rule are consistent with federal and State laws and regulations. Proposals for permits by rule authorized under this Section may be filed by any person in accordance with Title VII of this Act.

(b) Board rules adopted under this Section shall include, but not be limited to, standards as may be necessary to accomplish the intent of this Act and rules adopted under this Act and the terms and conditions for obtaining a permit by rule under this Section, which shall include, but not be limited to, the following as prerequisites to obtaining a permit by rule: (i) the submittal of a notice of intent to be subject to the permit by rule and (ii) the payment of applicable permitting fees.

(c) Within one year after the effective date of this amendatory Act of the 97th General Assembly, the Agency shall, in consultation with the regulated community, identify types of permits for which permits by rule would be appropriate and consistent with State and federal law and regulations. The types of permits may include, but shall not be limited to, permits for open burning, certain package boilers and heaters using only natural gas or refinery gas, and certain internal combustion engines.

(d) Persons obtaining a permit by rule shall be subject to the same permitting fees that apply to persons obtaining individual permits.

(e) No person that has obtained a permit by rule shall violate this Act, rules adopted under this Act, or the terms and conditions of the permit by rule.

(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/39.14)

Sec. 39.14. Expedited review of permits.

(a) It is the intent of this Section to promote an expedited permit review process for any permit required under this Act.

(b) Any applicant for a permit under this Act may request in writing from the Agency an expedited review of the application for a permit. Within a reasonable time, the Agency shall respond in writing, indicating whether the Agency will perform an expedited review.

(c) In addition to any other fees required by this Act or Board regulations, an applicant requesting expedited review under this Section shall pay to the Agency an expedited permit fee. The amount of the expedited permit fee shall be 4 times the standard permit fee required for the requested permit under this Act or Board regulations; provided that the expedited permit fee shall not exceed $100,000. For recurring permit fees, such as annual fees, operating fees, or discharge fees, the expedited permit fee shall be 4 times the amount of the recurring fee on a one-time basis for each expedited permitting action. If an owner or operator is not required to pay a standard permit fee for the requested permit, the amount of the expedited permit fee shall be mutually agreed upon by the Agency and the applicant. Prior to any Agency review, the applicant shall make full payment of the expedited permit fee to the Agency. All amounts paid to the Agency pursuant to this Section shall be deposited into the Environmental Protection Permit and Inspection Fund. The applicant shall also pay all standard permit fees in accordance with the applicable fee provisions of this Act or Board regulations.

(d) The Agency's expedited review under this Section shall include the usual and customary review by the Agency as necessary for processing any similar application.

(e) "Expedited review" means, for the purposes of this Section, the Agency taking action on a permit application within a period of time mutually agreed upon by the Agency and the applicant; provided, however, that the agreed-upon period of time shall be tolled during any times the Agency is waiting for the applicant or another party to provide information necessary for the Agency to complete its expedited review.

(f) If the Agency fails to complete an expedited review within the period of time agreed upon by the Agency and the applicant, taking into account the tolling provided under subsection (e) of this Section, the applicant shall be entitled to a refund of the expedited permit fee paid under this Section, on a prorated basis, as mutually agreed upon by the Agency and the applicant.

(g) This Section shall not apply to applications related to emergency events necessitating immediate action by the Agency on permit applications.

(h) The Agency may adopt rules for the implementation of this Section.

(Source: P.A. 97-95, eff. 7-12-11.)

(415 ILCS 5/40) (from Ch. 111 1/2, par. 1040)

Sec. 40. Appeal of permit denial.

(a)(1) If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency. However, the 35-day period for petitioning for a hearing may be extended for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. The Board shall give 21 days' notice to any person in the county where is located the facility in issue who has requested notice of enforcement proceedings and to each member of the General Assembly in whose legislative district that installation or property is located; and shall

publish that 21-day notice in a newspaper of general circulation in that county. The Agency shall appear as respondent in such hearing. At such hearing the rules prescribed in Section 32 and subsection (a) of Section 33 of this Act shall apply, and the burden of proof shall be on the petitioner. If, however, the Agency issues an NPDES permit that imposes limits which are based upon a criterion or denies a permit based upon application of a criterion, then the Agency shall have the burden of going forward with the basis for the derivation of those limits or criterion which were derived under the Board's rules.

(2) Except as provided in paragraph (a)(3), if there is no final action by the Board within 120 days after the date on which it received the petition, the petitioner may deem the permit issued under this Act, provided, however, that that period of 120 days shall not run for any period of time, not to exceed 30 days, during which the Board is without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act, and provided further that such 120 day period shall not be stayed for lack of quorum beyond 30 days regardless of whether the lack of quorum exists at the beginning of such 120-day period or occurs during the running of such 120-day period.

(3) Paragraph (a)(2) shall not apply to any permit which is subject to subsection (b), (d) or (e) of Section 39. If there is no final action by the Board within 120 days after the date on which it received the petition, the petitioner shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act.

(b) If the Agency grants a RCRA permit for a hazardous waste disposal site, a third party, other than the permit applicant or Agency, may, within 35 days after the date on which the Agency issued its decision, petition the Board for a hearing to contest the issuance of the permit. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the permitted facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before the Agency. The burden of proof shall be on the petitioner. The Agency and the permit applicant shall be named co-respondents.

The provisions of this subsection do not apply to the granting of permits issued for the disposal or utilization of sludge from publicly owned sewage works.

(c) Any party to an Agency proceeding conducted pursuant to Section 39.3 of this Act may petition as of right to the Board for review of the Agency's decision within 35 days from the date of issuance of the Agency's decision, provided that such appeal is not duplicative or frivolous. However, the 35-day period for petitioning for a hearing may be extended by the applicant for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period. The decision of the Board shall be based exclusively on the record compiled in the Agency proceeding. In other respects the Board's review shall be conducted in accordance with subsection (a) of this Section and the Board's procedural rules governing permit denial appeals.

(d) In reviewing the denial or any condition of a NA NSR permit issued by the Agency pursuant to rules and regulations adopted under subsection (c) of Section 9.1 of this Act, the decision of the Board shall be based exclusively on the record

before the Agency including the record of the hearing, if any, unless the parties agree to supplement the record. The Board shall, if it finds the Agency is in error, make a final determination as to the substantive limitations of the permit including a final determination of Lowest Achievable Emission Rate.

(e)(1) If the Agency grants or denies a permit under subsection (b) of Section 39 of this Act, a third party, other than the permit applicant or Agency, may petition the Board within 35 days from the date of issuance of the Agency's decision, for a hearing to contest the decision of the Agency.

(2) A petitioner shall include the following within a petition submitted under subdivision (1) of this subsection:

(A) a demonstration that the petitioner raised the issues contained within the petition during the public notice period or during the public hearing on the NPDES permit application, if a public hearing was held; and

(B) a demonstration that the petitioner is so situated as to be affected by the permitted facility.

(3) If the Board determines that the petition is not duplicative or frivolous and contains a satisfactory demonstration under subdivision (2) of this subsection, the Board shall hear the petition (i) in accordance with the terms of subsection (a) of this Section and its procedural rules governing permit denial appeals and (ii) exclusively on the basis of the record before the Agency. The burden of proof shall be on the petitioner. The Agency and permit applicant shall be named co-respondents.

(f) Any person who files a petition to contest the issuance of a permit by the Agency shall pay a filing fee.

(g) If the Agency grants or denies a permit under subsection (y) of Section 39, a third party, other than the permit applicant or Agency, may appeal the Agency's decision as provided under federal law for CCR surface impoundment permits.
(Source: P.A. 101-171, eff. 7-30-19; 102-558, eff. 8-20-21.)

(415 ILCS 5/40.1) (from Ch. 111 1/2, par. 1040.1)

Sec. 40.1. Appeal of siting approval.

(a) If the county board or the governing body of the municipality, as determined by paragraph (c) of Section 39 of this Act, refuses to grant or grants with conditions approval under Section 39.2 of this Act, the applicant may, within 35 days after the date on which the local siting authority disapproved or conditionally approved siting, petition for a hearing before the Board to contest the decision of the county board or the governing body of the municipality. The Board shall publish 21 day notice of the hearing on the appeal in a newspaper of general circulation published in that county. The county board or governing body of the municipality shall appear as respondent in such hearing, and such hearing shall be based exclusively on the record before the county board or the governing body of the municipality. At such hearing the rules prescribed in Sections 32 and 33 (a) of this Act shall apply, and the burden of proof shall be on the petitioner; however, no new or additional evidence in support of or in opposition to any finding, order, determination or decision of the appropriate county board or governing body of the municipality shall be heard by the Board. In making its orders and determinations under this Section the Board shall include in its consideration the written decision and reasons for the decision of the county board or the governing body of the municipality, the transcribed record of the hearing held pursuant to subsection (d) of Section 39.2, and the fundamental fairness of the procedures used by the county board or the governing body of the municipality in

reaching its decision. The Board shall transmit a copy of its decision to the office of the county board or governing body of the municipality where it shall be available for public inspection and copied upon payment of the actual cost of reproduction. If there is no final action by the Board within 120 days after the date on which it received the petition, the petitioner may deem the site location approved; provided, however, that that period of 120 days shall not run for any period of time, not to exceed 30 days, during which the Board is without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act, and provided further, that such 120 day period shall not be stayed for lack of quorum beyond 30 days regardless of whether the lack of quorum exists at the beginning of such 120 day period or occurs during the running of such 120 day period.

(b) If the county board or the governing body of the municipality as determined by paragraph (c) of Section 39 of this Act, grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board or governing body of the municipality may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board or the governing body of the municipality. Unless the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the proposed facility, the Board shall hear the petition in accordance with the terms of subsection (a) of this Section and its procedural rules governing denial appeals, such hearing to be based exclusively on the record before county board or the governing body of the municipality. The burden of proof shall be on the petitioner. The county board or the governing body of the municipality and the applicant shall be named as co-respondents.

The Board shall transmit a copy of its decision to the office of the county board or governing body of the municipality where it shall be available for public inspection and may be copied upon payment of the actual cost of reproduction.

(c) Any person who files a petition to contest a decision of the county board or governing body of the municipality shall pay a filing fee.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/40.2) (from Ch. 111 1/2, par. 1040.2)

Sec. 40.2. Application of review process.

(a) Subsection (a) of Section 40 does not apply to any permit which is subject to Section 39.5. If the Agency refuses to grant or grants with conditions a CAAPP permit, makes a determination of incompleteness regarding a submitted CAAPP application, or fails to act on an application for a CAAPP permit, permit renewal, or permit revision within the time specified in paragraph 5(j) of Section 39.5 of this Act, the applicant, any person who participated in the public comment process pursuant to subsection 8 of Section 39.5 of this Act, or any other person who could obtain judicial review pursuant to Section 41(a) of this Act, may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency. However, the 35-day period for petitioning for a hearing may be extended by the applicant for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. If another person with standing to appeal wishes to obtain an extension, there must be a written notice provided to the Board by that person, the Agency, and the applicant, within the initial appeal period.

Notwithstanding the preceding requirements, petitions for a hearing before the Board under this subsection may be filed after the 35-day period, only if such petitions are based solely on grounds arising after the 35-day period expires. Such petitions shall be filed within 35 days after the new grounds for review arise. If the final permit action being challenged is the Agency's failure to take final action, a petition for a hearing before the Board shall be filed before the Agency denies or issues the final permit.

The Agency shall appear as respondent in such hearing. At such hearing the rules prescribed in Sections 32 and 33(a) of this Act shall apply, and the burden of proof shall be on the petitioner.

(b) The Agency's failure to take final action within 90 days of receipt of an application requesting minor permit modification procedures (or 180 days for modifications subject to group processing requirements), pursuant to subsection 14 of Section 39.5, will be subject to this Section and Section 41 of this Act.

(c) If there is no final action by the Board within 120 days after the date on which it received the petition, the permit shall not be deemed issued; rather, the petitioner shall be entitled to an Appellate Court order pursuant to Section 41(d) of this Act. The period of 120 days shall not run for any period of time, not to exceed 30 days, during which the Board is without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act; the 120 day period shall not be stayed for lack of quorum beyond 30 days, regardless of whether the lack of quorum exists at the beginning of the 120 day period or occurs during the running of the 120 day period.

(d) Any person who files a petition to contest the final permit action by the Agency under this Section shall pay a filing fee.

(e) The Agency shall notify USEPA, in writing, of any petition for hearing brought under this Section involving a provision or denial of a Phase II acid rain permit within 30 days of the filing of the petition. USEPA may intervene as a matter of right in any such hearing. The Agency shall notify USEPA, in writing, of any determination or order in a hearing brought under this Section that interprets, voids, or otherwise relates to any portion of a Phase II acid rain permit.

(f) If requested by the applicant, the Board may stay the effectiveness of any final Agency action identified in subsection (a) of this Section during the pendency of the review process. If requested by the applicant, the Board shall stay the effectiveness of all the contested conditions of a CAAPP permit. The Board may stay the effectiveness of any or all uncontested conditions if the Board determines that the uncontested conditions would be affected by its review of contested conditions. If the Board stays any, but not all, conditions, then the applicant shall continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process. If the Board stays all conditions, then the applicant shall continue to operate in accordance with all related terms and conditions of any other applicable permits until final Board action in the review process. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant under this subsection (f). Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this subsection.

(Source: P.A. 96-934, eff. 6-21-10.)

(415 ILCS 5/40.3)

Sec. 40.3. Review process for PSD permits.

(a) (1) Subsection (a) of Section 40 does not apply to any PSD permit that is subject to subsection (c) of Section 9.1 of this Act. If the Agency refused to grant or grants with conditions a PSD permit, the applicant may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency. If the Agency fails to act on an application for a PSD permit within the time frame specified in paragraph (3) of subsection (f) of Section 39 of this Act, the applicant may, before the Agency denies or issues the final permit, petition for a hearing before the Board to compel the Agency to act on the application in a time that is deemed reasonable.

(2) Any person who participated in the public comment process and is either aggrieved or has an interest that is or may be adversely affected by the PSD permit may, within 35 days after final permit action, petition for a hearing before the Board to contest the decision of the Agency. If the petitioner failed to participate in the public comment process, the person may still petition for a hearing, but only upon issues where the final permit conditions reflect changes from the proposed draft permit.

The petition shall: (i) include such facts as necessary to demonstrate that the petitioner is aggrieved or has an interest that is or may be adversely affected; (ii) state the issues proposed for review, citing to the record where those issues were raised or explaining why such issues were not required to be raised during the public comment process; and (iii) explain why the Agency's previous response, if any, to those issues is (A) clearly erroneous or (B) an exercise of discretion or an important policy consideration that the Board should, in its discretion, review.

The Board shall hold a hearing upon a petition to contest the decision of the Agency under this paragraph (a)(2) unless the request is determined by the Board to be frivolous or to lack facially adequate factual statements required in this paragraph (a)(2).

The Agency shall appear as respondent in any hearing pursuant to this subsection (a). At such hearing the rules prescribed in Section 32 and subsection (a) of Section 33 of this Act shall apply, and the burden of proof shall be on the petitioner.

(b) If there is no final action by the Board within 120 days after the date on which it received the petition, the PSD permit shall not be deemed issued; rather, any party shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act. This period of 120 days shall not run for any period of time, not to exceed 30 days, during which the Board is without sufficient membership to constitute the quorum required by subsection (a) of Section 5 of this Act. The 120-day period shall not be stayed for lack of quorum beyond 30 days, regardless of whether the lack of quorum exists at the beginning of the 120-day period or occurs during the running of the 120-day period.

(c) Any person who files a petition to contest the final permit action by the Agency under this Section shall pay the filing fee for petitions for review of permit set forth in Section 7.5.

(d)(1) In reviewing the denial or any condition of a PSD permit issued by the Agency pursuant to rules adopted under subsection (c) of Section 9.1 of this Act, the decision of the Board shall be based exclusively on the record before the Agency unless the parties agree to supplement the record.

(2) If requested by the applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application identified in subsection (f) of Section 39 of this Act during the pendency of the review process. In such cases, the Board shall stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant under this subsection (d). Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this subsection (d).

(3) If requested by a party other than the applicant, the Board may stay the effectiveness of any final Agency action on a PSD permit application identified in subsection (f) of Section 39 of this Act during the pendency of the review process. In such cases, the Board may stay the effectiveness of all the contested conditions of the PSD permit and may stay the effectiveness of any or all uncontested conditions only if the Board determines that the uncontested conditions would be affected by its review of contested conditions. The party requesting the stay has the burden of demonstrating the following: (i) that an immediate stay is required in order to preserve the status quo without endangering the public, (ii) that it is not contrary to public policy, and (iii) that there is a reasonable likelihood of success on the merits. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed under this subsection (d) and shall remain in effect until a decision is issued by the Board on the petition. Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this paragraph.

(Source: P.A. 99-463, eff. 1-1-16.)

(415 ILCS 5/Tit. XI heading)

TITLE XI: JUDICIAL REVIEW

(415 ILCS 5/41) (from Ch. 111 1/2, par. 1041)

Sec. 41. Judicial review.

(a) Any party to a Board hearing, any person who filed a complaint on which a hearing was denied, any person who has been denied a variance or permit under this Act, any party adversely affected by a final order or determination of the Board, and any person who participated in the public comment process under subsection (8) of Section 39.5 of this Act may obtain judicial review, by filing a petition for review within 35 days from the date that a copy of the order or other final action sought to be reviewed was served upon the party affected by the order or other final Board action complained of, under the provisions of the Administrative Review Law, as amended and the rules adopted pursuant thereto, except that review shall be afforded directly in the Appellate Court for the District in which the cause of action arose and not in the Circuit Court. For purposes of this subsection (a), the date of service of the Board's final order is the date on which the party received a copy of the order from the Board. Review of any rule or regulation promulgated by the Board shall not be limited by this Section but may also be had as provided in Section 29 of this Act.

(b) Any final order of the Board under this Act shall be based solely on the evidence in the record of the particular proceeding involved, and any such final order for permit

appeals, enforcement actions and variance proceedings, shall be invalid if it is against the manifest weight of the evidence. Notwithstanding this subsection, the Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of this Act may require. If an objection is made to a variance condition, the board shall reconsider the condition within not more than 75 days from the date of the objection.

(c) No challenge to the validity of a Board order shall be made in any enforcement proceeding under Title XII of this Act as to any issue that could have been raised in a timely petition for review under this Section.

(d) If there is no final action by the Board within 120 days on a request for a variance which is subject to subsection (c) of Section 38 or a permit appeal which is subject to paragraph (a) (3) of Section 40 or paragraph (d) of Section 40.2 or Section 40.3, the petitioner shall be entitled to an Appellate Court order under this subsection. If a hearing is required under this Act and was not held by the Board, the Appellate Court shall order the Board to conduct such a hearing, and to make a decision within 90 days from the date of the order. If a hearing was held by the Board, or if a hearing is not required under this Act and was not held by the Board, the Appellate Court shall order the Board to make a decision within 90 days from the date of the order.

The Appellate Court shall retain jurisdiction during the pendency of any further action conducted by the Board under an order by the Appellate Court. The Appellate Court shall have jurisdiction to review all issues of law and fact presented upon appeal.

(e) This Section does not apply to orders entered by the Board pursuant to Section 38.5 of this Act. Final orders entered by the Board pursuant to Section 38.5 of this Act are subject to judicial review under subsection (j) of that Section. Interim orders entered by the Board pursuant to Section 38.5 are not subject to judicial review under this Section or Section 38.5.
(Source: P.A. 99-463, eff. 1-1-16; 99-934, eff. 1-27-17; 99-937, eff. 2-24-17; 100-863, eff. 8-14-18.)

(415 ILCS 5/Tit. XII heading)

TITLE XII: PENALTIES

(415 ILCS 5/42) (from Ch. 111 1/2, par. 1042)

Sec. 42. Civil penalties.

(a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed $50,000 for the violation and an additional civil penalty of not to exceed $10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

(b) Notwithstanding the provisions of subsection (a) of this Section:

(1) Any person that violates Section 12(f) of this Act or any NPDES permit or term or condition thereof, or any filing requirement, regulation or order relating to the NPDES permit program, shall be liable to a civil penalty of not to exceed $10,000 per day of violation.

(2) Any person that violates Section 12(g) of this Act or any UIC permit or term or condition thereof, or any filing requirement, regulation or order relating to the State UIC program for all wells, except Class II wells as defined by the Board under this Act, shall be liable to a civil penalty not to exceed $2,500 per day of violation; provided, however, that any person who commits such violations relating to the State UIC program for Class II wells, as defined by the Board under this Act, shall be liable to a civil penalty of not to exceed $10,000 for the violation and an additional civil penalty of not to exceed $1,000 for each day during which the violation continues.

(3) Any person that violates Sections 21(f), 21(g), 21(h) or 21(i) of this Act, or any RCRA permit or term or condition thereof, or any filing requirement, regulation or order relating to the State RCRA program, shall be liable to a civil penalty of not to exceed $25,000 per day of violation.

(4) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (o) of Section 21 of this Act shall pay a civil penalty of $500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(4-5) In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) of Section 21, Section 22.38, Section 22.51, Section 22.51a, or subsection (k) of Section 55 of this Act shall pay a civil penalty of $1,500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency, except that the civil penalty amount shall be $3,000 for each violation of any provision of subsection (p) of Section 21, Section 22.38, Section 22.51, Section 22.51a, or subsection (k) of Section 55 that is the person's second or subsequent adjudication violation of that provision. The penalties shall be deposited into the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act; except that if a unit of local government issued the administrative citation, 50% of the civil penalty shall be payable to the unit of local government.

(5) Any person who violates subsection 6 of Section 39.5 of this Act or any CAAPP permit, or term or condition thereof, or any fee or filing requirement, or any duty to allow or carry out inspection, entry or monitoring activities, or any regulation or order relating to the CAAPP shall be liable for a civil penalty not to exceed $10,000 per day of violation.

(6) Any owner or operator of a community water system that violates subsection (b) of Section 18.1 or subsection (a) of Section 25d-3 of this Act shall, for each day of violation, be liable for a civil penalty not to exceed $5 for each of the premises connected to the affected community water system.

(7) Any person who violates Section 52.5 of this Act shall be liable for a civil penalty of up to $1,000 for the first violation of that Section and a civil penalty of up to

$2,500 for a second or subsequent violation of that Section.

(b.5) In lieu of the penalties set forth in subsections (a) and (b) of this Section, any person who fails to file, in a timely manner, toxic chemical release forms with the Agency pursuant to Section 25b-2 of this Act shall be liable for a civil penalty of $100 per day for each day the forms are late, not to exceed a maximum total penalty of $6,000. This daily penalty shall begin accruing on the thirty-first day after the date that the person receives the warning notice issued by the Agency pursuant to Section 25b-6 of this Act; and the penalty shall be paid to the Agency. The daily accrual of penalties shall cease as of January 1 of the following year. All penalties collected by the Agency pursuant to this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

(c) Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the death of fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

(d) The penalties provided for in this Section may be recovered in a civil action.

(e) The State's Attorney of the county in which the violation occurred, or the Attorney General, may, at the request of the Agency or on his own motion, institute a civil action for an injunction, prohibitory or mandatory, to restrain violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or to require such other actions as may be necessary to address violations of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

(f) The State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the people of the State of Illinois. Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing, or repeated violation of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order.

Any funds collected under this subsection (f) in which the Attorney General has prevailed shall be deposited in the Hazardous Waste Fund created in Section 22.2 of this Act. Any funds collected under this subsection (f) in which a State's Attorney has prevailed shall be retained by the county in which he serves.

(g) All final orders imposing civil penalties pursuant to this Section shall prescribe the time for payment of such penalties. If any such penalty is not paid within the time prescribed, interest on such penalty at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, shall be paid for the period from the date payment is due until the date payment is received. However, if the time for payment is stayed during the pendency of an appeal, interest shall not accrue during such stay.

(h) In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3), (b)(5),

(b)(6), or (b)(7) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to, the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;

(3) any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;

(4) the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;

(5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

(6) whether the respondent voluntarily self-disclosed, in accordance with subsection (i) of this Section, the non-compliance to the Agency;

(7) whether the respondent has agreed to undertake a "supplemental environmental project", which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and

(8) whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In determining the appropriate civil penalty to be imposed under subsection (a) or paragraph (1), (2), (3), (5), (6), or (7) of subsection (b) of this Section, the Board shall ensure, in all cases, that the penalty is at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship. However, such civil penalty may be off-set in whole or in part pursuant to a supplemental environmental project agreed to by the complainant and the respondent.

(i) A person who voluntarily self-discloses non-compliance to the Agency, of which the Agency had been unaware, is entitled to a 100% reduction in the portion of the penalty that is not based on the economic benefit of non-compliance if the person can establish the following:

(1) that either the regulated entity is a small entity or the non-compliance was discovered through an environmental audit or a compliance management system documented by the regulated entity as reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations;

(2) that the non-compliance was disclosed in writing within 30 days of the date on which the person discovered it;

(3) that the non-compliance was discovered and disclosed prior to:

(i) the commencement of an Agency inspection, investigation, or request for information;

(ii) notice of a citizen suit;

(iii) the filing of a complaint by a citizen, the

Illinois Attorney General, or the State's Attorney of the county in which the violation occurred;

(iv) the reporting of the non-compliance by an employee of the person without that person's knowledge; or

(v) imminent discovery of the non-compliance by the Agency;

(4) that the non-compliance is being corrected and any environmental harm is being remediated in a timely fashion;

(5) that the person agrees to prevent a recurrence of the non-compliance;

(6) that no related non-compliance events have occurred in the past 3 years at the same facility or in the past 5 years as part of a pattern at multiple facilities owned or operated by the person;

(7) that the non-compliance did not result in serious actual harm or present an imminent and substantial endangerment to human health or the environment or violate the specific terms of any judicial or administrative order or consent agreement;

(8) that the person cooperates as reasonably requested by the Agency after the disclosure; and

(9) that the non-compliance was identified voluntarily and not through a monitoring, sampling, or auditing procedure that is required by statute, rule, permit, judicial or administrative order, or consent agreement.

If a person can establish all of the elements under this subsection except the element set forth in paragraph (1) of this subsection, the person is entitled to a 75% reduction in the portion of the penalty that is not based upon the economic benefit of non-compliance.

For the purposes of this subsection (i), "small entity" has the same meaning as in Section 221 of the federal Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601).

(j) In addition to any other remedy or penalty that may apply, whether civil or criminal, any person who violates Section 22.52 of this Act shall be liable for an additional civil penalty of up to 3 times the gross amount of any pecuniary gain resulting from the violation.

(k) In addition to any other remedy or penalty that may apply, whether civil or criminal, any person who violates subdivision (a)(7.6) of Section 31 of this Act shall be liable for an additional civil penalty of $2,000.

(Source: P.A. 102-310, eff. 8-6-21.)

(415 ILCS 5/43) (from Ch. 111 1/2, par. 1043)

Sec. 43. (a) In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State's Attorney or Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of injunction.

(b) If any term or condition of an NPDES permit issued under this Act for discharges from a publicly owned or publicly regulated sewage works is violated, the use of the sewage works by a contaminant source not using the works prior to a finding that the condition was violated:

(i) may be prohibited by the public body owning or

regulating such sewage works, pursuant to State law or local ordinance; or

(ii) may be prohibited or restricted under the provisions of Title VIII of this Act; or

(iii) the State's Attorney of the county in which the violation occurred, or the Attorney General, at the request of the Agency or on his own motion, may proceed in a court of competent jurisdiction to secure such relief.

(c) If an industrial user of a publicly owned or publicly regulated sewage works is not in compliance with a system of user charges required under State law or local ordinance or regulations or as a term or condition of any NPDES permit issued under this Act to the sewage works into which the user is discharging contaminants, the system of charges may be enforced directly against the industrial user--

(i) by the public body owning or regulating such sewage works, pursuant to State law or local ordinance; or

(ii) under the provisions of Title VIII of this Act; or

(iii) the State's Attorney of the county in which the violation occurred, or the Attorney General, at the request of the Agency or on his own motion, may proceed in a court of competent jurisdiction to secure such relief.

(Source: P.A. 78-862.)

(415 ILCS 5/44) (from Ch. 111 1/2, par. 1044)

Sec. 44. Criminal acts; penalties.

(a) Except as otherwise provided in this Section, it shall be a Class A misdemeanor to violate this Act or regulations thereunder, or any permit or term or condition thereof, or knowingly to submit any false information under this Act or regulations adopted thereunder, or under any permit or term or condition thereof. A court may, in addition to any other penalty herein imposed, order a person convicted of any violation of this Act to perform community service for not less than 100 hours and not more than 300 hours if community service is available in the jurisdiction. It shall be the duty of all State and local law-enforcement officers to enforce such Act and regulations, and all such officers shall have authority to issue citations for such violations.

(b) Calculated Criminal Disposal of Hazardous Waste.

(1) A person commits the offense of Calculated Criminal Disposal of Hazardous Waste when, without lawful justification, he knowingly disposes of hazardous waste while knowing that he thereby places another person in danger of great bodily harm or creates an immediate or long-term danger to the public health or the environment.

(2) Calculated Criminal Disposal of Hazardous Waste is a Class 2 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Calculated Criminal Disposal of Hazardous Waste is subject to a fine not to exceed $500,000 for each day of such offense.

(c) Criminal Disposal of Hazardous Waste.

(1) A person commits the offense of Criminal Disposal of Hazardous Waste when, without lawful justification, he knowingly disposes of hazardous waste.

(2) Criminal Disposal of Hazardous Waste is a Class 3 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Criminal Disposal of Hazardous Waste is subject to a fine not to exceed $250,000 for each day of such offense.

(d) Unauthorized Use of Hazardous Waste.

(1) A person commits the offense of Unauthorized Use

of Hazardous Waste when he, being required to have a permit, registration, or license under this Act or any other law regulating the treatment, transportation, or storage of hazardous waste, knowingly:

(A) treats, transports, or stores any hazardous waste without such permit, registration, or license;

(B) treats, transports, or stores any hazardous waste in violation of the terms and conditions of such permit or license;

(C) transports any hazardous waste to a facility which does not have a permit or license required under this Act; or

(D) transports by vehicle any hazardous waste without having in each vehicle credentials issued to the transporter by the transporter's base state pursuant to procedures established under the Uniform Program.

(2) A person who is convicted of a violation of subparagraph (A), (B), or (C) of paragraph (1) of this subsection is guilty of a Class 4 felony. A person who is convicted of a violation of subparagraph (D) of paragraph (1) of this subsection is guilty of a Class A misdemeanor. In addition to any other penalties prescribed by law, a person convicted of violating subparagraph (A), (B), or (C) of paragraph (1) of this subsection is subject to a fine not to exceed $100,000 for each day of such violation, and a person who is convicted of violating subparagraph (D) of paragraph (1) of this subsection is subject to a fine not to exceed $1,000.

(e) Unlawful Delivery of Hazardous Waste.

(1) Except as authorized by this Act or the federal Resource Conservation and Recovery Act, and the regulations promulgated thereunder, it is unlawful for any person to knowingly deliver hazardous waste.

(2) Unlawful Delivery of Hazardous Waste is a Class 3 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Unlawful Delivery of Hazardous Waste is subject to a fine not to exceed $250,000 for each such violation.

(3) For purposes of this Section, "deliver" or "delivery" means the actual, constructive, or attempted transfer of possession of hazardous waste, with or without consideration, whether or not there is an agency relationship.

(f) Reckless Disposal of Hazardous Waste.

(1) A person commits Reckless Disposal of Hazardous Waste if he disposes of hazardous waste, and his acts which cause the hazardous waste to be disposed of, whether or not those acts are undertaken pursuant to or under color of any permit or license, are performed with a conscious disregard of a substantial and unjustifiable risk that such disposing of hazardous waste is a gross deviation from the standard of care which a reasonable person would exercise in the situation.

(2) Reckless Disposal of Hazardous Waste is a Class 4 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Reckless Disposal of Hazardous Waste is subject to a fine not to exceed $50,000 for each day of such offense.

(g) Concealment of Criminal Disposal of Hazardous Waste.

(1) A person commits the offense of Concealment of Criminal Disposal of Hazardous Waste when he conceals, without lawful justification, the disposal of hazardous waste with the knowledge that such hazardous waste has been disposed of in violation of this Act.

(2) Concealment of Criminal Disposal of a Hazardous Waste is a Class 4 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Concealment of Criminal Disposal of Hazardous Waste is subject to a fine not to exceed $50,000 for each day of such offense.

(h) Violations; False Statements.

(1) Any person who knowingly makes a false material statement in an application for a permit or license required by this Act to treat, transport, store, or dispose of hazardous waste commits the offense of perjury and shall be subject to the penalties set forth in Section 32-2 of the Criminal Code of 2012.

(2) Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit or license, or other document filed, maintained, or used for the purpose of compliance with this Act in connection with the generation, disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 felony. A second or any subsequent offense after conviction hereunder is a Class 3 felony.

(3) Any person who knowingly destroys, alters, or conceals any record required to be made by this Act in connection with the disposal, treatment, storage, or transportation of hazardous waste commits a Class 4 felony. A second or any subsequent offense after a conviction hereunder is a Class 3 felony.

(4) Any person who knowingly makes a false material statement or representation in any application, bill, invoice, or other document filed, maintained, or used for the purpose of receiving money from the Underground Storage Tank Fund commits a Class 4 felony. A second or any subsequent offense after conviction hereunder is a Class 3 felony.

(4.5) Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit or license, or other document filed, maintained, or used for the purpose of compliance with Title XVI of this Act commits a Class 4 felony. Any second or subsequent offense after conviction hereunder is a Class 3 felony.

(5) Any person who knowingly destroys, alters, or conceals any record required to be made or maintained by this Act or required to be made or maintained by Board or Agency rules for the purpose of receiving money from the Underground Storage Tank Fund commits a Class 4 felony. A second or any subsequent offense after a conviction hereunder is a Class 3 felony.

(6) A person who knowingly and falsely certifies under Section 22.48 that an industrial process waste or pollution control waste is not special waste commits a Class 4 felony for a first offense and commits a Class 3 felony for a second or subsequent offense.

(7) In addition to any other penalties prescribed by law, a person convicted of violating this subsection (h) is subject to a fine not to exceed $50,000 for each day of such violation.

(8) Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Agency, or to a unit of local government to which the Agency has delegated authority under subsection (r) of Section 4 of this Act, related to or required by this Act, a regulation adopted under this Act, any federal law or regulation for which the Agency has responsibility, or any

permit, term, or condition thereof, commits a Class 4 felony, and each such statement or writing shall be considered a separate Class 4 felony. A person who, after being convicted under this paragraph (8), violates this paragraph (8) a second or subsequent time, commits a Class 3 felony.

(i) Verification.

(1) Each application for a permit or license to dispose of, transport, treat, store, or generate hazardous waste under this Act shall contain an affirmation that the facts are true and are made under penalty of perjury as defined in Section 32-2 of the Criminal Code of 2012. It is perjury for a person to sign any such application for a permit or license which contains a false material statement, which he does not believe to be true.

(2) Each request for money from the Underground Storage Tank Fund shall contain an affirmation that the facts are true and are made under penalty of perjury as defined in Section 32-2 of the Criminal Code of 2012. It is perjury for a person to sign any request that contains a false material statement that he does not believe to be true.

(j) Violations of Other Provisions.

(1) It is unlawful for a person knowingly to violate:

(A) subsection (f) of Section 12 of this Act;

(B) subsection (g) of Section 12 of this Act;

(C) any term or condition of any Underground Injection Control (UIC) permit;

(D) any filing requirement, regulation, or order relating to the State Underground Injection Control (UIC) program;

(E) any provision of any regulation, standard, or filing requirement under subsection (b) of Section 13 of this Act;

(F) any provision of any regulation, standard, or filing requirement under subsection (b) of Section 39 of this Act;

(G) any National Pollutant Discharge Elimination System (NPDES) permit issued under this Act or any term or condition of such permit;

(H) subsection (h) of Section 12 of this Act;

(I) subsection 6 of Section 39.5 of this Act;

(J) any provision of any regulation, standard or filing requirement under Section 39.5 of this Act;

(K) a provision of the Procedures for Asbestos Emission Control in subsection (c) of Section 61.145 of Title 40 of the Code of Federal Regulations; or

(L) the standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations in Section 61.150 of Title 40 of the Code of Federal Regulations.

(2) A person convicted of a violation of subdivision (1) of this subsection commits a Class 4 felony, and in addition to any other penalty prescribed by law is subject to a fine not to exceed $25,000 for each day of such violation.

(3) A person who negligently violates the following shall be subject to a fine not to exceed $10,000 for each day of such violation:

(A) subsection (f) of Section 12 of this Act;

(B) subsection (g) of Section 12 of this Act;

(C) any provision of any regulation, standard, or

filing requirement under subsection (b) of Section 13 of this Act;

(D) any provision of any regulation, standard, or filing requirement under subsection (b) of Section 39 of this Act;

(E) any National Pollutant Discharge Elimination System (NPDES) permit issued under this Act;

(F) subsection 6 of Section 39.5 of this Act; or

(G) any provision of any regulation, standard, or filing requirement under Section 39.5 of this Act.

(4) It is unlawful for a person knowingly to:

(A) make any false statement, representation, or certification in an application form, or form pertaining to, a National Pollutant Discharge Elimination System (NPDES) permit;

(B) render inaccurate any monitoring device or record required by the Agency or Board in connection with any such permit or with any discharge which is subject to the provisions of subsection (f) of Section 12 of this Act;

(C) make any false statement, representation, or certification in any form, notice, or report pertaining to a CAAPP permit under Section 39.5 of this Act;

(D) render inaccurate any monitoring device or record required by the Agency or Board in connection with any CAAPP permit or with any emission which is subject to the provisions of Section 39.5 of this Act; or

(E) violate subsection 6 of Section 39.5 of this Act or any CAAPP permit, or term or condition thereof, or any fee or filing requirement.

(5) A person convicted of a violation of paragraph (4) of this subsection commits a Class A misdemeanor, and in addition to any other penalties provided by law is subject to a fine not to exceed $10,000 for each day of violation.

(k) Criminal operation of a hazardous waste or PCB incinerator.

(1) A person commits the offense of criminal operation of a hazardous waste or PCB incinerator when, in the course of operating a hazardous waste or PCB incinerator, he knowingly and without justification operates the incinerator (i) without an Agency permit, or in knowing violation of the terms of an Agency permit, and (ii) as a result of such violation, knowingly places any person in danger of great bodily harm or knowingly creates an immediate or long term material danger to the public health or the environment.

(2) Any person who commits the offense of criminal operation of a hazardous waste or PCB incinerator for the first time commits a Class 4 felony and, in addition to any other penalties prescribed by law, shall be subject to a fine not to exceed $100,000 for each day of the offense.

Any person who commits the offense of criminal operation of a hazardous waste or PCB incinerator for a second or subsequent time commits a Class 3 felony and, in addition to any other penalties prescribed by law, shall be subject to a fine not to exceed $250,000 for each day of the offense.

(3) For the purpose of this subsection (k), the term "hazardous waste or PCB incinerator" means a pollution control facility at which either hazardous waste or PCBs, or both, are incinerated. "PCBs" means any substance or mixture of substances that contains one or more polychlorinated biphenyls in detectable amounts.

(l) It shall be the duty of all State and local law enforcement officers to enforce this Act and the regulations adopted hereunder, and all such officers shall have authority to issue citations for such violations.

(m) Any action brought under this Section shall be brought by the State's Attorney of the county in which the violation occurred, or by the Attorney General, and shall be conducted in accordance with the applicable provisions of the Code of Criminal Procedure of 1963.

(n) For an offense described in this Section, the period for commencing prosecution prescribed by the statute of limitations shall not begin to run until the offense is discovered by or reported to a State or local agency having the authority to investigate violations of this Act.

(o) In addition to any other penalties provided under this Act, if a person is convicted of (or agrees to a settlement in an enforcement action over) illegal dumping of waste on the person's own property, the Attorney General, the Agency, or local prosecuting authority shall file notice of the conviction, finding, or agreement in the office of the Recorder in the county in which the landowner lives.

(p) Criminal Disposal of Waste.

(1) A person commits the offense of Criminal Disposal of Waste when he or she:

(A) if required to have a permit under subsection (d) of Section 21 of this Act, knowingly conducts a waste-storage, waste-treatment, or waste-disposal operation in a quantity that exceeds 250 cubic feet of waste without a permit; or

(B) knowingly conducts open dumping of waste in violation of subsection (a) of Section 21 of this Act.

(2) (A) A person who is convicted of a violation of subparagraph (A) of paragraph (1) of this subsection is guilty of a Class 4 felony for a first offense and, in addition to any other penalties provided by law, is subject to a fine not to exceed $25,000 for each day of violation. A person who is convicted of a violation of subparagraph (A) of paragraph (1) of this subsection is guilty of a Class 3 felony for a second or subsequent offense and, in addition to any other penalties provided by law, is subject to a fine not to exceed $50,000 for each day of violation.

(B) A person who is convicted of a violation of subparagraph (B) of paragraph (1) of this subsection is guilty of a Class A misdemeanor. However, a person who is convicted of a violation of subparagraph (B) of paragraph (1) of this subsection for the open dumping of waste in a quantity that exceeds 250 cubic feet or that exceeds 50 waste tires is guilty of a Class 4 felony and, in addition to any other penalties provided by law, is subject to a fine not to exceed $25,000 for each day of violation.

(q) Criminal Damage to a Public Water Supply.

(1) A person commits the offense of Criminal Damage to a Public Water Supply when, without lawful justification, he knowingly alters, damages, or otherwise tampers with the equipment or property of a public water supply, or knowingly introduces a contaminant into the distribution system of a public water supply so as to cause, threaten, or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health or the environment.

(2) Criminal Damage to a Public Water Supply is a Class 4 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of

Criminal Damage to a Public Water Supply is subject to a fine not to exceed $250,000 for each day of such offense.

(r) Aggravated Criminal Damage to a Public Water Supply.

(1) A person commits the offense of Aggravated Criminal Damage to a Public Water Supply when, without lawful justification, he commits Criminal Damage to a Public Water Supply while knowing that he thereby places another person in danger of serious illness or great bodily harm, or creates an immediate or long-term danger to public health or the environment.

(2) Aggravated Criminal Damage to a Public Water Supply is a Class 2 felony. In addition to any other penalties prescribed by law, a person convicted of the offense of Aggravated Criminal Damage to a Public Water Supply is subject to a fine not to exceed $500,000 for each day of such offense.

(Source: P.A. 97-220, eff. 7-28-11; 97-286, eff. 8-10-11; 97-813, eff. 7-13-12; 97-1150, eff. 1-25-13; 98-822, eff. 8-1-14.)

(415 ILCS 5/44.1)

Sec. 44.1. (a) In addition to all other civil and criminal penalties provided by law, any person convicted of a criminal violation of this Act or the regulations adopted thereunder shall forfeit to the State (1) an amount equal to the value of all profits earned, savings realized, and benefits incurred as a direct or indirect result of such violation, and (2) any vehicle or conveyance used in the perpetration of such violation, except as provided in subsection (b).

(b) Forfeiture of conveyances shall be subject to the following exceptions:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it is proven that the owner or other person in charge of the conveyance consented to or was privy to the covered violation.

(2) No conveyance is subject to forfeiture under this Section by reason of any covered violation which the owner proves to have been committed without his knowledge or consent.

(3) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the covered violation.

(c) Except as provided in subsection (d), all property subject to forfeiture under this Section shall be seized pursuant to the order of a circuit court.

(d) Property subject to forfeiture under this Section may be seized by the Director or any peace officer without process:

(1) if the seizure is incident to an inspection under an administrative inspection warrant, or incident to the execution of a criminal search or arrest warrant;

(2) if the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal proceeding, or in an injunction or forfeiture proceeding based upon this Act; or

(3) if there is probable cause to believe that the property is directly or indirectly dangerous to health or safety.

(e) Property taken or detained under this Section shall not be subject to eviction or replevin, but is deemed to be in the custody of the Director subject only to the order and judgments of the circuit court having jurisdiction over the forfeiture proceedings. When property is seized under this Act, the

Director may:

(1) place the property under seal;

(2) secure the property or remove the property to a place designated by him; or

(3) require the sheriff of the county in which the seizure occurs to take custody of the property and secure or remove it to an appropriate location for disposition in accordance with law.

(f) All amounts forfeited under item (1) of subsection (a) shall be apportioned in the following manner:

(1) 40% shall be deposited in the Hazardous Waste Fund created in Section 22.2;

(2) 30% shall be paid to the office of the Attorney General or the State's Attorney of the county in which the violation occurred, whichever brought and prosecuted the action; and

(3) 30% shall be paid to the law enforcement agency which investigated the violation.

Any funds received under this subsection (f) shall be used solely for the enforcement of the environmental protection laws of this State.

(g) When property is forfeited under this Section the court may order:

(1) that the property shall be made available for the official use of the Agency, the Office of the Attorney General, the State's Attorney of the county in which the violation occurred, or the law enforcement agency which investigated the violation, to be used solely for the enforcement of the environmental protection laws of this State;

(2) the sheriff of the county in which the forfeiture occurs to take custody of the property and remove it for disposition in accordance with law; or

(3) the sheriff of the county in which the forfeiture occurs to sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds of such sale shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs, and the balance, if any, shall be apportioned pursuant to subsection (f).

(h) Property seized or forfeited under this Section is subject to reporting under the Seizure and Forfeiture Reporting Act.

(Source: P.A. 100-173, eff. 1-1-18; 100-512, eff. 7-1-18; 100-863, eff. 8-14-18.)

(415 ILCS 5/45) (from Ch. 111 1/2, par. 1045)

Sec. 45. Injunctive and other relief.

(a) No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by this Act. Nothing in this Act shall be construed to limit or supersede the provisions of the Illinois Oil and Gas Act and the powers therein granted to prevent the intrusion of water into oil, gas or coal strata and to prevent the pollution of fresh water supplies by oil, gas or salt water or oil field wastes, except that water quality standards as set forth by the Pollution Control Board apply to and are effective within the areas covered by and affected by permits issued by the Department of Natural Resources. However, if the Department of Natural Resources fails to act upon any complaint within a period of 10 working days following the receipt of a complaint by the Department, the Environmental Protection Agency may proceed under the provisions of this Act.

(b) Any person adversely affected in fact by a violation of

this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order may sue for injunctive relief against such violation. However, except as provided in subsections (d) and (e), no action shall be brought under this Section until 30 days after the plaintiff has been denied relief by the Board in a proceeding brought under subdivision (d)(1) of Section 31 of this Act. The prevailing party shall be awarded costs and reasonable attorneys' fees.

(c) Nothing in Section 39.4 of this Act shall limit the authority of the Agency to proceed with enforcement under the provisions of this Act for violations of terms and conditions of an endorsed agrichemical facility permit, an endorsed lawncare containment permit, or this Act or regulations hereunder caused or threatened by an agrichemical facility or a lawncare wash water containment area, provided that prior notice is given to the Department of Agriculture which provides that Department an opportunity to respond as appropriate.

(d) If the State brings an action under this Act against a person with an interest in real property upon which the person is alleged to have allowed open dumping or open burning by a third party in violation of this Act, which action seeks to compel the defendant to remove the waste or otherwise clean up the site, the defendant may, in the manner provided by law for third-party complaints, bring in as a third-party defendant a person who with actual knowledge caused or contributed to the illegal open dumping or open burning, or who is or may be liable for all or part of the removal and cleanup costs. The court may include any of the parties which it determines to have, with actual knowledge, allowed, caused or contributed to the illegal open dumping or open burning in any order that it may issue to compel removal of the waste and cleanup of the site, and may apportion the removal and cleanup costs among such parties, as it deems appropriate. However, a person may not seek to recover any fines or civil penalties imposed upon him under this Act from a third-party defendant in an action brought under this subsection.

(e) A final order issued by the Board pursuant to Section 33 of this Act may be enforced through a civil action for injunctive or other relief instituted by a person who was a party to the Board enforcement proceeding in which the Board issued the final order.

(Source: P.A. 92-574, eff. 6-26-02; 93-152, eff. 7-10-03.)

(415 ILCS 5/Tit. XIII heading)

TITLE XIII: MISCELLANEOUS PROVISIONS

(415 ILCS 5/46) (from Ch. 111 1/2, par. 1046)

Sec. 46. (a) Any municipality, sanitary district, county or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, which has been directed by an order issued by the Board or by the circuit court to abate any violation of this Act or of any regulation adopted thereunder shall, unless such order be set aside upon review, take steps for the acquisition or construction of such facilities, or for such repair, alteration, extension or completion of existing facilities, or for such modification of existing practices as may be necessary to comply with the order. The cost of the acquisition, construction, repair, alteration, completion, or extension of such facilities, or of such modification of practices shall be paid out of funds on hand available for such purposes, or out of the general funds

of such public body not otherwise appropriated.

If funds on hand or unappropriated are insufficient for the purposes of this Section, the necessary funds shall be raised by the issuance of either general obligation or revenue bonds. If the estimated cost of the steps necessary to be taken by such public body to comply with such order is such that the bond issue, necessary to finance such project, would not raise the total outstanding bonded indebtedness of such public body in excess of any limit which may be imposed upon such indebtedness, the necessary bonds may be issued as a direct obligation of such public body and retired pursuant to general law governing the issue of such bonds. No election or referendum shall be necessary for the issuance of bonds under this Section.

The funds made available by the issuance of direct obligation or revenue bonds as herein provided shall constitute a Sanitary Fund, and shall be used for no other purpose than for carrying out such order or orders of the Board.

The Attorney General shall enforce this provision of the Act by an action for mandamus, injunction, or other appropriate relief.

Any general obligation bonds issued under this Section, or any revenue bonds issued under this Section as limited bonds pursuant to Section 15.01 of the Local Government Debt Reform Act, are subject to the requirements of the Bond Issue Notification Act.

(b) In order to be eligible for federal grants for construction of sewage works pursuant to Section 201(g) of the Federal Water Pollution Control Act, as now or hereafter amended, any sanitary district, drainage district, municipality, county, special district or other unit of local government established pursuant to State law, that owns or operates sewage works may adopt, in accordance with such unit's statutory procedures, ordinances or regulations to provide for systems of proportionate cost sharing for operation and maintenance by recipients of such unit's waste treatment services, to provide for payments by industrial users of costs of sewage works construction allocable to the treatment of industrial wastes, and to provide such other capabilities as may be necessary to comply with Sections 204(b), 307, and 308 of the Federal Water Pollution Control Act, as now or hereafter amended.

(c) In order to comply with Section 307 of the Federal Water Pollution Control Act, as now or hereafter amended, and regulations promulgated thereunder, the units of local government identified in subsection (b) of this Section may adopt, in accordance with such unit's statutory procedures, ordinances or regulations to enable the unit of government, as regards industrial users of sewage works, to control through permit, contract, order or similar means, the nature and amount of pollutants discharged to the sewage works, to require compliance with applicable pretreatment standards and requirements, to require compliance schedules and the submission of notices and self-monitoring reports related thereto, to carry out inspection and monitoring procedures in order to determine compliance or noncompliance with the applicable pretreatment standards and requirements, to obtain remedies including, but not limited to, injunctive relief and civil and criminal penalties for noncompliance with pretreatment standards and requirements, and to provide such other capabilities as may be necessary to comply with Section 307 of the Federal Water Pollution Control Act, as now or hereafter amended, and regulations promulgated thereunder.

(Source: P.A. 89-655, eff. 1-1-97.)

(415 ILCS 5/47) (from Ch. 111 1/2, par. 1047)

Sec. 47. (a) The State of Illinois and all its agencies, institutions, officers and subdivisions shall comply with all requirements, prohibitions, and other provisions of the Act and of regulations adopted thereunder.

(b) (Blank).

(c) (Blank).

(Source: P.A. 97-220, eff. 7-28-11.)

(415 ILCS 5/48) (from Ch. 111 1/2, par. 1048)

Sec. 48. (a) Whenever the Board has adopted regulations respecting the equipment, specifications, use, inspection, or sale of vehicles, vessels, or aircraft, no department or agency shall license any such vehicles, vessels, or aircraft for operation in this State in the absence of such proof as the Board may prescribe that the equipment in question satisfies the Board's regulations.

(b) Whenever the Board has adopted regulations limiting vehicle, vessel, or aircraft operations to essential or other classes of use under certain conditions, the department or agency responsible for the licensing shall issue indicia of such use, subject to standards prescribed by the Board, for each vehicle, vessel, or aircraft qualifying therefor.

(Source: P.A. 76-2429.)

(415 ILCS 5/49) (from Ch. 111 1/2, par. 1049)

Sec. 49. Proceedings governed by Act; compliance as defense.

(a) (Blank.)

(b) All proceedings respecting acts done before the effective date of this Act shall be determined in accordance with the law and regulations in force at the time such acts occurred. All proceedings instituted for actions taken after the effective date of this Act (July 1, 1970) shall be governed by this Act.

(c) (Blank.)

(d) (Blank.)

(e) Compliance with the rules and regulations promulgated by the Board under this Act shall constitute a prima facie defense to any action, legal, equitable, or criminal, or an administrative proceeding for a violation of this Act, brought by any person.

(Source: P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/50) (from Ch. 111 1/2, par. 1050)

Sec. 50. (Repealed).

(Source: P.A. 76-2429. Repealed by P.A. 92-574, eff. 6-26-02.)

(415 ILCS 5/51) (from Ch. 111 1/2, par. 1051)

Sec. 51. If any Section, subsection, sentence or clause of this Act shall be adjudged unconstitutional, such adjudication shall not affect the validity of the Act as a whole or of any Section, subsection, sentence or clause thereof not adjudged unconstitutional.

(Source: P.A. 76-2429.)

(415 ILCS 5/52) (from Ch. 111 1/2, par. 1052)

Sec. 52. (a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the

administration or enforcement of the provisions of this Act, or offers any evidence of any violation of this Act.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this Section may, within 30 days after such alleged violation occurs, apply to the Director of the Department of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Director of the Department of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least 5 days prior to the hearing. Upon receiving the report of such investigation, the Director shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein of his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Director deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position and shall be fully compensated for the time he was unemployed. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Director under this subparagraph shall be subject to judicial review under the Administrative Review Law, and all amendments and modifications thereof.

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

(d) This Section shall not apply to any employee who, acting without direction from his employer, or his agents, deliberately fails to comply with any requirement of this Act.

(Source: P.A. 83-1079.)

(415 ILCS 5/52.2)

Sec. 52.2. (Repealed).

(Source: P.A. 88-690, eff. 1-24-95. Repealed by P.A. 94-580, eff. 8-12-05.)

(415 ILCS 5/52.3-1)

Sec. 52.3-1. Findings; purpose.

(a) The General Assembly finds that:

(1) During the last decade, considerable expertise in pollution prevention, sophisticated emissions monitoring and tracking techniques, compliance auditing methods, stakeholder involvement, and innovative approaches to control pollution have been developed.

(2) Substantial opportunities exist to reduce the amount of or prevent adverse impacts from emissions or discharges of pollutants or wastes through the use of innovative and cost effective measures not currently recognized by or allowed under existing environmental laws, rules, and regulations.

(3) There are persons regulated under this Act who have demonstrated excellence and leadership in environmental compliance or stewardship or pollution prevention and,

through the implementation of innovative measures, who can achieve further reductions in emissions or discharges of pollutants or wastes or continued environmental stewardship.

(4) Current environmental laws and regulations have, in some instances, resulted in burdensome transactional requirements that are unnecessarily costly and complex for regulated entities and have proven to be frustrating to the public that is concerned about environmental protection.

(5) The goals of environmental protection will be best served by promoting and evaluating the efforts of those persons who are ready to achieve measurable and verifiable pollution reductions in excess of the otherwise applicable statutory and regulatory requirements or who can demonstrate real environmental risk reduction, promote pollution prevention, foster superior environmental compliance by other persons regulated under this Act, and who can improve stakeholder involvement in environmental decision making.

(6) The United States Environmental Protection Agency is operating a program entitled "National Environmental Performance Track" 65 Federal Register 41655 (July 6, 2000) (Federal Performance Track Program) to recognize and reward businesses and public facilities that demonstrate strong environmental performance beyond current regulatory requirements. There should be a process that allows regulatory flexibility available to a participant in the Federal Performance Track Program to be also granted in the State if the participant's proposal is acceptable to the Agency.

(7) A process for implementing and evaluating innovative environmental measures on a pilot project basis should be developed and implemented in this State.

(b) It is the purpose of this Section to create a voluntary pilot program by which the Agency may enter into Environmental Management System Agreements with persons regulated under this Act to implement innovative environmental measures not otherwise recognized or allowed under existing laws and regulations of this State if those measures:

(1) achieve emissions reductions or reductions in discharges or wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or

(2) achieve real environmental risk reduction or foster environmental compliance by other persons regulated under this Act in a manner that is clearly superior to the existing regulatory system.

These Agreements may be executed with participants in the Federal Performance Track Program if the provisions are acceptable to the Agency.

(c) This program is a voluntary pilot program. Participation is at the discretion of the Agency, and any decision by the Agency to reject an initial proposal under this Section is not appealable. An initial Agreement may be renewed for appropriate time periods if the Agency finds the Agreement continues to meet applicable requirements and the purposes of this Section.

(d) The Agency shall develop and make publicly available a program guidance document regarding participation in the pilot program. A draft document shall be distributed for review and comment by interested parties and a final document shall be completed by December 1, 1996. At a minimum, this document shall include the following:

(1) The approximate number of projects that the Agency envisions being part of the pilot program.

(2) The types of projects and facilities that the

Agency believes would be most useful to be a part of the pilot program.

(3) A description of potentially useful environmental management systems, such as ISO 14000.

(4) A description of suitable Environmental Performance Plans, including appropriate provisions or opportunities for promoting pollution prevention and sustainable development.

(5) A description of practices and procedures to ensure that performance is measurable and verifiable.

(6) A characterization of less-preferred practices that can generate adverse consequences such as multi-media pollutant transfers.

(7) A description of suitable practices for productive stakeholder involvement in project development and implementation that may include, but need not be limited to, consensus-based decision making and appropriate technical assistance.

(e) The Agency has the authority to develop and distribute written guidance, fact sheets, or other documents that explain, summarize, or describe programs operated under this Act or regulations. The written guidance, fact sheets, or other documents shall not be considered rules and shall not be subject to the Illinois Administrative Procedure Act.

(Source: P.A. 92-397, eff. 1-1-02; 93-171, eff. 7-10-03.)

(415 ILCS 5/52.3-2)

Sec. 52.3-2. Agency authority; scope of agreement.

(a) The Agency may enter into an initial Environmental Management System Agreement with any person regulated under this Act to implement innovative environmental measures that relate to or involve provisions of this Act, even if one or more of the terms of such an Agreement would be inconsistent with an otherwise applicable statute or regulation of this State. Participation in this program is limited to those persons who have submitted an Environmental Management System Agreement that is acceptable to the Agency and who are not currently subject to enforcement action under this Act.

(b) The Agency may adopt rules to implement this Section. Without limiting the generality of this authority, those regulations may, among other things:

(1) Specify the criteria an applicant must meet to participate in this program.

(2) Specify the minimum contents of a proposed Environmental Management System Agreement, including, without limitation, the following:

(A) requiring identification of all State and federal statutes, rules, and regulations applicable to the facility;

(B) requiring identification of all statutes, rules, and regulations that are inconsistent with one or more terms of the proposed Environmental Management System Agreement;

(C) requiring a statement of how the proposed Environmental Management System Agreement will achieve one or more of the purposes of this Section;

(D) requiring identification of those members of the general public, representatives of local communities, and environmental groups who may have an interest in the Environmental Management System Agreement; and

(E) requiring identification of how a participant will demonstrate ongoing compliance with the terms of its Environmental Management System Agreement, which may

include an evaluation of a participant's performance under the Environmental Management System Agreement by a third party acceptable to the Agency. Compliance with the Agreement shall be determined not less than annually.

(3) Specify the procedures for review by the Agency of Environmental Management System Agreements.

(4) Specify the procedures for public participation in, including notice of and comment on, Environmental Management System Agreements and stakeholder involvement in design and implementation of specific projects that are undertaken.

(5) Specify the procedures for voluntary termination of an Environmental Management System Agreement.

(6) Specify the type of performance guarantee to be provided by an applicant for participation in this program. The nature of the performance guarantee shall be directly related to the complexity of and environmental risk associated with the proposed Environmental Management System Agreement.

(c) The Agency shall propose by December 31, 1996, and the Board shall promulgate, criteria and procedures for involuntary termination of Environmental Management System Agreements. The Board shall complete such rulemaking no later than 180 days after receipt of the Agency's proposal.

(d) After July 1, 2003, the Agency may enter into an initial Environmental Management System Agreement with any participant in the Federal Performance Track Program, in accordance with the following:

(1) The participant submits, in writing, a proposed Environmental Management System Agreement to the Agency.

(1.5) The Agency shall provide notice to the public, including an opportunity for public comment and hearing in accordance with the procedures set forth in 35 Ill. Adm. Code Part 164, on each proposal filed with the Agency under this subsection (d).

(2) The Agency shall have 120 days after the public comment period, unless the participant grants an extension, to execute a proposed Environmental Management System Agreement.

(3) Failure to execute an agreement shall be deemed a rejection.

(4) A rejection of a proposed Environmental Management System Agreement by the Agency shall not be appealable.

(Source: P.A. 92-397, eff. 1-1-02; 93-171, eff. 7-10-03.)

(415 ILCS 5/52.3-3)

Sec. 52.3-3. Effect of Environmental Management System Agreements.

(a) An Environmental Management System Agreement shall operate in lieu of all applicable requirements under Illinois and federal environmental statutes, regulations, and existing permits that are identified in the Agreement. Any environmental statute, regulation, or condition in an existing permit that differs from a term or condition in an Agreement shall cease to apply from the effective date of an initial or renewed Agreement until it is terminated or expires.

(b) Notwithstanding the other provisions of this Section, no Agreement entered into by the Agency may allow a participant to cause air or water pollution or an unauthorized release in violation of this Act.

(c) Nothing in this Section shall reduce, eliminate, or in any way affect any fees that a participant in this program may

be subject to under any federal environmental statute or regulation or under this Act or any rule promulgated hereunder.

(d) Applicants for participation in the Environmental Management System Agreement Program shall pay all costs associated with public notice and hearings.

(Source: P.A. 89-465, eff. 6-13-96.)

(415 ILCS 5/52.3-4)

Sec. 52.3-4. Performance assurance.

(a) The Agency shall ensure that each Environmental Management System Agreement contains appropriate provisions for performance assurance. Those provisions may specify types of performance guarantees to be provided by the participant to assure performance of the terms and conditions of the Agreement.

(b) In the case of deficient performance of any term or condition in an Environmental Management System Agreement that prevents achievement of the stated purposes in subsection (b) of Section 52.3-1, the Agency may terminate the Agreement and the participant may be subject to enforcement in accordance with the provisions of Section 31 or 42 of this Act.

(b-5) The Agency may terminate an Agreement executed pursuant to subsection (d) of Section 52.3-1 if participation in the Federal Performance Track Program ceases.

(c) If the Agreement is terminated, the facility shall have sufficient time to apply for and receive any necessary permits to continue the operations in effect during the course of the Environmental Management Systems Agreement. Any such application shall also be deemed a timely and complete application for renewal of an existing permit under applicable law.

(d) The Agency may adopt rules that are necessary to carry out its duties under this Section including, but not limited to, rules that provide mechanisms for alternative dispute resolution and performance assurance.

(e) Nothing in this Section shall limit the authority or ability of a State's Attorney or the Attorney General to proceed pursuant to Section 43(a) of this Act, or to enforce Section 44 or 44.1 of this Act, except that for the purposes of enforcement under Section 43(a), 44, or 44.1, an Agreement shall be deemed to be a permit issued under this Act to engage in activities authorized under the Agreement.

(Source: P.A. 93-171, eff. 7-10-03.)

(415 ILCS 5/52.3-5)

Sec. 52.3-5. Effect of amendatory Act of the 96th General Assembly. Nothing contained in this amendatory Act of the 96th General Assembly shall remove any liability for any operation, site, or facility operating without any required legal permit or authorization for activities taking place prior to the effective date of this Act.

(Source: P.A. 96-611, eff. 8-24-09.)

(415 ILCS 5/52.3-10)

Sec. 52.3-10. Effect of amendatory Act of the 96th General Assembly. Nothing contained in this amendatory Act of the 96th General Assembly shall remove any liability for any operation, site, or facility operating without any required legal permit or authorization for activities taking place prior to the effective date of this Act.

(Source: P.A. 96-1068, eff. 7-16-10.)

(415 ILCS 5/52.5)

Sec. 52.5. Microbead-free waters.

(a) As used in this Section:

"Over the counter drug" means a drug that is a personal care

product that contains a label that identifies the product as a drug as required by 21 CFR 201.66. An "over the counter drug" label includes:

(1) A drug facts panel; or

(2) A statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

"Personal care product" means any article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and any article intended for use as a component of any such article. "Personal care product" does not include any prescription drugs.

"Plastic" means a synthetic material made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms retaining their defined shapes during life cycle and after disposal.

"Synthetic plastic microbead" means any intentionally added non-biodegradable solid plastic particle measured less than 5 millimeters in size and is used to exfoliate or cleanse in a rinse-off product.

(b) The General Assembly hereby finds that microbeads, a synthetic alternative ingredient to such natural materials as ground almonds, oatmeal, and pumice, found in over 100 personal care products, including facial cleansers, shampoos, and toothpastes, pose a serious threat to the State's environment.

Microbeads have been documented to collect harmful pollutants already present in the environment and harm fish and other aquatic organisms that form the base of the aquatic food chain. Recently, microbeads have been recorded in Illinois water bodies, and in particular, the waters of Lake Michigan.

Although synthetic plastic microbeads are a safe and effective mild abrasive ingredient effectively used for gently removing dead skin, there are recent concerns about the potential environmental impact of these materials. More research is needed on any adverse consequences, but a number of cosmetic manufacturers have already begun a voluntary process for identifying alternatives that allay those concerns. Those alternatives will be carefully evaluated to assure safety and implemented in a timely manner.

Without significant and costly improvements to the majority of the State's sewage treatment facilities, microbeads contained in products will continue to pollute Illinois' waters and hinder the recent substantial economic investments in redeveloping Illinois waterfronts and the ongoing efforts to restore the State's lakes and rivers and recreational and commercial fisheries.

(c) Effective December 31, 2017, no person shall manufacture for sale a personal care product, except for an over the counter drug, that contains synthetic plastic microbeads as defined in this Section.

(d) Effective December 31, 2018, no person shall accept for sale a personal care product, except for an over the counter drug, that contains synthetic plastic microbeads as defined in this Section.

(e) Effective December 31, 2018, no person shall manufacture for sale an over the counter drug that contains synthetic plastic microbeads as defined in this Section.

(f) Effective December 31, 2019, no person shall accept for sale an over the counter drug that contains synthetic plastic microbeads as defined in this Section.

(Source: P.A. 98-638, eff. 1-1-15.)

(415 ILCS 5/52.10)
Sec. 52.10. (Repealed).
(Source: P.A. 102-996, eff. 5-27-22. Repealed internally, eff. 12-31-22.)

(415 ILCS 5/Tit. XIV heading)
TITLE XIV. USED TIRES

(415 ILCS 5/53) (from Ch. 111 1/2, par. 1053)
Sec. 53. (a) The General Assembly finds:

(1) that used and waste tires constitute a growing solid waste problem of considerable magnitude that is exacerbated by the fact that tires do not readily degrade or decompose;

(2) that the accumulation of used and waste tires constitutes a fire hazard and a threat to air and water quality;

(3) that unmanaged used and waste tire sites encourage open dumping of other types of waste;

(4) that used and waste tire accumulations pose a threat to the public health, safety and welfare by providing habitat for a number of disease-spreading mosquitoes and other nuisance organisms, and that the transport of used tires has introduced such mosquitoes into the State and dispersed them;

(5) that State agencies need the ability to remove, or cause the removal of, used and waste tire accumulations as necessary to abate or correct hazards to public health and to protect the environment; and

(6) that used and waste tires may also afford a significant economic opportunity for recycling into new and useful products or as a source of fuel.

(b) It is the purpose of this Act:

(1) to ensure that used and waste tires are collected and are put to beneficial use or properly disposed of;

(2) to provide for the abatement of used and waste tire dumps and associated threats to the public health and welfare;

(3) to encourage the development of used and waste tire processing facilities and technologies, including energy recovery; and

(4) to provide for research on disease vectors associated with used and waste tires, and the diseases they spread.

It shall be the policy of the State of Illinois to provide for the recovery, recycling and reuse of materials from scrap vehicle tires. The following hierarchy shall be in effect for tires generated for waste management in this State:

(1) Reuse of tire casings for remanufacture or retreading.

(2) Processing of tires into marketable products, such as stamped parts from portions of tire casings.

(3) Total destruction of tires into a uniform product that is marketable as a fuel or recycled material feedstock, including such products as tire-derived fuel, or recovered rubber for recycling into rubber or other products or as an asphalt additive.

(4) Total destruction of tires through primary shredding to produce a nonuniform product for use as in road beds or other construction applications, or at a landfill or

similar site for erosion control or cover.

(5) Total destruction of tires to a nonuniform product consistency for direct landfill disposal.

(Source: P.A. 86-452; 87-727.)

(415 ILCS 5/54) (from Ch. 111 1/2, par. 1054)

Sec. 54. For the purposes of this Title, except as the context otherwise clearly requires, the words and terms defined in the Sections which follow this Section and precede Section 55 shall have the meanings given therein. Words and terms not defined shall have the meanings otherwise set forth in this Act.

(Source: P.A. 86-452.)

(415 ILCS 5/54.01) (from Ch. 111 1/2, par. 1054.01)

Sec. 54.01. "Altered tire" means a used tire which has been altered so that it is no longer capable of holding accumulations of water, including, but not limited to, used tires that have been shredded, chopped, drilled with holes sufficient to assure drainage, slit longitudinally and stacked so as not to collect water, or wholly or partially filled with cement or other material to prevent the accumulation of water. "Alteration" or "altering" means action which produces an altered tire.

(Source: P.A. 86-452.)

(415 ILCS 5/54.02) (from Ch. 111 1/2, par. 1054.02)

Sec. 54.02. "Converted tire" means a used tire which has been manufactured into a usable commodity other than a tire. "Conversion" or "converting" means action which produces a converted tire. Usable products manufactured from tires, which products are themselves capable of holding accumulations of water, shall be deemed to be "converted" if they are stacked, packaged, boxed, containerized or enclosed in such a manner as to preclude exposure to precipitation prior to sale or conveyance.

(Source: P.A. 86-452.)

(415 ILCS 5/54.03) (from Ch. 111 1/2, par. 1054.03)

Sec. 54.03. "Covered tire" means a used tire located in a building, vehicle or facility with a roof extending over the tire, or securely located under a material so as to preclude exposure to precipitation.

(Source: P.A. 86-452.)

(415 ILCS 5/54.04) (from Ch. 111 1/2, par. 1054.04)

Sec. 54.04. "Disposal" means the placement of used tires into or on any land or water except as an integral part of systematic reuse or conversion in the regular course of business.

(Source: P.A. 86-452.)

(415 ILCS 5/54.05) (from Ch. 111 1/2, par. 1054.05)

Sec. 54.05. "New tire" means a tire which has never been placed on a vehicle wheel rim.

(Source: P.A. 86-452.)

(415 ILCS 5/54.06) (from Ch. 111 1/2, par. 1054.06)

Sec. 54.06. "Processing" means the altering, converting or reprocessing of used or waste tires.

(Source: P.A. 86-452.)

(415 ILCS 5/54.06a)

Sec. 54.06a. "Recyclable tire" means a used tire which is free of permanent physical damage and maintains sufficient tread

depth to allow its use through resale or repairing.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.07) (from Ch. 111 1/2, par. 1054.07)
Sec. 54.07. "Reprocessed tire" means a used tire which has been recapped, retreaded or regrooved and which has not been placed on a vehicle wheel rim.
(Source: P.A. 86-452.)

(415 ILCS 5/54.08) (from Ch. 111 1/2, par. 1054.08)
Sec. 54.08. "Reused tire" means a used tire that is used again, in part or as a whole, by being employed in a particular function or application as an effective substitute for a commercial product or fuel without having been converted.
(Source: P.A. 86-452.)

(415 ILCS 5/54.09) (from Ch. 111 1/2, par. 1054.09)
Sec. 54.09. "Storage" means any accumulation of used tires that does not constitute disposal. At a minimum, such an accumulation must be an integral part of the systematic alteration, reuse, reprocessing or conversion of the tires in the regular course of business.
(Source: P.A. 86-452.)

(415 ILCS 5/54.10) (from Ch. 111 1/2, par. 1054.10)
Sec. 54.10. "Tire" means a hollow ring, made of rubber or similar materials, which was manufactured for the purpose of being placed on the wheel rim of a vehicle.
(Source: P.A. 86-452.)

(415 ILCS 5/54.10a)
Sec. 54.10a. "Tire carcass" means the internal part of a used tire containing the plies, beads, and belts suitable for retread or remanufacture.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.10b)
Sec. 54.10b. "Tire derived fuel" means a product made from used tires to exact specifications of a system designed to accept a tire derived fuel as a primary or supplemental fuel source.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.11) (from Ch. 111 1/2, par. 1054.11)
Sec. 54.11. "Tire disposal site" means a site where used tires have been disposed of other than a sanitary landfill permitted by the Agency.
(Source: P.A. 86-452.)

(415 ILCS 5/54.11a)
Sec. 54.11a. "Tire retreader" means a person or firm that retreads or remanufactures tires.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.12) (from Ch. 111 1/2, par. 1054.12)
Sec. 54.12. "Tire storage site" means a site where used tires are stored or processed, other than (1) the site at which the tires were separated from the vehicle wheel rim, (2) the site where the used tires were accepted in trade as part of a sale of new tires, or (3) a site at which tires are sold at retail in the regular course of business, and at which not more than 250 used tires are kept at any time or (4) a facility at which tires are sold at retail provided that the facility

maintains less than 1300 recyclable tires, 1300 tire carcasses, and 1300 used tires on site and those tires are stored inside a building or so that they are prevented from accumulating water.
(Source: P.A. 92-24, eff. 7-1-01.)

(415 ILCS 5/54.12a)
Sec. 54.12a. "Tire storage unit" means a pile of tires or a group of piles of tires at a storage site.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.12b)
Sec. 54.12b. "Tire transporter" means a person who transports used or waste tires in a vehicle.
(Source: P.A. 89-200, eff. 1-1-96.)

(415 ILCS 5/54.13) (from Ch. 111 1/2, par. 1054.13)
Sec. 54.13. "Used tire" means a worn, damaged, or defective tire that is not mounted on a vehicle.
(Source: P.A. 92-24, eff. 7-1-01.)

(415 ILCS 5/54.14) (from Ch. 111 1/2, par. 1054.14)
Sec. 54.14. "Vector" means arthropods, rats, mice, birds or other animals capable of carrying disease-producing organisms to a human or animal host. "Vector" does not include animals that transmit disease to humans only when used as human food.
(Source: P.A. 86-452.)

(415 ILCS 5/54.15) (from Ch. 111 1/2, par. 1054.15)
Sec. 54.15. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn, except devices moved by human power or by animal power, devices used exclusively upon stationary rails or tracks, and motorized wheelchairs.
(Source: P.A. 86-452.)

(415 ILCS 5/54.16) (from Ch. 111 1/2, par. 1054.16)
Sec. 54.16. "Waste tire" means a used tire that has been disposed of.
(Source: P.A. 86-452.)

(415 ILCS 5/55) (from Ch. 111 1/2, par. 1055)
Sec. 55. Prohibited activities.
(a) No person shall:
(1) Cause or allow the open dumping of any used or waste tire.
(2) Cause or allow the open burning of any used or waste tire.
(3) Except at a tire storage site which contains more than 50 used tires, cause or allow the storage of any used tire unless the tire is altered, reprocessed, converted, covered, or otherwise prevented from accumulating water.
(4) Cause or allow the operation of a tire storage site except in compliance with Board regulations.
(5) Abandon, dump or dispose of any used or waste tire on private or public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board.
(6) Fail to submit required reports, tire removal agreements, or Board regulations.
(b) (Blank.)
(b-1) No person shall knowingly mix any used or waste tire, either whole or cut, with municipal waste, and no owner or operator of a sanitary landfill shall accept any used or waste

tire for final disposal; except that used or waste tires, when separated from other waste, may be accepted if the sanitary landfill provides and maintains a means for shredding, slitting, or chopping whole tires and so treats whole tires and, if approved by the Agency in a permit issued under this Act, uses the used or waste tires for alternative uses, which may include on-site practices such as lining of roadways with tire scraps, alternative daily cover, or use in a leachate collection system. In the event the physical condition of a used or waste tire makes shredding, slitting, chopping, reuse, reprocessing, or other alternative use of the used or waste tire impractical or infeasible, then the sanitary landfill, after authorization by the Agency, may accept the used or waste tire for disposal.

(c) Any person who sells new or used tires at retail or operates a tire storage site or a tire disposal site which contains more than 50 used or waste tires shall give notice of such activity to the Agency. Any person engaging in such activity for the first time after January 1, 1990, shall give notice to the Agency within 30 days after the date of commencement of the activity. The form of such notice shall be specified by the Agency and shall be limited to information regarding the following:

(1) the name and address of the owner and operator;

(2) the name, address and location of the operation;

(3) the type of operations involving used and waste tires (storage, disposal, conversion or processing); and

(4) the number of used and waste tires present at the location.

(d) Beginning January 1, 1992, no person shall cause or allow the operation of:

(1) a tire storage site which contains more than 50 used tires, unless the owner or operator, by January 1, 1992 (or the January 1 following commencement of operation, whichever is later) and January 1 of each year thereafter, (i) registers the site with the Agency, except that the registration requirement in this item (i) does not apply in the case of a tire storage site required to be permitted under subsection (d-5), (ii) certifies to the Agency that the site complies with any applicable standards adopted by the Board pursuant to Section 55.2, (iii) reports to the Agency the number of tires accumulated, the status of vector controls, and the actions taken to handle and process the tires, and (iv) pays the fee required under subsection (b) of Section 55.6; or

(2) a tire disposal site, unless the owner or operator (i) has received approval from the Agency after filing a tire removal agreement pursuant to Section 55.4, or (ii) has entered into a written agreement to participate in a consensual removal action under Section 55.3.

The Agency shall provide written forms for the annual registration and certification required under this subsection (d).

(d-4) On or before January 1, 2015, the owner or operator of each tire storage site that contains used tires totaling more than 10,000 passenger tire equivalents, or at which more than 500 tons of used tires are processed in a calendar year, shall submit documentation demonstrating its compliance with Board rules adopted under this Title. This documentation must be submitted on forms and in a format prescribed by the Agency.

(d-5) Beginning July 1, 2016, no person shall cause or allow the operation of a tire storage site that contains used tires totaling more than 10,000 passenger tire equivalents, or at which more than 500 tons of used tires are processed in a calendar year, without a permit granted by the Agency or in

violation of any conditions imposed by that permit, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to ensure compliance with this Act and with regulations and standards adopted under this Act.

(d-6) No person shall cause or allow the operation of a tire storage site in violation of the financial assurance rules established by the Board under subsection (b) of Section 55.2 of this Act. In addition to the remedies otherwise provided under this Act, the State's Attorney of the county in which the violation occurred, or the Attorney General, may, at the request of the Agency or on his or her own motion, institute a civil action for an immediate injunction, prohibitory or mandatory, to restrain any violation of this subsection (d-6) or to require any other action as may be necessary to abate or mitigate any immediate danger or threat to public health or the environment at the site. Injunctions to restrain a violation of this subsection (d-6) may include, but are not limited to, the required removal of all tires for which financial assurance is not maintained and a prohibition against the acceptance of tires in excess of the amount for which financial assurance is maintained.

(e) No person shall cause or allow the storage, disposal, treatment or processing of any used or waste tire in violation of any regulation or standard adopted by the Board.

(f) No person shall arrange for the transportation of used or waste tires away from the site of generation with a person known to openly dump such tires.

(g) No person shall engage in any operation as a used or waste tire transporter except in compliance with Board regulations.

(h) No person shall cause or allow the combustion of any used or waste tire in an enclosed device unless a permit has been issued by the Agency authorizing such combustion pursuant to regulations adopted by the Board for the control of air pollution and consistent with the provisions of Section 9.4 of this Act.

(i) No person shall cause or allow the use of pesticides to treat tires except as prescribed by Board regulations.

(j) No person shall fail to comply with the terms of a tire removal agreement approved by the Agency pursuant to Section 55.4.

(k) No person shall:

(1) Cause or allow water to accumulate in used or waste tires. The prohibition set forth in this paragraph (1) of subsection (k) shall not apply to used or waste tires located at a residential household, as long as not more than 4 used or waste tires at the site are covered and kept dry.

(2) Fail to collect a fee required under Section 55.8 of this Title.

(3) Fail to file a return required under Section 55.10 of this Title.

(4) Transport used or waste tires in violation of the registration and vehicle placarding requirements adopted by the Board.

(Source: P.A. 100-103, eff. 8-11-17; 100-327, eff. 8-24-17; 100-621, eff. 7-20-18; 100-863, eff. 8-14-18.)

(415 ILCS 5/55.1) (from Ch. 111 1/2, par. 1055.1)

Sec. 55.1. (a) The prohibitions set forth in subdivision (a)(3) of Section 55 of this Act shall not apply to used tires:

(1) generated and located at a site as a result of the growing and harvesting of agricultural crops or the raising of animals, as long as not more than 20 used tires

are located at the site;

(2) located at a residential household, as long as not more than 12 used tires are located at the site; or

(3) which were placed in service for recreational purposes prior to January 1, 1990 at a school, park or playground, provided that the used tires are altered by January 1, 1992.

(b) The prohibitions set forth in subdivisions (a)(3), (a)(4), (c), (d), (d-5), (d-6), (e), (g), and (k)(4) of Section 55 of this Act shall not apply to used or waste tires collected by a not-for-profit corporation if:

(1) the collection location has been approved by the applicable general purpose unit of local government;

(2) the collected tires are transported to a facility permitted by the Agency to store, process or dispose of used or waste tires within 7 days after collection; and

(3) the collection does not occur as a continuous business operation.

(c) The prohibitions set forth in subdivisions (a)(3), (a)(4), (c), (d), (d-5), (d-6), (e), (g), and (k)(4) of Section 55 of this Act shall not apply to used or waste tires collected by the State or a unit of local government, provided that:

(1) the collection is part of an established program to take preventive or corrective action regarding such tires;

(2) any staging sites for handling such tires are reasonably secure and regularly maintained in a safe manner; and

(3) the Agency is notified in writing during January of each calendar year regarding the location of the staging sites, the number of such tires accumulated, the status of vector controls, and actions taken to process such tires.

The Agency shall provide written confirmation to a State agency or unit of local government regarding the applicability of this subsection upon receipt of a written description of its established program, and each January following receipt of the annual report required under subdivision (c)(3) of this subsection.

For purposes of determining the applicability of this subsection, any municipality with a population over 1,000,000 may certify to the Agency by January 1, 1990 that it operates an established program. Upon the filing of such a certification, the established program shall be deemed to satisfy the provisions of subdivisions (1) and (2) of this subsection.

(d) The prohibitions set forth in subdivision (a)(5) of Section 55 of this Act shall not apply to used tires that are generated and located at a permitted coal mining site after use on specialized coal hauling and extraction vehicles.
(Source: P.A. 98-656, eff. 6-19-14.)

(415 ILCS 5/55.2) (from Ch. 111 1/2, par. 1055.2)

Sec. 55.2. (a) Not later than July 1, 1990, the Agency shall propose regulations which prescribe standards for the storage, disposal, processing and transportation of used and waste tires.

(b) Not later than one year after the receipt of the Agency's proposed regulations, the Board shall adopt, pursuant to Sections 27 and 28 of this Act, regulations which are consistent with the provisions of this Title. These regulations shall, at a minimum, specify: recordkeeping and reporting requirements; criteria for minimizing the danger of tire fires, including dimensions for piling tires and minimum aisle spacing; financial assurance criteria; and criteria for distinguishing storage from disposal. In addition, such regulations shall prohibit the use of pesticides as an ongoing means of

demonstrating compliance with this Title.

(b-5) Not later than 6 months after the effective date of this amendatory Act of the 98th General Assembly, the Agency shall propose, and, not later than 9 months after receipt of the Agency's proposal, the Board shall adopt, revisions to the rules adopted under this Title that are necessary to conform those rules to the requirements of this Title, including, but not limited to, revisions to those rules that are necessary to implement the changes made to this Act by this amendatory Act of the 98th General Assembly.

(c) In adopting regulations under this Section, the Board may impose different requirements for different categories of used or waste tire storage, disposal, transport, and processing.

(d) Nothing in this Section shall be construed as limiting the general authority of the Board to promulgate regulations pursuant to Title VII of this Act.

(Source: P.A. 98-656, eff. 6-19-14.)

(415 ILCS 5/55.3) (from Ch. 111 1/2, par. 1055.3)

Sec. 55.3. (a) Upon finding that an accumulation of used or waste tires creates an immediate danger to health, the Agency may take action pursuant to Section 34 of this Act.

(b) Upon making a finding that an accumulation of used or waste tires creates a hazard posing a threat to public health or the environment, the Agency may undertake preventive or corrective action in accordance with this subsection. Such preventive or corrective action may consist of any or all of the following:

(1) Treating and handling used or waste tires and other infested materials within the area for control of mosquitoes and other disease vectors.

(2) Relocation of ignition sources and any used or waste tires within the area for control and prevention of tire fires.

(3) Removal of used and waste tire accumulations from the area.

(4) Removal of soil and water contamination related to tire accumulations.

(5) Installation of devices to monitor and control groundwater and surface water contamination related to tire accumulations.

(6) Such other actions as may be authorized by Board regulations.

(c) The Agency may, subject to the availability of appropriated funds, undertake a consensual removal action for the removal of up to 1,000 used or waste tires at no cost to the owner according to the following requirements:

(1) Actions under this subsection shall be taken pursuant to a written agreement between the Agency and the owner of the tire accumulation.

(2) The written agreement shall at a minimum specify:

(i) that the owner relinquishes any claim of an ownership interest in any tires that are removed, or in any proceeds from their sale;

(ii) that tires will no longer be allowed to be accumulated at the site;

(iii) that the owner will hold harmless the Agency or any employee or contractor utilized by the Agency to effect the removal, for any damage to property incurred during the course of action under this subsection, except for gross negligence or intentional misconduct; and

(iv) any conditions upon or assistance required

from the owner to assure that the tires are so located or arranged as to facilitate their removal.

(3) The Agency may by rule establish conditions and priorities for removal of used and waste tires under this subsection.

(4) The Agency shall prescribe the form of written agreements under this subsection.

(d) The Agency shall have authority to provide notice to the owner or operator, or both, of a site where used or waste tires are located and to the owner or operator, or both, of the accumulation of tires at the site, whenever the Agency finds that the used or waste tires pose a threat to public health or the environment, or that there is no owner or operator proceeding in accordance with a tire removal agreement approved under Section 55.4.

The notice provided by the Agency shall include the identified preventive or corrective action, and shall provide an opportunity for the owner or operator, or both, to perform such action.

For sites with more than 250,000 passenger tire equivalents, following the notice provided for by this subsection (d), the Agency may enter into a written reimbursement agreement with the owner or operator of the site. The agreement shall provide a schedule for the owner or operator to reimburse the Agency for costs incurred for preventive or corrective action, which shall not exceed 5 years in length. An owner or operator making payments under a written reimbursement agreement pursuant to this subsection (d) shall not be liable for punitive damages under subsection (h) of this Section.

(e) In accordance with constitutional limitations, the Agency shall have authority to enter at all reasonable times upon any private or public property for the purpose of taking whatever preventive or corrective action is necessary and appropriate in accordance with the provisions of this Section, including but not limited to removal, processing or treatment of used or waste tires, whenever the Agency finds that used or waste tires pose a threat to public health or the environment.

(f) In undertaking preventive, corrective or consensual removal action under this Section the Agency may consider use of the following: rubber reuse alternatives, shredding or other conversion through use of mobile or fixed facilities, energy recovery through burning or incineration, and landfill disposal.

(g) Except as otherwise provided in this Section, the owner or operator of any site or accumulation of used or waste tires at which the Agency has undertaken corrective or preventive action under this Section shall be liable for all costs thereof incurred by the State of Illinois, including reasonable costs of collection. Any monies received by the Agency hereunder shall be deposited into the Used Tire Management Fund. The Agency may in its discretion store, dispose of or convey the tires that are removed from an area at which it has undertaken a corrective, preventive or consensual removal action, and may sell or store such tires and other items, including but not limited to rims, that are removed from the area. The net proceeds of any sale shall be credited against the liability incurred by the owner or operator for the costs of any preventive or corrective action.

(h) Any person liable to the Agency for costs incurred under subsection (g) of this Section may be liable to the State of Illinois for punitive damages in an amount at least equal to, and not more than 2 times, the costs incurred by the State if such person failed without sufficient cause to take preventive or corrective action pursuant to notice issued under subsection (d) of this Section.

(i) There shall be no liability under subsection (g) of this

Section for a person otherwise liable who can establish by a preponderance of the evidence that the hazard created by the tires was caused solely by:

(1) an act of God;

(2) an act of war; or

(3) an act or omission of a third party other than an employee or agent, and other than a person whose act or omission occurs in connection with a contractual relationship with the person otherwise liable.

For the purposes of this subsection, "contractual relationship" includes, but is not limited to, land contracts, deeds and other instruments transferring title or possession, unless the real property upon which the accumulation is located was acquired by the defendant after the disposal or placement of used or waste tires on, in or at the property and one or more of the following circumstances is also established by a preponderance of the evidence:

(A) at the time the defendant acquired the property, the defendant did not know and had no reason to know that any used or waste tires had been disposed of or placed on, in or at the property, and the defendant undertook, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability;

(B) the defendant is a government entity which acquired the property by escheat or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or

(C) the defendant acquired the property by inheritance or bequest.

(j) Nothing in this Section shall affect or modify the obligations or liability of any person under any other provision of this Act, federal law, or State law, including the common law, for injuries, damages or losses resulting from the circumstances leading to Agency action under this Section.

(k) The costs and damages provided for in this Section may be imposed by the Board in an action brought before the Board in accordance with Title VIII of this Act, except that subsection (c) of Section 33 of this Act shall not apply to any such action.

(l) The Agency shall, when feasible, consult with the Department of Public Health prior to taking any action to remove or treat an infested tire accumulation for control of mosquitoes or other disease vectors. The Agency may by contract or agreement secure the services of the Department of Public Health, any local public health department, or any other qualified person in treating any such infestation as part of an emergency or preventive action.

(m) Neither the State, the Agency, the Board, the Director, nor any State employee shall be liable for any damage or injury arising out of or resulting from any action taken under this Section.

(Source: P.A. 102-444, eff. 8-20-21.)

(415 ILCS 5/55.4) (from Ch. 111 1/2, par. 1055.4)

Sec. 55.4. (a) The owner or operator of a tire disposal site required to file and receive approval of a tire removal agreement under subsection (d) of Section 55 shall remove used or waste tires from the site in a manner that:

(1) minimizes the need for further maintenance;

(2) removes all used and waste tires and any residues therefrom; and

(3) protects human health during the removal and post-removal periods.

(b) A tire removal agreement submitted to the Agency shall include the following:

(1) A complete inventory of the tires located on the site.

(2) A description of how the removal will be conducted in accordance with subsection (a) of this Section.

(3) A description of the methods to be used during removal including, but not limited to, the methods for removing, transporting, processing, storing or disposing of tires and residues, and the offsite facilities to be used.

(4) A detailed description of other activities necessary during the removal period to ensure that the requirements of subsection (a) of this Section are met.

(5) A schedule for completing the removal of tires from the site, as required in subsection (d).

(c) For a site at which the owner or operator is proposing to proceed with removal, the Agency shall approve, modify or disapprove a proposed agreement within 90 days of receiving it. If the Agency does not approve the agreement, the Agency shall provide the owner or operator with a written statement of reasons for the refusal, and the owner or operator shall modify the agreement or submit a new agreement for approval within 30 days after receiving the statement. The Agency shall approve or modify the second proposed agreement within 60 days. If the Agency modifies the second proposed agreement, the agreement as modified shall become the approved agreement.

(d) Each approved agreement shall include a schedule by which the owner or operator must complete the removal activities. The total time allowed shall not exceed the following:

(1) one year if the site contains 1,000 tires or less;

(2) two years if the site contains more than 1,000 tires but less than 10,000 tires;

(3) five years if the site contains 10,000 or more tires.

The owner or operator may apply for an extension of time, no later than 90 days before the end of the time period specified in the agreement. The Agency shall not grant such an extension unless it determines that the owner or operator has proceeded to carry out the agreement with all due diligence. The requested extension of time may not exceed 3 years, and the Agency may approve the request as submitted or may approve a lesser amount of time.

(e) Within 60 days after the completion of removal activities under an approved agreement, the owner or operator shall submit to the Agency a certification that the site or the affected portion of the site has been cleared of tires in accordance with the approved agreement.

(f) Modification of or refusal to modify an agreement submitted by an owner or operator proposing to proceed with removal is a permit denial for purposes of subsection (a) of Section 40 of this Act.

(Source: P.A. 86-452.)

(415 ILCS 5/55.5) (from Ch. 111 1/2, par. 1055.5)

Sec. 55.5. (a) The Agency shall investigate alleged violations of this Title XIV, or of any regulation promulgated hereunder, or of any approval granted by the Agency, and may cause such other investigations to be made as it may deem advisable.

(b) If an investigation discloses that a violation may exist, the Agency shall take action pursuant to Title VIII of

this Act in a timely manner.

(c) Notwithstanding the provisions of subsection (b) of this Section, prior to taking action pursuant to Title VIII for violation of subsection (a), (b) or (c) of Section 55 of this Act, the Agency or unit of local government shall issue and serve upon the person complained against a written warning notice informing such person that the Agency or unit of local government intends to take such action. Such written warning notice shall specify the alleged violation, describe the corrective action which should be taken, and provide a period of 30 days in which one of the following response actions may be taken by such person:

(1) initiation and completion of the corrective action, and notification of the Agency or unit of local government in writing that such action has been taken; or

(2) notification of the Agency or unit of local government in writing that corrective action will be taken and completed within a period of 45 days from the date of issuance of the warning notice.

In the event that the person fails to take a response action, initiates but does not adequately complete a response action, or takes other action in contravention of the described corrective action, the Agency or unit of local government may proceed pursuant to subsection (b) of this Section. If the same person has been issued 2 written warning notices for similar violations in any calendar year, thereafter the Agency or unit of local government may proceed pursuant to subsection (b) without first following the provisions of this subsection for the remainder of such calendar year with respect to such person. (Source: P.A. 91-357, eff. 7-29-99.)

(415 ILCS 5/55.6) (from Ch. 111 1/2, par. 1055.6)

Sec. 55.6. Used Tire Management Fund.

(a) There is hereby created in the State Treasury a special fund to be known as the Used Tire Management Fund. There shall be deposited into the Fund all monies received as (1) recovered costs or proceeds from the sale of used tires under Section 55.3 of this Act, (2) repayment of loans from the Used Tire Management Fund, or (3) penalties or punitive damages for violations of this Title, except as provided by subdivision (b)(4) or (b)(4-5) of Section 42.

(b) Beginning January 1, 1992, in addition to any other fees required by law, the owner or operator of each site required to be registered or permitted under subsection (d) or (d-5) of Section 55 shall pay to the Agency an annual fee of $100. Fees collected under this subsection shall be deposited into the Environmental Protection Permit and Inspection Fund.

(c) Pursuant to appropriation, moneys up to an amount of $4 million per fiscal year from the Used Tire Management Fund shall be allocated as follows:

(1) 38% shall be available to the Agency for the following purposes, provided that priority shall be given to item (i):

(i) To undertake preventive, corrective or removal action as authorized by and in accordance with Section 55.3, and to recover costs in accordance with Section 55.3.

(ii) For the performance of inspection and enforcement activities for used and waste tire sites.

(iii) (Blank).

(iv) To provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to

subsection (r) of Section 4 at used and waste tire sites.

(v) To provide financial assistance for used and waste tire collection projects sponsored by local government or not-for-profit corporations.

(vi) For the costs of fee collection and administration relating to used and waste tires, and to accomplish such other purposes as are authorized by this Act and regulations thereunder.

(vii) To provide financial assistance to units of local government and private industry for the purposes of:

(A) assisting in the establishment of facilities and programs to collect, process, and utilize used and waste tires and tire-derived materials;

(B) demonstrating the feasibility of innovative technologies as a means of collecting, storing, processing, and utilizing used and waste tires and tire-derived materials; and

(C) applying demonstrated technologies as a means of collecting, storing, processing, and utilizing used and waste tires and tire-derived materials.

(2) (Blank).

(2.1) For the fiscal year beginning July 1, 2004 and for all fiscal years thereafter, 23% shall be deposited into the General Revenue Fund. Such transfers are at the direction of the Department of Revenue, and shall be made within 30 days after the end of each quarter.

(3) 25% shall be available to the Illinois Department of Public Health for the following purposes:

(A) To investigate threats or potential threats to the public health related to mosquitoes and other vectors of disease associated with the improper storage, handling and disposal of tires, improper waste disposal, or natural conditions.

(B) To conduct surveillance and monitoring activities for mosquitoes and other arthropod vectors of disease, and surveillance of animals which provide a reservoir for disease-producing organisms.

(C) To conduct training activities to promote vector control programs and integrated pest management as defined in the Vector Control Act.

(D) To respond to inquiries, investigate complaints, conduct evaluations and provide technical consultation to help reduce or eliminate public health hazards and nuisance conditions associated with mosquitoes and other vectors.

(E) To provide financial assistance to units of local government for training, investigation and response to public nuisances associated with mosquitoes and other vectors of disease.

(4) 2% shall be available to the Department of Agriculture for its activities under the Illinois Pesticide Act relating to used and waste tires.

(5) 2% shall be available to the Pollution Control Board for administration of its activities relating to used and waste tires.

(6) 10% shall be available to the University of Illinois for the Prairie Research Institute to perform research to study the biology, distribution, population ecology, and biosystematics of tire-breeding arthropods, especially mosquitoes, and the diseases they spread.

(d) By January 1, 1998, and biennially thereafter, each State agency receiving an appropriation from the Used Tire Management Fund shall report to the Governor and the General Assembly on its activities relating to the Fund.

(e) Any monies appropriated from the Used Tire Management Fund, but not obligated, shall revert to the Fund.

(f) In administering the provisions of subdivisions (1), (2) and (3) of subsection (c) of this Section, the Agency, the Department of Commerce and Economic Opportunity, and the Illinois Department of Public Health shall ensure that appropriate funding assistance is provided to any municipality with a population over 1,000,000 or to any sanitary district which serves a population over 1,000,000.

(g) Pursuant to appropriation, monies in excess of $4 million per fiscal year from the Used Tire Management Fund shall be used as follows:

(1) 55% shall be available to the Agency for the following purposes, provided that priority shall be given to subparagraph (A):

(A) To undertake preventive, corrective or renewed action as authorized by and in accordance with Section 55.3 and to recover costs in accordance with Section 55.3.

(B) To provide financial assistance to units of local government and private industry for the purposes of:

(i) assisting in the establishment of facilities and programs to collect, process, and utilize used and waste tires and tire-derived materials;

(ii) demonstrating the feasibility of innovative technologies as a means of collecting, storing, processing, and utilizing used and waste tires and tire-derived materials; and

(iii) applying demonstrated technologies as a means of collecting, storing, processing, and utilizing used and waste tires and tire-derived materials.

(C) To provide grants to public universities for vector-related research, disease-related research, and for related laboratory-based equipment and field-based equipment.

(2) (Blank).

(3) For the fiscal year beginning July 1, 2004 and for all fiscal years thereafter, 45% shall be deposited into the General Revenue Fund. Such transfers are at the direction of the Department of Revenue, and shall be made within 30 days after the end of each quarter.

(Source: P.A. 100-103, eff. 8-11-17; 100-327, eff. 8-24-17; 100-587, eff. 6-4-18; 100-621, eff. 7-20-18; 100-863, eff. 8-14-18; 101-10, eff. 6-5-19; 101-636, eff. 6-10-20.)

(415 ILCS 5/55.6a)

Sec. 55.6a. Emergency Public Health Fund.

(a) Beginning on July 1, 2003, moneys in the Emergency Public Health Fund, subject to appropriation, shall be allocated annually as follows: (i) $300,000 to the University of Illinois for the purposes described in Section 55.6(c)(6) and (ii) subject to subsection (b) of this Section, all remaining amounts to the Department of Public Health to be used to make vector control grants and surveillance grants to the Cook County Department of Public Health (for areas of the County excluding the City of Chicago), to the City of Chicago health department, and to other certified local health departments. These grants

shall be used for expenses related to West Nile Virus and other vector-borne diseases. The amount of each grant shall be based on population and need as supported by information submitted to the Department of Public Health. For the purposes of this Section, need shall be determined by the Department based primarily upon surveillance data and the number of positive human cases of West Nile Virus and other vector-borne diseases occurring during the preceding year and current year in the county or municipality seeking the grant.

(b) Beginning on July 31, 2003, on the last day of each month, the State Comptroller shall order transferred and the State Treasurer shall transfer the fees collected in the previous month pursuant to item (1.5) of subsection (a) of Section 55.8 from the Emergency Public Health Fund to the Communications Revolving Fund. These transfers shall continue until the cumulative total of the transfers is $3,000,000.
(Source: P.A. 100-327, eff. 8-24-17.)

(415 ILCS 5/55.7) (from Ch. 111 1/2, par. 1055.7)

Sec. 55.7. The Agency may adopt regulations as necessary for the administration of the grant and loan programs funded from the Used Tire Management Fund, including but not limited to procedures and criteria for applying for, evaluating, awarding and terminating grants and loans. The Agency may by rule specify criteria for providing grant assistance rather than loan assistance; such criteria shall promote the expeditious development of alternatives to the disposal of used tires, and the efficient use of monies for assistance. Evaluation criteria may be established by rule, considering such factors as:

(1) the likelihood that a proposal will lead to the actual collection and processing of used tires and protection of the environment and public health in furtherance of the purposes of this Act;

(2) the feasibility of the proposal;

(3) the suitability of the location for the proposed activity;

(4) the potential of the proposal for encouraging recycling and reuse of resources; and

(5) the potential for development of new technologies consistent with the purposes of this Act.
(Source: P.A. 102-444, eff. 8-20-21.)

(415 ILCS 5/55.7a)

Sec. 55.7a. (Repealed).
(Source: P.A. 87-727. Repealed by P.A. 99-933, eff. 1-27-17.)

(415 ILCS 5/55.8) (from Ch. 111 1/2, par. 1055.8)

Sec. 55.8. Tire retailers.

(a) Any person selling new or used tires at retail or offering new or used tires for retail sale in this State shall:

(1) beginning on June 20, 2003 (the effective date of Public Act 93-32), collect from retail customers a fee of $2 per new or used tire sold and delivered in this State, to be paid to the Department of Revenue and deposited into the Used Tire Management Fund, less a collection allowance of 10 cents per tire to be retained by the retail seller and a collection allowance of 10 cents per tire to be retained by the Department of Revenue and paid into the General Revenue Fund; the collection allowance for retail sellers, however, shall be allowed only if the return is filed timely and in the manner required by this Title XIV and only for the amount that is paid timely in accordance with this Title XIV;

(1.5) beginning on July 1, 2003, collect from retail

customers an additional 50 cents per new or used tire sold and delivered in this State; the money collected from this fee shall be deposited into the Emergency Public Health Fund;

(2) accept for recycling used tires from customers, at the point of transfer, in a quantity equal to the number of new tires purchased; and

(3) post in a conspicuous place a written notice at least 8.5 by 11 inches in size that includes the universal recycling symbol and the following statements: "DO NOT put used tires in the trash."; "Recycle your used tires."; and "State law requires us to accept used tires for recycling, in exchange for new tires purchased.".

(b) A person who accepts used tires for recycling under subsection (a) shall not allow the tires to accumulate for periods of more than 90 days.

(c) The requirements of subsection (a) of this Section do not apply to mail order sales nor shall the retail sale of a motor vehicle be considered to be the sale of tires at retail or offering of tires for retail sale. Instead of filing returns, retailers of tires may remit the tire user fee to their suppliers of tires if the supplier of tires is a registered retailer of tires and agrees or otherwise arranges to collect and remit the tire fee to the Department of Revenue, notwithstanding the fact that the sale of the tire is a sale for resale and not a sale at retail. A tire supplier who enters into such an arrangement with a tire retailer shall be liable for the tax on all tires sold to the tire retailer and must (i) provide the tire retailer with a receipt that separately reflects the tire tax collected from the retailer on each transaction and (ii) accept used tires for recycling from the retailer's customers. The tire supplier shall be entitled to the collection allowance of 10 cents per tire, but only if the return is filed timely and only for the amount that is paid timely in accordance with this Title XIV.

The retailer of the tires must maintain in its books and records evidence that the appropriate fee was paid to the tire supplier and that the tire supplier has agreed to remit the fee to the Department of Revenue for each tire sold by the retailer. Otherwise, the tire retailer shall be directly liable for the fee on all tires sold at retail. Tire retailers paying the fee to their suppliers are not entitled to the collection allowance of 10 cents per tire. The collection allowance for suppliers, however, shall be allowed only if the return is filed timely and in the manner required by this Title XIV and only for the amount that is paid timely in accordance with this Title XIV.

(d) The requirements of subsection (a) of this Section shall apply exclusively to tires to be used for vehicles defined in Section 1-217 of the Illinois Vehicle Code, aircraft tires, special mobile equipment, and implements of husbandry.

(e) The requirements of paragraph (1) of subsection (a) do not apply to the sale of reprocessed tires. For purposes of this Section, "reprocessed tire" means a used tire that has been recapped, retreaded, or regrooved and that has not been placed on a vehicle wheel rim.

(Source: P.A. 100-303, eff. 8-24-17.)

(415 ILCS 5/55.9) (from Ch. 111 1/2, par. 1055.9)

Sec. 55.9. Collection of fee. Retailers shall collect the fee from the purchaser by adding the fee to the selling price of the tire. The fee imposed by Section 55.8 shall be stated as a distinct item separate and apart from the selling price of the tire. The fee imposed by Section 55.8 shall not be includable in the gross receipts of the retailer subject to the Retailers'

Occupation Tax Act, the Use Tax Act or any locally imposed retailers' occupation tax. The fee imposed by Section 55.8, and any such fees collected by a retailer, shall constitute a debt owed by the retailer to this State.
(Source: P.A. 87-727.)

(415 ILCS 5/55.10) (from Ch. 111 1/2, par. 1055.10)

Sec. 55.10. Tax returns by retailer.

(a) Except as otherwise provided in this Section, for returns due on or before January 31, 2010, each retailer of tires maintaining a place of business in this State shall make a return to the Department of Revenue on a quarter annual basis, with the return for January, February and March of a given year being due by April 30 of that year; with the return for April, May and June of a given year being due by July 31 of that year; with the return for July, August and September of a given year being due by October 31 of that year; and with the return for October, November and December of a given year being due by January 31 of the following year.

For returns due after January 31, 2010, each retailer of tires maintaining a place of business in this State shall make a return to the Department of Revenue on a quarter annual basis, with the return for January, February, and March of a given year being due by April 20 of that year; with the return for April, May, and June of a given year being due by July 20 of that year; with the return for July, August, and September of a given year being due by October 20 of that year; and with the return for October, November, and December of a given year being due by January 20 of the following year.

Notwithstanding any other provision of this Section to the contrary, the return for October, November, and December of 2009 is due by February 20, 2010.

On and after January 1, 2018, tire retailers and suppliers required to file electronically under Section 3 of the Retailers' Occupation Tax Act or Section 9 of the Use Tax Act must electronically file all returns pursuant to this Act. Tire retailers and suppliers who demonstrate that they do not have access to the Internet or demonstrate hardship in filing electronically may petition the Department to waive the electronic filing requirement.

(b) Each return made to the Department of Revenue shall state:

(1) the name of the retailer;

(2) the address of the retailer's principal place of business, and the address of the principal place of business (if that is a different address) from which the retailer engages in the business of making retail sales of tires;

(3) total number of tires sold at retail for the preceding calendar quarter;

(4) the amount of tax due; and

(5) such other reasonable information as the Department of Revenue may require.

If any payment provided for in this Section exceeds the retailer's liabilities under this Act, as shown on an original return, the retailer may credit such excess payment against liability subsequently to be remitted to the Department under this Act, in accordance with reasonable rules adopted by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the retailer, the retailer's discount shall be reduced by the monetary amount of the discount applicable to the difference between the credit taken and that actually due, and the retailer shall be liable for penalties and interest on such difference.

Notwithstanding any other provision of this Act concerning

the time within which a retailer may file his return, in the case of any retailer who ceases to engage in the retail sale of tires, the retailer shall file a final return under this Act with the Department of Revenue not more than one month after discontinuing that business.
(Source: P.A. 100-303, eff. 8-24-17; 100-1171, eff. 1-4-19.)

(415 ILCS 5/55.11) (from Ch. 111 1/2, par. 1055.11)

Sec. 55.11. Application of Retailers' Occupation Tax provisions. All the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6, 6a, 6b, 6c, 7, 8, 9, 10, 11, and 13 1/2 of the Retailers' Occupation Tax Act, which are not inconsistent with this Act, shall apply, as far as practicable, to the fee imposed by Section 55.8 of this Act to the same extent as if such provisions were included herein. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers or to persons engaged in the business of selling tangible personal property mean retailers of tires.
(Source: P.A. 87-727.)

(415 ILCS 5/55.12) (from Ch. 111 1/2, par. 1055.12)

Sec. 55.12. Review under Administrative Review Law. The circuit court of any county wherein a hearing is held shall have the power to review all final administrative decisions of the Department of Revenue in administering the fee imposed under Section 55.7. However, if the administrative proceeding which is to be reviewed judicially is a claim for refund proceeding commenced under this Act and Section 2a of the State Officers and Employees Money Disposition Act, the circuit court having jurisdiction over the action for judicial review under this Section and under the Administrative Law shall be the same court that entered the temporary restraining order or preliminary injunction which is provided for in that Section 2a, and which enables the claim proceeding to be processed and disposed of as a claim for refund proceeding other than as a claim for credit proceeding.

The provisions of the Administrative Review Law, and the rules adopted pursuant thereto, shall apply to and govern all proceeding for the judicial review of final administrative decisions of the Department of Revenue hereunder. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Service upon the Director or Assistant Director of the Department of Revenue of summons issued in any action to review a final administrative decision shall be service upon the Department of Revenue. The Department of Revenue shall certify the record of its proceedings if the taxpayer shall pay to it the sum of 75 cents per page of testimony taken before the Department of Revenue and 25 cents per page of all other matters contained in such record, except that these charges may be waived where the Department of Revenue is satisfied that the aggrieved party is a poor person who cannot afford to pay such charges.
(Source: P.A. 87-727.)

(415 ILCS 5/55.13) (from Ch. 111 1/2, par. 1055.13)

Sec. 55.13. Rules, etc. The Department of Revenue may adopt and enforce such reasonable rules and regulations relating to the administration and enforcement of the fee imposed by Section 55.8 of this Act as may be deemed expedient.

Whenever the Department of Revenue is required to provide notice to a retailer under this Act, such notice may be personally served or given by United States certified or registered mail, addressed to the retailer or taxpayer concerned

at his last known address, and proof of such mailing shall be sufficient for the purposes of this Article. In the case of a notice of hearing, such notice shall be mailed not less than 7 days prior to the date fixed for the hearing.

All hearings provided by the Department of Revenue under this Act with respect to or concerning a taxpayer having his or her principal place of business in this State other than in Cook County shall be held at the Department's office nearest to the location of the taxpayer's principal place of business. If the taxpayer has his or her principal place of business in Cook County, such hearing shall be held in Cook County. If the taxpayer does not have his or her principal place of business in this State, such hearing shall be held in Sangamon County.

Whenever any proceeding provided by this Act has been begun by the Department of Revenue or by a person subject thereto and such person thereafter dies or becomes a person under legal disability before the proceeding has been concluded, the legal representative of the deceased person or person under legal disability shall notify the Department of Revenue of such death or legal disability. The legal representative, as such, shall then be substituted by the Department of Revenue in place of and for the person. Within 20 days after notice to the legal representative of the time fixed for that purpose, the proceeding may proceed in all respects and with like effect as though the person had not died or become a person under legal disability.
(Source: P.A. 87-727.)

(415 ILCS 5/55.14) (from Ch. 111 1/2, par. 1055.14)

Sec. 55.14. Administrative procedures. The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Revenue under this Act, except that: (1) paragraph (b) of Section 4 of the Illinois Administrative Procedure Act does not apply to final orders, decisions and opinions of the Department of Revenue; (2) subparagraph (a)(2) of Section 4 of the Illinois Administrative Procedure Act does not apply to forms established by the Department of Revenue for use under this Act; and (3) the provisions of Section 13 of the Illinois Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department of Revenue under this Act.
(Source: P.A. 87-727.)

(415 ILCS 5/55.15) (from Ch. 111 1/2, par. 1055.15)

Sec. 55.15. Violations.

(a) Any retailer who fails to make a return, or who makes a fraudulent return, or who willfully violates any rule or regulation of the Department of Revenue for the administration and enforcement of the fee imposed by Section 55.8, is guilty of a Class 4 felony.

(b) Any retailer who knowingly violates subsections (a) (2), (a) (3), or (b) of Section 55.8 commits a petty offense punishable by a fine of $100.
(Source: P.A. 87-727.)

(415 ILCS 5/Tit. XV heading)

Title XV: Potentially Infectious Medical Waste

(415 ILCS 5/56) (from Ch. 111 1/2, par. 1056)

Sec. 56. (a) The General Assembly finds:

(1) that potentially infectious medical waste, if not handled properly, may constitute an environmental or public health problem.

(2) that potentially infectious medical waste, if not handled properly, may present a health risk to handlers of the waste at the facility where the waste is generated, during transportation of the waste, and at the facility receiving the waste.

(b) It is the purpose of this Title to reduce the potential environmental and public health risks associated with potentially infectious medical waste by establishing statutory and regulatory requirements to ensure that such waste will be handled in a safe and responsible manner.

(c) Potentially infectious medical waste is not a hazardous waste, except for those potentially infectious medical wastes identified by characteristics or listing as hazardous under Section 3001 of the Resource Conservation and Recovery Act of 1976, P.L. 94-580, or pursuant to Board regulations. Potentially infectious medical waste characterized or listed as hazardous shall be subject to the appropriate hazardous waste regulations. Potentially infectious medical waste packages that contain both waste characterized or listed as hazardous and waste characterized as nonhazardous shall be subject to the hazardous waste regulations.

(Source: P.A. 90-773, eff. 8-14-98.)

(415 ILCS 5/56.1) (from Ch. 111 1/2, par. 1056.1)

Sec. 56.1. Acts prohibited.

(A) No person shall:

(a) Cause or allow the disposal of any potentially infectious medical waste. Sharps may be disposed in any landfill permitted by the Agency under Section 21 of this Act to accept municipal waste for disposal, if both:

(1) the infectious potential has been eliminated from the sharps by treatment; and

(2) the sharps are packaged in accordance with Board regulations.

(b) Cause or allow the delivery of any potentially infectious medical waste for transport, storage, treatment, or transfer except in accordance with Board regulations.

(c) Beginning July 1, 1992, cause or allow the delivery of any potentially infectious medical waste to a person or facility for storage, treatment, or transfer that does not have a permit issued by the agency to receive potentially infectious medical waste, unless no permit is required under subsection (g)(1).

(d) Beginning July 1, 1992, cause or allow the delivery or transfer of any potentially infectious medical waste for transport unless:

(1) the transporter has a permit issued by the Agency to transport potentially infectious medical waste, or the transporter is exempt from the permit requirement set forth in subsection (f)(l).

(2) a potentially infectious medical waste manifest is completed for the waste if a manifest is required under subsection (h).

(e) Cause or allow the acceptance of any potentially infectious medical waste for purposes of transport, storage, treatment, or transfer except in accordance with Board regulations.

(f) Beginning July 1, 1992, conduct any potentially infectious medical waste transportation operation:

(1) Without a permit issued by the Agency to

transport potentially infectious medical waste. No permit is required under this provision (f)(1) for:

(A) a person transporting potentially infectious medical waste generated solely by that person's activities;

(B) noncommercial transportation of less than 50 pounds of potentially infectious medical waste at any one time; or

(C) the U.S. Postal Service.

(2) In violation of any condition of any permit issued by the Agency under this Act.

(3) In violation of any regulation adopted by the Board.

(4) In violation of any order adopted by the Board under this Act.

(g) Beginning July 1, 1992, conduct any potentially infectious medical waste treatment, storage, or transfer operation:

(1) without a permit issued by the Agency that specifically authorizes the treatment, storage, or transfer of potentially infectious medical waste. No permit is required under this subsection (g) or subsection (d)(1) of Section 21 for any:

(A) Person conducting a potentially infectious medical waste treatment, storage, or transfer operation for potentially infectious medical waste generated by the person's own activities that are treated, stored, or transferred within the site where the potentially infectious medical waste is generated.

(B) Hospital that treats, stores, or transfers only potentially infectious medical waste generated by its own activities or by members of its medical staff.

(C) Sharps collection station that is operated in accordance with Section 56.7.

(2) in violation of any condition of any permit issued by the Agency under this Act.

(3) in violation of any regulation adopted by the Board.

(4) In violation of any order adopted by the Board under this Act.

(h) Transport potentially infectious medical waste unless the transporter carries a completed potentially infectious medical waste manifest. No manifest is required for the transportation of:

(1) potentially infectious medical waste being transported by generators who generated the waste by their own activities, when the potentially infectious medical waste is transported within or between sites or facilities owned, controlled, or operated by that person;

(2) less than 50 pounds of potentially infectious medical waste at any one time for a noncommercial transportation activity; or

(3) potentially infectious medical waste by the U.S. Postal Service.

(i) Offer for transportation, transport, deliver, receive or accept potentially infectious medical waste for which a manifest is required, unless the manifest indicates that the fee required under Section 56.4 of this Act has been paid.

(j) Beginning January 1, 1994, conduct a potentially

infectious medical waste treatment operation at an incinerator in existence on the effective date of this Title in violation of emission standards established for these incinerators under Section 129 of the Clean Air Act (42 USC 7429), as amended.

(k) Beginning July 1, 2015, knowingly mix household sharps, including, but not limited to, hypodermic, intravenous, or other medical needles or syringes or other medical household waste containing used or unused sharps, including, but not limited to, hypodermic, intravenous, or other medical needles or syringes or other sharps, with any other material intended for collection as a recyclable material by a residential hauler.

(l) Beginning on July 1, 2015, knowingly place household sharps into a container intended for collection by a residential hauler for processing at a recycling center.

(B) In making its orders and determinations relative to penalties, if any, to be imposed for violating subdivision (A)(a) of this Section, the Board, in addition to the factors in Sections 33(c) and 42(h) of this Act, or the Court shall take into consideration whether the owner or operator of the landfill reasonably relied on written statements from the person generating or treating the waste that the waste is not potentially infectious medical waste.

(C) Notwithstanding subsection (A) or any other provision of law, including the Vital Records Act, tissue and products from an abortion, as defined in Section 1-10 of the Reproductive Health Act, or a miscarriage may be buried, entombed, or cremated.

(Source: P.A. 101-13, eff. 6-12-19.)

(415 ILCS 5/56.2) (from Ch. 111 1/2, par. 1056.2)

Sec. 56.2. Regulations.

(a) No later than July 1, 1993, the Board shall adopt regulations in accordance with Title VII of this Act prescribing design and operating standards and criteria for all potentially infectious medical waste treatment, storage, and transfer facilities. At a minimum, these regulations shall require treatment of potentially infectious medical waste at a facility that:

(1) eliminates the infectious potential of the waste;

(2) prevents compaction and rupture of containers during handling operations;

(3) disposes of treatment residuals in accordance with this Act and regulations adopted thereunder;

(4) provides for quality assurance programs;

(5) provides for periodic testing using biological testing, where appropriate, that demonstrate proper treatment of the waste;

(6) provides for assurances that clearly demonstrate that potentially infectious medical waste has been properly treated; and

(7) is in compliance with all Federal and State laws and regulations pertaining to environmental protection.

(b) After the effective date of the Board regulations adopted under subsection (a), each applicant for a potentially infectious medical waste treatment permit shall prove that the facility will not cause a violation of the Act or of regulations adopted thereunder.

(c) No later than July 1, 1993, the Board shall adopt regulations in accordance with Title VII of this Act prescribing standards and criteria for transporting, packaging, segregating, labeling, and marking potentially infectious medical waste.

(d) In accord with Title VII of this Act, no later than

January 1, 1992, the Board shall repeal Subpart I of 35 Ill. Adm. Code 809.

(e) No later than January 1, 1992, the Board shall adopt rules that are identical in substance to the list of etiologic agents identified as Class 4 agents as set forth in "Classification of Etiological Agents on the Basis of Hazard, 1974", published by the Centers for Disease Control. On and after the effective date of this amendatory Act of the 102nd General Assembly, any person, including the Agency, may propose rules under Section 28 to amend the listing of etiologic agents identified as Class 4 agents. When proposing rules, the proponent may consult classifications published by the U.S. Department of Health and Human Services, "Guidelines for Research Involving Recombinant DNA Molecules" published by the National Institutes for Health, or "Biosafety in Microbiological and Biomedical Laboratories" published by the Centers for Disease Control and Prevention. The Board shall take action on a proposal to amend the listing of Class 4 agents not later than 6 months after receiving it.

(f) In accord with Title VII of this Act, the Board may adopt regulations to promote the purposes of this Title. The regulations prescribed in subsection (a), (c), and (e) shall not limit the generality of this authority.

(Source: P.A. 102-243, eff. 8-3-21.)

(415 ILCS 5/56.3) (from Ch. 111 1/2, par. 1056.3)

Sec. 56.3. Commencing March 31, 1993, and annually thereafter, each transporter of potentially infectious medical waste required to have a permit under subsection (f) of Section 56.1 of this Act, each facility for which a permit is required under subsection (g) of Section 56.1 of this Act that stores, treats, or transfers potentially infectious medical waste and each facility not required to have a permit under subsection (g) of Section 56.1 of this Act that treats more than 50 pounds per month of potentially infectious medical waste shall file a report with the Agency specifying the quantities and disposition of potentially infectious medical waste transported, stored, treated, disposed, or transferred during the previous calendar year. Such reports shall be on forms prescribed and provided by the Agency.

(Source: P.A. 87-752; 87-1097.)

(415 ILCS 5/56.4) (from Ch. 111 1/2, par. 1056.4)

Sec. 56.4. Medical waste manifests.

(a) Manifests for potentially infectious medical waste shall consist of an original (the first page of the form) and 3 copies. Upon delivery of potentially infectious medical waste by a generator to a transporter, the transporter shall deliver one copy of the completed manifest to the generator. Upon delivery of potentially infectious medical waste by a transporter to a treatment or disposal facility, the transporter shall keep one copy of the completed manifest, and the transporter shall deliver the original and one copy of the completed manifest to the treatment or disposal facility. The treatment or disposal facility shall keep one copy of the completed manifest and return the original to the generator within 35 days. The manifest, as provided for in this Section, shall not terminate while being transferred between the generator, transporter, transfer station, or storage facility, unless transfer activities are conducted at the treatment or disposal facility. The manifest shall terminate at the treatment or disposal facility.

(b) Potentially infectious medical waste manifests shall be in a form prescribed and provided by the Agency. Generators and

transporters of potentially infectious medical waste and facilities accepting potentially infectious medical waste are not required to submit copies of such manifests to the Agency. The manifest described in this Section shall be used for the transportation of potentially infectious medical waste instead of the manifest described in Section 22.01 of this Act. Copies of each manifest shall be retained for 3 years by generators, transporters, and facilities, and shall be available for inspection and copying by the Agency.

(c) The Agency shall assess a fee of $4.00 for each potentially infectious medical waste manifest provided by the Agency.

(d) All fees collected by the Agency under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund. The Agency may establish procedures relating to the collection of fees under this Section. The Agency shall not refund any fee paid to it under this Section.

(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/56.5) (from Ch. 111 1/2, par. 1056.5)

Sec. 56.5. Medical waste hauling fees.

(a) The Agency shall annually collect a $2000 fee for each potentially infectious medical waste hauling permit application and, in addition, shall collect a fee of $250 for each potentially infectious medical waste hauling vehicle identified in the annual permit application and for each vehicle that is added to the permit during the annual period. Each applicant required to pay a fee under this Section shall submit the fee along with the permit application. The Agency shall deny any permit application for which a fee is required under this Section that does not contain the appropriate fee.

(b) All fees collected by the Agency under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund. The Agency may establish procedures relating to the collection of fees under this Section. The Agency shall not refund any fee paid to it under this Section.

(c) The Agency shall not collect a fee under this Section from any hospital that transports only potentially infectious medical waste generated by its own activities or by members of its medical staff.

(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/56.6) (from Ch. 111 1/2, par. 1056.6)

Sec. 56.6. Medical waste transportation fees.

(a) The Agency shall collect from each transporter of potentially infectious medical waste required to have a permit under Section 56.1(f) of this Act a fee in the amount of 3 cents per pound of potentially infectious medical waste transported. The Agency shall collect from each transporter of potentially infectious medical waste not required to have a permit under Section 56.1(f)(1)(A) of this Act a fee in the amount of 3 cents per pound of potentially infectious medical waste transported to a site or facility not owned, controlled, or operated by the transporter. The Agency shall deny any permit required under Section 56.1(f) of this Act from any applicant who has not paid to the Agency all fees due under this Section.

A fee in the amount of 3 cents per pound of potentially infectious medical waste shall be collected by the Agency from a potentially infectious medical waste storage site or treatment facility receiving potentially infectious medical waste, unless the fee has been previously paid by a transporter.

(b) The Agency shall establish procedures, not later than January 1, 1992, relating to the collection of the fees authorized by this Section. These procedures shall include, but

not be limited to: (i) necessary records identifying the quantities of potentially infectious medical waste transported; (ii) the form and submission of reports to accompany the payment of fees to the Agency; and (iii) the time and manner of payment of fees to the Agency, which payments shall be not more often than quarterly.

(c) All fees collected by the Agency under this Section shall be deposited into the Environmental Protection Permit and Inspection Fund. The Agency may establish procedures relating to the collection of fees under this Section. The Agency shall not refund any fee paid to it under this Section.

(d) The Agency shall not collect a fee under this Section from a person transporting potentially infectious medical waste to a hospital when the person is a member of the hospital's medical staff.

(Source: P.A. 93-32, eff. 7-1-03.)

(415 ILCS 5/56.7)

Sec. 56.7. No permit shall be required under subsection (d)(1) of Section 21 or subsection (g) of Section 56.1 of this Act for a sharps collection station if the station is operated in accordance with all of the following:

(1) The only waste accepted at the sharps collection station is (i) hypodermic, intravenous, or other medical needles or syringes or other sharps, or (ii) medical household waste containing used or unused sharps, including but not limited to, hypodermic, intravenous, or other medical needles or syringes or other sharps.

(2) The waste is stored and transferred in the same manner as required for potentially infectious medical waste under this Act and under Board regulations.

(3) The waste is not treated at the sharps collection station unless it is treated in the same manner as required for potentially infectious medical waste under this Act and under Board regulations.

(4) The waste is not disposed of at the sharps collection station.

(5) The waste is transported in the same manner as required for potentially infectious medical waste under this Act and under Board regulations.

(Source: P.A. 94-641, eff. 8-22-05.)

(415 ILCS 5/56.8)

Sec. 56.8. (Repealed).

(Source: P.A. 100-925, eff. 1-1-19. Repealed internally, eff. 12-31-22.)

(415 ILCS 5/Tit. XVI heading)

TITLE XVI. PETROLEUM UNDERGROUND STORAGE TANKS

(415 ILCS 5/57)

Sec. 57. Intent and purpose. This Title shall be known and may be cited as the Leaking Underground Storage Tank Program (LUST). The purpose of this Title is, in accordance with the requirements of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 and in accordance with the State's interest in the protection of Illinois' land and water resources: (1) to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances regulated under this Title from certain underground storage tanks or related tank systems; (2) to establish and provide procedures for a Leaking

Underground Storage Tank Program which will oversee and review any remediation required for leaking underground storage tanks, and administer the Underground Storage Tank Fund; (3) to establish an Underground Storage Tank Fund intended to be a State fund by which persons who qualify for access to the Underground Storage Tank Fund may satisfy the financial responsibility requirements under applicable State law and regulations; (4) to establish requirements for eligible owners and operators of underground storage tanks to seek payment for any costs associated with physical soil classification, groundwater investigation, site classification and corrective action from the Underground Storage Tank Fund; and (5) to audit and approve corrective action efforts performed by Licensed Professional Engineers.
(Source: P.A. 91-357, eff. 7-29-99.)

(415 ILCS 5/57.1)
Sec. 57.1. Applicability.

(a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation, and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

(b) An owner or operator of a heating oil tank as defined by this Title may elect to perform tank removal, abandonment or repair, site investigation, or corrective action, unless the provisions of subsection (g) of Section 57.5 are applicable.

(c) All owners or operators who conduct tank removal, repair or abandonment, site investigation, or corrective action may be eligible for the relief provided for under Section 57.10 of this Title.

(d) The owners or operators, or both, of underground storage tanks containing regulated substances other than petroleum shall undertake corrective action in conformance with regulations promulgated by the Illinois Pollution Control Board.
(Source: P.A. 92-554, eff. 6-24-02.)

(415 ILCS 5/57.2)
Sec. 57.2. Definitions. As used in this Title:

"Audit" means a systematic inspection or examination of plans, reports, records, or documents to determine the completeness and accuracy of the data and conclusions contained therein.

"Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from a release of petroleum from an underground storage tank.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of petroleum from an underground storage tank into groundwater, surface water or subsurface soils.

"Fill material" means non-native or disturbed materials used to bed and backfill around an underground storage tank.

"Fund" means the Underground Storage Tank Fund.

"Heating Oil" means petroleum that is No. 1, No. 2, No. 4 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy or No. 6 technical grades of fuel oil; and other residual fuel oils including Navy Special Fuel Oil and Bunker C.

"Indemnification" means indemnification of an owner or operator for the amount of any judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement

arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator.

"Corrective action" means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of this Title.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a sudden or nonsudden release from an underground storage tank.

When used in connection with, or when otherwise relating to, underground storage tanks, the terms "facility", "owner", "operator", "underground storage tank", "(UST)", "petroleum" and "regulated substance" shall have the meanings ascribed to them in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580); provided however that the term "underground storage tank" shall also mean an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit; provided further however that the term "owner" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title.

"Licensed Professional Engineer" means a person, corporation, or partnership licensed under the laws of the State of Illinois to practice professional engineering.

"Licensed Professional Geologist" means a person licensed under the laws of the State of Illinois to practice as a professional geologist.

"Site" means any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way.

"Site investigation" means activities associated with compliance with the provisions of subsection (a) of Section 57.7.

"Property damage" means physical injury to, destruction of, or contamination of tangible property, including all resulting loss of use of that property; or loss of use of tangible property that is not physically injured, destroyed, or contaminated, but has been evacuated, withdrawn from use, or rendered inaccessible because of a release of petroleum from an underground storage tank.

"Class I Groundwater" means groundwater that meets the Class I: Potable Resource Groundwater criteria set forth in the Board regulations adopted pursuant to the Illinois Groundwater Protection Act.

"Class III Groundwater" means groundwater that meets the Class III: Special Resource Groundwater criteria set forth in the Board regulations adopted pursuant to the Illinois Groundwater Protection Act.

(Source: P.A. 94-274, eff. 1-1-06.)

(415 ILCS 5/57.3)

Sec. 57.3. Underground Storage Tank Program. The General Assembly hereby establishes the Illinois Leaking Underground Storage Tank Program (LUST Program). The LUST Program shall be administered by the Office of the State Fire Marshal and the Illinois Environmental Protection Agency.

(Source: P.A. 88-496.)

(415 ILCS 5/57.4)

Sec. 57.4. State Agencies. The Office of State Fire Marshal and the Illinois Environmental Protection Agency shall administer the Leaking Underground Storage Tank Program in accordance with the terms of this Title.

(Source: P.A. 88-496.)

(415 ILCS 5/57.5)

Sec. 57.5. Underground Storage Tanks; removal; repair; abandonment.

(a) Notwithstanding the eligibility or the level of deductibility of an owner or operator under the Underground Storage Tank Fund, any owner or operator of an Underground Storage Tank may seek to remove or abandon such tank under the provisions of this Title. In order to be reimbursed under Section 57.8, the owner or operator must comply with the provisions of this Title. In no event will an owner or operator be reimbursed for any costs which exceed the minimum requirements necessary to comply with this Title.

(b) Removal or abandonment of an Underground Storage Tank must be carried out in accordance with regulations adopted by the Office of State Fire Marshal.

(c) The Office of the State Fire Marshal or a designated agent shall have an inspector on site at the time of removal, abandonment, or such other times the Office of State Fire Marshal deems appropriate. At such time, the inspector shall, upon preliminary excavation of the tank site, render an opinion as to whether a release of petroleum has occurred and, if so, the owner or operator shall report the known or suspected release to the Illinois Emergency Management Agency. The owner or operator shall determine whether or not a release has occurred in conformance with the regulations adopted by the Board and the Office of the State Fire Marshal. Except that if the opinion of the Office of the State Fire Marshal inspector is that a release of petroleum has occurred and the owner or operator has reported the release to the Illinois Emergency Management Agency within 24 hours of removal of the tank, no such determination is required under this subsection. In the event the owner or operator confirms the presence of a release of petroleum, the owner or operator shall comply with Section 57.6. The inspector shall provide the owner or operator, or a designated agent, with an "Eligibility and Deductibility Determination" form. The Office of the State Fire Marshal shall provide on-site assistance to the owner or operator or a designated agent with regard to the eligibility and deductibility procedures as provided in Section 57.9. If the Office of the State Fire Marshal is not on site, the Office of the State Fire Marshal shall provide the owner or operator with an "Eligibility and Deductibility Determination" form within 15 days after receiving notice that the confirmed release was reported by the owner or operator.

(d) In the event that a release of petroleum is confirmed under subsection (c) of this Section, the owner or operator may elect to backfill the preliminary excavation and proceed under Section 57.6.

(e) In the event that an Underground Storage Tank is found to be ineligible for payment from the Underground Storage Tank Fund, the owner or operator shall proceed under Sections 57.6 and 57.7.

(f) In the event that no release of petroleum is confirmed, the owner or operator shall proceed to complete the removal of the underground storage tank, and when appropriate, dispose of the tank and backfill the excavation or, in the alternate, abandon the underground storage tank in place. Either option

shall be in accordance with regulations adopted by the Office of the State Fire Marshal. The owner or operator shall certify to the Office of the State Fire Marshal that the tank removal or abandonment was conducted in accordance with all applicable rules and regulations, and the Office of the State Fire Marshal shall then issue a certificate of removal or abandonment to the owner or operator. If the Office of the State Fire Marshal fails to issue a certificate of removal or abandonment within 30 days of receipt of the certification, the certification shall be considered rejected by operation of law and a final action appealable to the Board. Nothing in this Title shall prohibit the Office of the State Fire Marshal from making an independent inspection of the site and challenging the veracity of the owner or operator certification.

(g) The owner or operator of an underground storage tank taken out of operation before January 2, 1974, or an underground storage tank used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit shall not be required to remove or abandon in place such underground storage tank except in the case in which the Office of the State Fire Marshal has determined that a release from the underground storage tank poses a current or potential threat to human health and the environment. In that case, and upon receipt of an order from the Office of the State Fire Marshal, the owner or operator of such underground storage tank shall conduct removal and, if necessary, site investigation and corrective action in accordance with this Title and regulations promulgated by the Office of State Fire Marshal and the Board.

(h) In the event that a release of petroleum occurred between September 13, 1993, and August 1, 1994, for which the Office of the State Fire Marshal issued a certificate of removal or abandonment based on its determination of "no release" or "minor release," and the Office of the State Fire Marshal subsequently has rescinded that determination and required a report of a confirmed release to the Illinois Emergency Management Agency, the owner or operator may be eligible for reimbursement for the costs of site investigation and corrective action incurred on or after the date of the release but prior to the notification of the Illinois Emergency Management Agency. The date of the release shall be the date of the initial inspection by the Office of the State Fire Marshal as recorded in its inspection log. Eligibility and deductibility shall be determined in accordance with this Title, the owner or operator must comply with the provisions of this Act and its rules, and in no case shall the owner or operator be reimbursed for costs exceeding the minimum requirements of this Act and its rules.
(Source: P.A. 92-554, eff. 6-24-02.)

(415 ILCS 5/57.6)

Sec. 57.6. Underground storage tanks; early action.

(a) Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

(b) Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner or operator may also remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4

feet from the outside dimensions of the tank.
(Source: P.A. 92-554, eff. 6-24-02.)

(415 ILCS 5/57.7)

Sec. 57.7. Leaking underground storage tanks; site investigation and corrective action.

(a) Site investigation.

(1) For any site investigation activities required by statute or rule, the owner or operator shall submit to the Agency for approval a site investigation plan designed to determine the nature, concentration, direction of movement, rate of movement, and extent of the contamination as well as the significant physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment.

(2) Any owner or operator intending to seek payment from the Fund shall submit to the Agency for approval a site investigation budget that includes, but is not limited to, an accounting of all costs associated with the implementation and completion of the site investigation plan.

(3) Remediation objectives for the applicable indicator contaminants shall be determined using the tiered approach to corrective action objectives rules adopted by the Board pursuant to this Title and Title XVII of this Act. For the purposes of this Title, "Contaminant of Concern" or "Regulated Substance of Concern" in the rules means the applicable indicator contaminants set forth in subsection (d) of this Section and the rules adopted thereunder.

(4) Upon the Agency's approval of a site investigation plan, or as otherwise directed by the Agency, the owner or operator shall conduct a site investigation in accordance with the plan.

(5) Within 30 days after completing the site investigation, the owner or operator shall submit to the Agency for approval a site investigation completion report. At a minimum the report shall include all of the following:

(A) Executive summary.

(B) Site history.

(C) Site-specific sampling methods and results.

(D) Documentation of all field activities, including quality assurance.

(E) Documentation regarding the development of proposed remediation objectives.

(F) Interpretation of results.

(G) Conclusions.

(b) Corrective action.

(1) If the site investigation confirms none of the applicable indicator contaminants exceed the proposed remediation objectives, within 30 days after completing the site investigation the owner or operator shall submit to the Agency for approval a corrective action completion report in accordance with this Section.

(2) If any of the applicable indicator contaminants exceed the remediation objectives approved for the site, within 30 days after the Agency approves the site investigation completion report the owner or operator shall submit to the Agency for approval a corrective action plan designed to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release. The plan shall describe the selected remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the site. At a minimum, the report shall include all of the following:

(A) Executive summary.

(B) Statement of remediation objectives.

(C) Remedial technologies selected.

(D) Confirmation sampling plan.

(E) Current and projected future use of the property.

(F) Applicable preventive, engineering, and institutional controls including long-term reliability, operating, and maintenance plans, and monitoring procedures.

(G) A schedule for implementation and completion of the plan.

(3) Any owner or operator intending to seek payment from the Fund shall submit to the Agency for approval a corrective action budget that includes, but is not limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan.

(4) Upon the Agency's approval of a corrective action plan, or as otherwise directed by the Agency, the owner or operator shall proceed with corrective action in accordance with the plan.

(5) Within 30 days after the completion of a corrective action plan that achieves applicable remediation objectives the owner or operator shall submit to the Agency for approval a corrective action completion report. The report shall demonstrate whether corrective action was completed in accordance with the approved corrective action plan and whether the remediation objectives approved for the site, as well as any other requirements of the plan, have been achieved.

(6) If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not submitted a corrective action completion report, the owner or operator must submit a status report for Agency review. The status report must include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved.

(7) If the Agency determines any approved corrective action plan will not achieve applicable remediation objectives within a reasonable time, based upon the method of remediation and site specific circumstances, the Agency may require the owner or operator to submit to the Agency for approval a revised corrective action plan. If the owner or operator intends to seek payment from the Fund, the owner or operator must also submit a revised budget.

(c) Agency review and approval.

(1) Agency approval of any plan and associated budget, as described in this subsection (c), shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget.

(2) In the event the Agency fails to approve, disapprove, or modify any plan or report submitted pursuant to this Title in writing within 120 days of the receipt by the Agency, the plan or report shall be considered to be rejected by operation of law for purposes of this Title and

rejected for purposes of payment from the Underground Storage Tank Fund.

(A) For purposes of those plans as identified in paragraph (5) of this subsection (c), the Agency's review may be an audit procedure. Such review or audit shall be consistent with the procedure for such review or audit as promulgated by the Board under Section 57.14. The Agency has the authority to establish an auditing program to verify compliance of such plans with the provisions of this Title.

(B) For purposes of corrective action plans submitted pursuant to subsection (b) of this Section for which payment from the Fund is not being sought, the Agency need not take action on such plan until 120 days after it receives the corrective action completion report required under subsection (b) of this Section. In the event the Agency approved the plan, it shall proceed under the provisions of this subsection (c).

(3) In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(A) For purposes of payment from the Fund, corrective action activities required to meet the minimum requirements of this Title shall include, but not be limited to, the following use of the Board's Tiered Approach to Corrective Action Objectives rules adopted under Title XVII of this Act:

(i) For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives.

(ii) The use of industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or being developed into residential property.

(iii) The use of groundwater ordinances as institutional controls in accordance with Board rules.

(iv) The use of on-site groundwater use restrictions as institutional controls in accordance with Board rules.

(B) Any bidding process adopted under Board rules to determine the reasonableness of costs of corrective action must provide for a publicly-noticed, competitive, and sealed bidding process that includes, at a minimum, the following:

(i) The owner or operator must issue invitations for bids that include, at a minimum, a description of the work being bid and applicable contractual terms and conditions. The criteria on which the bids will be evaluated must be set forth in the invitation for bids. The criteria may include, but shall not be limited to, criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and

suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable.

(ii) At least 14 days prior to the date set in the invitation for the opening of bids, public notice of the invitation for bids must be published in a local paper of general circulation for the area in which the site is located.

(iii) Bids must be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The name of each bidder, the amount of each bid, and other relevant information as specified in Board rules must be recorded and submitted to the Agency in the applicable budget. After selection of the winning bid, the winning bid and the record of each unsuccessful bid shall be open to public inspection.

(iv) Bids must be unconditionally accepted without alteration or correction. Bids must be evaluated based on the requirements set forth in the invitation for bids, which may include criteria for determining acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Criteria that will affect the bid price and be considered in the evaluation of a bid, such as discounts, shall be objectively measurable. The invitation for bids shall set forth the evaluation criteria to be used.

(v) Correction or withdrawal of inadvertently erroneous bids before or after selection of the winning bid, or cancellation of winning bids based on bid mistakes, shall be allowed in accordance with Board rules. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the owner or operator or fair competition shall be allowed. All decisions to allow the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination made by the owner or operator.

(vi) The owner or operator shall select the winning bid with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The winning bid and other relevant information as specified in Board rules must be recorded and submitted to the Agency in the applicable budget.

(vii) All bidding documentation must be retained by the owner or operator for a minimum of 3 years after the costs bid are submitted in an application for payment, except that documentation relating to an appeal, litigation, or other disputed claim must be maintained until at least 3 years after the date of the final disposition of the appeal, litigation, or other disputed claim. All bidding documentation must be made available to the Agency for inspection and copying during normal business hours.

(C) Any bidding process adopted under Board rules to determine the reasonableness of costs of corrective action shall (i) be optional and (ii) allow bidding only if the owner or operator demonstrates that corrective

action cannot be performed for amounts less than or equal to maximum payment amounts adopted by the Board.

(4) For any plan or report received after June 24, 2002, any action by the Agency to disapprove or modify a plan submitted pursuant to this Title shall be provided to the owner or operator in writing within 120 days of the receipt by the Agency or, in the case of a site investigation plan or corrective action plan for which payment is not being sought, within 120 days of receipt of the site investigation completion report or corrective action completion report, respectively, and shall be accompanied by:

(A) an explanation of the Sections of this Act which may be violated if the plans were approved;

(B) an explanation of the provisions of the regulations, promulgated under this Act, which may be violated if the plan were approved;

(C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved.

Any action by the Agency to disapprove or modify a plan or report or the rejection of any plan or report by operation of law shall be subject to appeal to the Board in accordance with the procedures of Section 40. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, an amended plan shall be submitted to the Agency within 35 days of receipt of the Agency's written notification.

(5) For purposes of this Title, the term "plan" shall include:

(A) Any site investigation plan submitted pursuant to subsection (a) of this Section;

(B) Any site investigation budget submitted pursuant to subsection (a) of this Section;

(C) Any corrective action plan submitted pursuant to subsection (b) of this Section; or

(D) Any corrective action plan budget submitted pursuant to subsection (b) of this Section.

(d) For purposes of this Title, the term "indicator contaminant" shall mean, unless and until the Board promulgates regulations to the contrary, the following: (i) if an underground storage tank contains gasoline, the indicator parameter shall be BTEX and Benzene; (ii) if the tank contained petroleum products consisting of middle distillate or heavy ends, then the indicator parameter shall be determined by a scan of PNA's taken from the location where contamination is most likely to be present; and (iii) if the tank contained used oil, then the indicator contaminant shall be those chemical constituents which indicate the type of petroleum stored in an underground storage tank. All references in this Title to groundwater objectives shall mean Class I groundwater standards or objectives as applicable.

(e) (1) Notwithstanding the provisions of this Section, an owner or operator may proceed to conduct site investigation or corrective action prior to the submittal or approval of an otherwise required plan. If the owner or operator elects to so proceed, an applicable plan shall be filed with the Agency at any time. Such plan shall detail the steps taken to determine the type of site investigation or corrective action which was necessary at the site along with the site investigation or corrective action taken or to

be taken, in addition to costs associated with activities to date and anticipated costs.

(2) Upon receipt of a plan submitted after activities have commenced at a site, the Agency shall proceed to review in the same manner as required under this Title. In the event the Agency disapproves all or part of the costs, the owner or operator may appeal such decision to the Board. The owner or operator shall not be eligible to be reimbursed for such disapproved costs unless and until the Board determines that such costs were eligible for payment.

(f) All investigations, plans, and reports conducted or prepared under this Section shall be conducted or prepared under the supervision of a licensed professional engineer and in accordance with the requirements of this Title.
(Source: P.A. 98-109, eff. 7-25-13.)

(415 ILCS 5/57.8)

Sec. 57.8. Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective action upon availability of funds. If an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9, the owner or operator may submit a complete application for final or partial payment to the Agency for activities taken in response to a confirmed release. An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days.

(a) Payment after completion of corrective action measures. The owner or operator may submit an application for payment for activities performed at a site after completion of the requirements of Sections 57.6 and 57.7, or after completion of any other required activities at the underground storage tank site.

(1) In the case of any approved plan and budget for which payment is being sought, the Agency shall make a payment determination within 120 days of receipt of the application. Such determination shall be considered a final decision. The Agency's review shall be limited to generally accepted auditing and accounting practices. In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal. If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application. However, in no event shall the Agency reimburse the owner or operator an amount greater than the amount approved in the plan.

(2) If sufficient funds are available in the Underground Storage Tank Fund, the Agency shall, within 60 days, forward to the Office of the State Comptroller a voucher in the amount approved under the payment application.

(3) In the case of insufficient funds, the Agency shall form a priority list for payment and shall notify persons in such priority list monthly of the availability of funds and when payment shall be made. Payment shall be made to the owner or operator at such time as sufficient funds become available for the costs associated with site investigation and corrective action and costs expended for activities performed where no proposal is required, if

applicable. Such priority list shall be available to any owner or operator upon request. Priority for payment shall be determined by the date the Agency receives a complete request for partial or final payment. Upon receipt of notification from the Agency that the requirements of this Title have been met, the Comptroller shall make payment to the owner or operator of the amount approved by the Agency, if sufficient money exists in the Fund. If there is insufficient money in the Fund, then payment shall not be made. If the owner or operator appeals a final Agency payment determination and it is determined that the owner or operator is eligible for payment or additional payment, the priority date for the payment or additional payment shall be the same as the priority date assigned to the original request for partial or final payment.

(4) Any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9, shall be subtracted from any payment invoice paid to an eligible owner or operator. Only one deductible shall apply per underground storage tank site.

(5) In the event that costs are or will be incurred in addition to those approved by the Agency, or after payment, the owner or operator may submit successive plans containing amended budgets. The requirements of Section 57.7 shall apply to any amended plans.

(6) For purposes of this Section, a complete application shall consist of:

(A) A certification from a Licensed Professional Engineer or Licensed Professional Geologist as required under this Title and acknowledged by the owner or operator.

(B) A statement of the amounts approved in the budget and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought were expended in conformance with the approved budget.

(C) A copy of the Office of the State Fire Marshal's eligibility and deductibility determination.

(D) Proof that approval of the payment requested will not result in the limitations set forth in subsection (g) of this Section being exceeded.

(E) A federal taxpayer identification number and legal status disclosure certification on a form prescribed and provided by the Agency.

(F) If the Agency determined under subsection (c)(3) of Section 57.7 of this Act that corrective action must include a project labor agreement, a certification from the owner or operator that the corrective action was (i) performed under a project labor agreement that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act.

(b) Commencement of site investigation or corrective action upon availability of funds. The Board shall adopt regulations setting forth procedures based on risk to human health or the environment under which the owner or operator who has received approval for any budget plan submitted pursuant to Section 57.7, and who is eligible for payment from the Underground Storage Tank Fund pursuant to an Office of the State Fire Marshal

eligibility and deductibility determination, may elect to defer site investigation or corrective action activities until funds are available in an amount equal to the amount approved in the budget. The regulations shall establish criteria based on risk to human health or the environment to be used for determining on a site-by-site basis whether deferral is appropriate. The regulations also shall establish the minimum investigatory requirements for determining whether the risk based criteria are present at a site considering deferral and procedures for the notification of owners or operators of insufficient funds, Agency review of request for deferral, notification of Agency final decisions, returning deferred sites to active status, and earmarking of funds for payment.

(c) When the owner or operator requests indemnification for payment of costs incurred as a result of a release of petroleum from an underground storage tank, if the owner or operator has satisfied the requirements of subsection (a) of this Section, the Agency shall forward a copy of the request to the Attorney General. The Attorney General shall review and approve the request for indemnification if:

(1) there is a legally enforceable judgment entered against the owner or operator and such judgment was entered due to harm caused by a release of petroleum from an underground storage tank and such judgment was not entered as a result of fraud; or

(2) a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable.

(d) Notwithstanding any other provision of this Title, the Agency shall not approve payment to an owner or operator from the Fund for costs of corrective action or indemnification incurred during a calendar year in excess of the following aggregate amounts based on the number of petroleum underground storage tanks owned or operated by such owner or operator in Illinois.

Amount	Number of Tanks
$2,000,000	fewer than 101
$3,000,000	101 or more

(1) Costs incurred in excess of the aggregate amounts set forth in paragraph (1) of this subsection shall not be eligible for payment in subsequent years.

(2) For purposes of this subsection, requests submitted by any of the agencies, departments, boards, committees or commissions of the State of Illinois shall be acted upon as claims from a single owner or operator.

(3) For purposes of this subsection, owner or operator includes (i) any subsidiary, parent, or joint stock company of the owner or operator and (ii) any company owned by any parent, subsidiary, or joint stock company of the owner or operator.

(e) Costs of corrective action or indemnification incurred by an owner or operator which have been paid to an owner or operator under a policy of insurance, another written agreement, or a court order are not eligible for payment under this Section. An owner or operator who receives payment under a policy of insurance, another written agreement, or a court order shall reimburse the State to the extent such payment covers costs for which payment was received from the Fund. Any monies received by the State under this subsection (e) shall be deposited into the Fund.

(f) (Blank.)

(g) The Agency shall not approve any payment from the Fund to pay an owner or operator:

(1) for costs of corrective action incurred by such

owner or operator in an amount in excess of $1,500,000 per occurrence; and

(2) for costs of indemnification of such owner or operator in an amount in excess of $1,500,000 per occurrence.

(h) Payment of any amount from the Fund for corrective action or indemnification shall be subject to the State acquiring by subrogation the rights of any owner, operator, or other person to recover the costs of corrective action or indemnification for which the Fund has compensated such owner, operator, or person from the person responsible or liable for the release.

(i) If the Agency refuses to pay or authorizes only a partial payment, the affected owner or operator may petition the Board for a hearing in the manner provided for the review of permit decisions in Section 40 of this Act.

(j) Costs of corrective action or indemnification incurred by an owner or operator prior to July 28, 1989, shall not be eligible for payment or reimbursement under this Section.

(k) The Agency shall not pay costs of corrective action or indemnification incurred before providing notification of the release of petroleum in accordance with the provisions of this Title.

(l) Corrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees.

(m) The Agency may apportion payment of costs for plans submitted under Section 57.7 if:

(1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and

(2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site.

(n) The Agency shall not pay costs associated with a corrective action plan incurred after the Agency provides notification to the owner or operator pursuant to item (7) of subsection (b) of Section 57.7 that a revised corrective action plan is required. Costs associated with any subsequently approved corrective action plan shall be eligible for reimbursement if they meet the requirements of this Title.
(Source: P.A. 98-109, eff. 7-25-13.)

(415 ILCS 5/57.8a)

Sec. 57.8a. Assignment of payments from the Underground Storage Tank Fund.

(a) If the Agency has formed a priority list for payment under Section 57.8(a)(3) of this Act, an owner or operator on the priority list may assign to any bank, financial institution, lender, or other person that provides factoring or financing to an owner or operator or to a consultant of an owner or operator a full approved payment amount on the priority list for which the owner or operator is awaiting payment. The assignment must be made on an approved payment-by-approved payment basis and must be made on forms prescribed by the Agency. No assignment under this Section prevents or affects the right of the State Comptroller to make the deductions and off-sets provided in Section 10.05 of the State Comptroller Act.

(b) The making of an assignment under this Section shall not affect an owner's or operator's right to appeal an Agency decision as provided in this Title. No assignee shall have a right to appeal an Agency decision as provided in this Title.

(c) An owner's or operator's assignment under this Section is irrevocable and may be made to only one assignee. The State shall pay the assigned amount, subject to right of the State Comptroller to make the deductions and off-sets provided in Section 10.05 of the State Comptroller Act, to this one assignee only and shall not pay the assigned amount to any subsequent assignee of the one assignee.

(d) The State and its officers and employees are discharged of all liability upon payment of the assigned amount to the assignee. The assignor and assignee shall hold harmless and indemnify the State and its officers and employees from all claims, actions, suits, complaints, and liabilities related to the assignment.

(e) An assignee may use funds received for any purpose including, without limitation, paying principal, interest, or other costs due on any financing made by the assignee. To the extent an owner or operator incurs costs associated with making an assignment under this Section, the owner or operator may not seek reimbursement of those costs from the Fund.

(Source: P.A. 95-403, eff. 8-24-07.)

(415 ILCS 5/57.9)

Sec. 57.9. Underground Storage Tank Fund; eligibility and deductibility.

(a) The Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system of a substance listed in this Section. The owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements of this Title are satisfied and:

(1) Neither the owner nor the operator is the United States Government.

(2) The tank does not contain fuel which is exempt from the Motor Fuel Tax Law.

(3) The costs were incurred as a result of a confirmed release of any of the following substances:

(A) "Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law.

(B) Aviation fuel.

(C) Heating oil.

(D) Kerosene.

(E) Used oil which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

(4) The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.

(5) The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.

(6) The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.

(7) The costs were associated with "corrective action" of this Act.

If the underground storage tank which experienced a release of a substance listed in this Section was installed after July 28, 1989, the owner or operator is eligible to access the Underground Storage Tank Fund if it is demonstrated to the Office of the State Fire Marshal the

tank was installed and operated in accordance with Office of the State Fire Marshal regulatory requirements. Office of the State Fire Marshal certification is prima facie evidence the tank was installed pursuant to the Office of the State Fire Marshal regulatory requirements.

(b) For releases reported prior to the effective date of this amendatory Act of the 96th General Assembly, an owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action after the application of a $10,000 deductible, except in the following situations:

(1) A deductible of $100,000 shall apply when none of the underground storage tanks were registered prior to July 28, 1989, except in the case of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and which serve other than farms or residential units, a deductible of $100,000 shall apply when none of these tanks were registered prior to July 1, 1992.

(2) A deductible of $50,000 shall apply if any of the underground storage tanks were registered prior to July 28, 1989, and the State received notice of the confirmed release prior to July 28, 1989.

(3) A deductible of $15,000 shall apply when one or more, but not all, of the underground storage tanks were registered prior to July 28, 1989, and the State received notice of the confirmed release on or after July 28, 1989.

For releases reported on or after the effective date of this amendatory Act of the 96th General Assembly, an owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan, and the Agency shall approve the payment of costs associated with corrective action after the application of a $5,000 deductible.

A deductible shall apply annually for each site at which costs were incurred under a claim submitted pursuant to this Title, except that if corrective action in response to an occurrence takes place over a period of more than one year, in subsequent years, no deductible shall apply for costs incurred in response to such occurrence.

(c) Eligibility and deductibility determinations shall be made by the Office of the State Fire Marshal.

(1) When an owner or operator reports a confirmed release of a regulated substance, the Office of the State Fire Marshal shall provide the owner or operator with an "Eligibility and Deductibility Determination" form. The form shall either be provided on-site or within 15 days of the Office of the State Fire Marshal receipt of notice indicating a confirmed release. The form shall request sufficient information to enable the Office of the State Fire Marshal to make a final determination as to owner or operator eligibility to access the Underground Storage Tank Fund pursuant to this Title and the appropriate deductible. The form shall be promulgated as a rule or regulation pursuant to the Illinois Administrative Procedure Act by the Office of the State Fire Marshal. Until such form is promulgated, the Office of State Fire Marshal shall use a form which generally conforms with this Act.

(2) Within 60 days of receipt of the "Eligibility and Deductibility Determination" form, the Office of the State Fire Marshal shall issue one letter enunciating the final eligibility and deductibility determination, and such determination or failure to act within the time prescribed

shall be a final decision appealable to the Illinois Pollution Control Board.

(Source: P.A. 96-908, eff. 6-8-10.)

(415 ILCS 5/57.10)

Sec. 57.10. Professional Engineer or Professional Geologist certification; presumptions against liability.

(a) Within 120 days of the Agency's receipt of a corrective action completion report, the Agency shall issue to the owner or operator a "no further remediation letter" unless the Agency has requested a modification, issued a rejection under subsection (d) of this Section, or the report has been rejected by operation of law.

(b) By certifying such a statement, a Licensed Professional Engineer or Licensed Professional Geologist shall in no way be liable thereon, unless the engineer or geologist gave such certification despite his or her actual knowledge that the performed measures were not in compliance with applicable statutory or regulatory requirements or any plan submitted to the Agency.

(c) The Agency's issuance of a no further remediation letter shall signify, based on the certification of the Licensed Professional Engineer, that:

(1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with;

(2) all corrective action concerning the remediation of the occurrence has been completed; and

(3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment.

This subsection (c) does not apply to off-site contamination related to the occurrence that has not been remediated due to denial of access to the off-site property.

(d) The no further remediation letter issued under this Section shall apply in favor of the following parties:

(1) The owner or operator to whom the letter was issued.

(2) Any parent corporation or subsidiary of such owner or operator.

(3) Any co-owner or co-operator, either by joint tenancy, right-of-survivorship, or any other party sharing a legal relationship with the owner or operator to whom the letter is issued.

(4) Any holder of a beneficial interest of a land trust or inter vivos trust whether revocable or irrevocable.

(5) Any mortgagee or trustee of a deed of trust of such owner or operator.

(6) Any successor-in-interest of such owner or operator.

(7) Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.

(8) Any heir or devisee or such owner or operator.

(9) An owner of a parcel of real property to the extent that the no further remediation letter under subsection (c) of this Section applies to the occurrence on that parcel.

(e) If the Agency notifies the owner or operator that the "no further remediation" letter has been rejected, the grounds for such rejection shall be described in the notice. Such a decision shall be a final determination which may be appealed by the owner or operator.

(f) The Board shall adopt rules setting forth the criteria under which the Agency may require an owner or operator to conduct further investigation or remediation related to a release for which a no further remediation letter has been issued.

(g) Holders of security interests in sites subject to the requirements of this Title XVI shall be entitled to the same protections and subject to the same responsibilities provided under general regulations promulgated under Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580).

(Source: P.A. 94-276, eff. 1-1-06.)

(415 ILCS 5/57.11)

Sec. 57.11. Underground Storage Tank Fund; creation.

(a) There is hereby created in the State Treasury a special fund to be known as the Underground Storage Tank Fund. There shall be deposited into the Underground Storage Tank Fund all moneys received by the Office of the State Fire Marshal as fees for underground storage tanks under Sections 4 and 5 of the Gasoline Storage Act, fees pursuant to the Motor Fuel Tax Law, and beginning July 1, 2013, payments pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act. All amounts held in the Underground Storage Tank Fund shall be invested at interest by the State Treasurer. All income earned from the investments shall be deposited into the Underground Storage Tank Fund no less frequently than quarterly. In addition to any other transfers that may be provided for by law, beginning on July 1, 2018 and on the first day of each month thereafter during fiscal years 2019 through 2023 only, the State Comptroller shall direct and the State Treasurer shall transfer an amount equal to 1/12 of $10,000,000 from the Underground Storage Tank Fund to the General Revenue Fund. Moneys in the Underground Storage Tank Fund, pursuant to appropriation, may be used by the Agency and the Office of the State Fire Marshal for the following purposes:

(1) To take action authorized under Section 57.12 to recover costs under Section 57.12.

(2) To assist in the reduction and mitigation of damage caused by leaks from underground storage tanks, including but not limited to, providing alternative water supplies to persons whose drinking water has become contaminated as a result of those leaks.

(3) To be used as a matching amount towards federal assistance relative to the release of petroleum from underground storage tanks.

(4) For the costs of administering activities of the Agency and the Office of the State Fire Marshal relative to the Underground Storage Tank Fund.

(5) For payment of costs of corrective action incurred by and indemnification to operators of underground storage tanks as provided in this Title.

(6) For a total of 2 demonstration projects in amounts in excess of a $10,000 deductible charge designed to assess the viability of corrective action projects at sites which have experienced contamination from petroleum releases. Such demonstration projects shall be conducted in accordance with the provision of this Title.

(7) Subject to appropriation, moneys in the Underground Storage Tank Fund may also be used by the Department of Revenue for the costs of administering its activities relative to the Fund and for refunds provided for in Section 13a.8 of the Motor Fuel Tax Law.

(b) Moneys in the Underground Storage Tank Fund may, pursuant to appropriation, be used by the Office of the State Fire Marshal or the Agency to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of petroleum from an underground storage tank and for the costs of administering its activities relative to the Underground Storage Tank Fund.

(c) Beginning July 1, 1993, the Governor shall certify to the State Comptroller and State Treasurer the monthly amount necessary to pay debt service on State obligations issued pursuant to Section 6 of the General Obligation Bond Act. On the last day of each month, the Comptroller shall order transferred and the Treasurer shall transfer from the Underground Storage Tank Fund to the General Obligation Bond Retirement and Interest Fund the amount certified by the Governor, plus any cumulative deficiency in those transfers for prior months.

(d) Except as provided in subsection (c) of this Section, the Underground Storage Tank Fund is not subject to administrative charges authorized under Section 8h of the State Finance Act that would in any way transfer any funds from the Underground Storage Tank Fund into any other fund of the State.

(e) Each fiscal year, subject to appropriation, the Agency may commit up to $10,000,000 of the moneys in the Underground Storage Tank Fund to the payment of corrective action costs for legacy sites that meet one or more of the following criteria as a result of the underground storage tank release: (i) the presence of free product, (ii) contamination within a regulated recharge area, a wellhead protection area, or the setback zone of a potable water supply well, (iii) contamination extending beyond the boundaries of the site where the release occurred, or (iv) such other criteria as may be adopted in Agency rules.

(1) Fund moneys committed under this subsection (e) shall be held in the Fund for payment of the corrective action costs for which the moneys were committed.

(2) The Agency may adopt rules governing the commitment of Fund moneys under this subsection (e).

(3) This subsection (e) does not limit the use of Fund moneys at legacy sites as otherwise provided under this Title.

(4) For the purposes of this subsection (e), the term "legacy site" means a site for which (i) an underground storage tank release was reported prior to January 1, 2005, (ii) the owner or operator has been determined eligible to receive payment from the Fund for corrective action costs, and (iii) the Agency did not receive any applications for payment prior to January 1, 2010.

(f) Beginning July 1, 2013, if the amounts deposited into the Fund from moneys received by the Office of the State Fire Marshal as fees for underground storage tanks under Sections 4 and 5 of the Gasoline Storage Act and as fees pursuant to the Motor Fuel Tax Law during a State fiscal year are sufficient to pay all claims for payment by the fund received during that State fiscal year, then the amount of any payments into the fund pursuant to the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, and the Retailers' Occupation Tax Act during that State fiscal year shall be deposited as follows: 75% thereof shall be paid into the State treasury and 25% shall be reserved in a special account and used only for the transfer to the Common School Fund as part of the monthly transfer from the General Revenue Fund in accordance with Section 8a of the State Finance Act.

(Source: P.A. 101-10, eff. 6-5-19; 101-636, eff. 6-10-20; 102-16, eff. 6-17-21; 102-699, eff. 4-19-22.)

(415 ILCS 5/57.12)

Sec. 57.12. Underground storage tanks; enforcement; liability.

(a) Notwithstanding any other provision or rule of law, the owner or operator, or both, of an underground storage tank shall be liable for all costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an underground storage tank. Nothing in this Section shall affect or modify in any way:

(1) The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above; or

(2) the liability of any person under this Section for costs incurred by the State of Illinois for preventive action, corrective action and enforcement action that are not paid with monies from the Underground Storage Tank Fund.

(b) Nothing in this Section shall affect or modify in any way the obligations or liability of any person under any other provision of this Act or State or federal law, including common law, to investigate, respond to, remediate, or clean up a release of a regulated substance from an underground storage tank.

(c) The Agency has the authority to do either of the following:

(1) Provide notice to the owner or operator, or both, of an underground storage tank whenever there is a release or substantial threat of a release of petroleum from such tank. Such notice shall include the identified investigation or response action and an opportunity for the owner or operator, or both, to perform the response action.

(2) Undertake investigative, preventive or corrective action whenever there is a release or a substantial threat of a release of petroleum from an underground storage tank.

(d) If notice has been provided under this Section, the Agency has the authority to require the owner or operator, or both, of an underground storage tank to undertake preventive or corrective action whenever there is a release or substantial threat of a release of petroleum from such tank.

(e) The Director of the Agency is authorized to enter into such contracts and agreements as may be necessary, and as expeditiously as necessary, to carry out the Agency's duties or responsibilities under this Title.

(f) (1) The owner or operator, or both, of an underground storage tank may be liable to the State of Illinois for punitive damages in an amount at least equal to, and not more than 3 times, the amount of any costs incurred by the State as a result of the State's response to a release or a substantial threat of a release of petroleum from the underground storage tank if the owner or operator failed, without sufficient cause, to respond to a release or a substantial threat of a release of a regulated substance from the underground storage tank upon, or in accordance with, a notice issued by the Agency under this Section.

(2) The punitive damages imposed under this subsection (f) shall be in addition to any costs recovered from that person pursuant to this Section and in addition to any other penalty or relief provided by this Act, or any other law.

(g) The standard of liability under this Section is the standard of liability under Section 22.2(f) of this Act.

(h) Neither the State of Illinois, nor the Director of the Agency, nor any State employee shall be liable for any damages

or injuries arising out of or resulting from any action taken under this Section.

(i) The costs and damages provided for in this Section may be imposed by the Board or the Circuit Court in an action brought before the Board or the Circuit Court in accordance with Title VIII of this Act, except that Section 33(c) of this Act shall not apply to the action. Costs recovered pursuant to this Section shall be deposited in the fund from which the monies were expended. Damages recovered under this Section shall be deposited in the Underground Storage Tank Fund.

(Source: P.A. 88-496; 89-428, eff. 1-1-96; 89-457, eff. 5-22-96.)

(415 ILCS 5/57.12A)

Sec. 57.12A. Lender liability; definitions.

(a) Notwithstanding any other provision or rule of law, the term "owner" or "operator" does not include a holder who, without participating in the management of a facility, underground storage tank, or underground storage tank system, holds any indicia of ownership primarily to protect its security interest in the facility, underground storage tank, or underground storage tank system.

(b) As used in this Section, and notwithstanding any other provision or rule of law:

(1) "Underground Storage Tank technical standards" refers to the underground storage tank preventative and operating requirements under the rules promulgated under subsection (a) of Section 57.1 of this Title.

(2) Petroleum production, refining, and marketing.

(A) "Petroleum production" means the production of crude oil or other forms of petroleum as well as the production of petroleum products from purchased materials.

(B) "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(C) "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(3) "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests includes, but is not limited to, mortgages, deeds of trust, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (lease financing transaction), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(4) A "holder" is a person who maintains indicia of ownership (as defined in item (3) of subsection (b)) primarily to protect a security interest (as defined in item (6)(A) of subsection (b)) in a petroleum underground storage tank or underground storage tank system. "Holder" includes the initial holder; any subsequent holder; a guarantor of an obligation; a surety; any other person who holds ownership

indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(5) A "borrower", "debtor", or "obligor" is a person whose underground storage tank or underground storage tank system is encumbered by a security interest. These terms may be used interchangeably.

(6) "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(A) "Security interest" means an interest in a petroleum underground storage tank or underground storage tank system or in the facility or property on which the underground storage tank or underground storage tank system is located, created, or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an underground storage tank or underground storage tank system or in the facility or property on which the underground storage tank or underground storage tank system is located, for the purpose of securing a loan or other obligation.

(B) "Primarily to protect a security interest", as used in this Section, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why ownership indicia are held must be as protection for a security interest.

(c) Participation in management.

The term "participating in the management of an underground storage tank or underground storage tank system" means that the holder is engaging in acts of petroleum underground storage tank or underground storage tank system management, as defined herein.

(1) Actions that are participation in management pre-foreclosure.

Participation in the management of an underground storage tank or underground storage tank system means, for purposes of this Section, actual participation in the management or control of decision making related to the underground storage tank or underground storage tank system by the holder and does not include the mere capacity or ability to influence or the unexercised right to control underground storage tank or underground storage tank system operations. A holder is participating in management, while the borrower is still in possession of the underground storage tank or underground storage tank system encumbered by the security interest, only if the holder either:

(A) exercises decision making control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's underground storage tank or underground storage tank system management; or

(B) exercises control at a level comparable to

that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise with respect to (i) environmental compliance, or (ii) all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance.

(2) Actions that are not participation in management pre-foreclosure.

(A) Actions at the inception of the loan or other transaction. No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this Section. A prospective holder who undertakes or requires an environmental investigation of the underground storage tank or underground storage tank system in which indicia of ownership are to be held or requires a prospective borrower to clean up contamination from the underground storage tank or underground storage tank system or to comply or come into compliance with any applicable law or regulation is not by that action considered to be participating in the management of the underground storage tank or underground storage tank system.

(B) Loan policing and workout. Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this Section. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations, or promises from the borrower. Loan policing and workout activities cover and include all such activities up to foreclosure or its equivalents, exclusive of any activities that constitute participation in management.

(i) Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure shall remain within the exemption provided that the holder does not by such actions participate in the management of the underground storage tank or underground storage tank system as provided in item (1) of subsection (c). Such actions include, but are not limited to, requiring the borrower to clean up contamination from the underground storage tank or underground storage tank system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, State, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the underground storage tank or underground storage tank system in which indicia of ownership are maintained or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representation, or promises from the borrower).

(ii) Loan workout. A holder who engages in workout activities prior to foreclosure or its equivalents will remain within the exemption of this Section provided that the holder does not by such action participate in the management of the underground storage

tank or underground storage tank system as provided in item (1) of subsection (c). For purposes of this Section, "workout" refers to those actions by which a holder, at any time prior to foreclosure or its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights under an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights under an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(3) Foreclosure on an underground storage tank or underground storage tank system and participation in management activities; post-foreclosure.

(A) Foreclosure. Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents. For purposes of this Section, the term foreclosure or its equivalents includes purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner by which the holder acquires title to or possession of the secured underground storage tank or underground storage tank system. The indicia of ownership held after foreclosure continues to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an underground storage tank or underground storage tank system held pursuant to a lease financing transaction, or otherwise divest itself or the underground storage tank or underground storage tank system in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the underground storage tank or underground storage tank system, taking all facts and circumstances into consideration, and provided that the holder did not participate in management, as defined in item (1) of subsection (c), prior to foreclosure or its equivalents. For purposes of establishing that a holder is seeking to sell, re-lease an underground storage tank or underground storage tank system held pursuant to a lease financing transaction, or divest an underground storage tank or underground storage tank system in a reasonably expeditious manner, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the underground storage tank or underground storage tank system, or may employ the means specified in item (3)(B) of subsection (c). A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the underground storage tank or underground storage tank system, as provided in item (3)(B) of subsection (b), is

not considered to hold indicia of ownership primarily to protect a security interest.

(B) Holding foreclosed property for disposition and liquidation. A holder who did not participate in management prior to foreclosure or its equivalents may sell, re-lease an underground storage tank or underground storage tank system held pursuant to a lease financing transaction, liquidate, wind up operations, and take measures to preserve, protect, or prepare the secured underground storage tank or underground storage tank system prior to sale or other disposition. The holder may conduct these activities without voiding the exemption, subject to the requirements of this Section.

(i) A holder establishes that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest by listing, within 12 months from the time that the holder acquires marketable title, the underground storage tank or underground storage tank system or the facility or property on which the underground storage tank or underground storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question or by advertising the underground storage tank or underground storage tank system as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the underground storage tank or underground storage tank system in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, State, or local rules of court for publication required by court order or rules of civil procedure) covering the area in which the underground storage tank or underground storage tank system is located.

If the holder fails to act diligently to acquire marketable title, the 12 month period begins to run on the date of the judgment of foreclosure or its equivalents.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the underground storage tank or underground storage tank system or the facility or property on which the underground storage tank or underground storage tank system is located establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured underground storage tank or underground storage tank system are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or State law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) "Fair consideration", in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the underground storage tank or underground storage tank system, is the value of the security interest as defined in this item (3)(B)(iii)(A) of subsection (c). The value of the security interest is calculated as an amount equal to or in excess of the sum of the outstanding principal, or comparable amount in the case of a lease that constitutes a security interest, owed to the holder immediately preceding the acquisition of full title (or possession in the case of an underground storage tank or underground storage tank system subject to a lease financing transaction) pursuant to foreclosure or its equivalents,

plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure or its equivalents), plus all reasonable and necessary costs, fees, or other charges incurred by the holder incident to workout, foreclosure or its equivalent, retention, preserving, protecting, and preparing the underground storage tank or underground storage tank system prior to sale, re-lease of an underground storage tank or underground storage tank system held pursuant to a lease financing transaction or other disposition plus environmental investigation and corrective action costs incurred under any federal, State or local rule or regulation less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of an underground storage tank or underground storage tank system subject to a lease financing transaction) pursuant to foreclosure or its equivalents. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in the preceding sentence.

(B) "Outbids, rejects, or fails to act upon an offer of fair consideration" means that the holder outbids, rejects, or fails to act upon within 90 days of receipt of a written, bona fide, firm offer of fair consideration for the underground storage tank or underground storage tank system received at any time after 6 months following foreclosure or its equivalents. A "written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for foreclosed underground storage tank or underground storage tank system, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the 6 month period begins to run from the time that the holder acquires marketable title; otherwise, provided that the holder, after the expiration of any redemption or other waiting period provided by law, acted diligently to acquire marketable title; otherwise, the 6 month period begins to run on the date of foreclosure or its equivalents.

(d) Ownership of an underground storage tank and underground storage tank system.

(1) Ownership of an underground storage tank or underground storage tank system for purposes of corrective action. A holder is not an "owner" of a petroleum underground storage tank or underground storage tank system for purposes of compliance with the corrective action requirements of Section 57.12 of this Act, provided the person:

(A) does not participate in the management of the underground storage tank or underground storage tank system as defined in subsection (c); and

(B) does not engage in petroleum production, refining, and marketing.

(2) Ownership of an underground storage tank or underground storage tank system for purposes of the underground storage tank technical standards. A holder is not an owner of a petroleum underground storage tank or underground storage tank system for purposes of the underground storage tank technical standards provided that the holder:

(A) does not participate in the management of the

underground storage tank or underground storage tank system as defined in subsection (c); and

(B) does not engage in petroleum production, refining, and marketing.

(e) Operating an underground storage tank or underground storage tank system.

(1) Operating an underground storage tank or underground storage tank system prior to foreclosure. A holder, prior to foreclosure or its equivalents, is not an operator of a petroleum underground storage tank or underground storage tank system for purposes of compliance with the corrective action requirements of Section 57.12 of this Act, or any other provision of this Act or of State or federal law, provided the holder is not in control of or does not have responsibility for the daily operation of the underground storage tank or underground storage tank system.

(2) Operating an underground storage tank or underground storage tank system after foreclosure.

(A) A holder who has not participated in management prior to foreclosure and who acquires a petroleum underground storage tank or underground storage tank system through foreclosure or its equivalents is not an operator of the underground storage tank or underground storage tank system for purposes of compliance with the corrective action requirements under Section 57.12 of this Act, or any other provision of this Act or of State or federal law, provided that the holder within 15 days following foreclosure or its equivalents, empties all of its underground storage tanks and underground storage tank systems so that no more than 2.5 centimeters (one inch) of residue, or 0.3% by weight of the total capacity of the underground storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(B) In addition, the holder shall either:

(i) "permanently" close the underground storage tank or underground storage tank system in accordance with the regulations of the Office of the State Fire Marshal (41 Illinois Administrative Code Part 170, as amended); or

(ii) "temporarily" close the underground storage tank or underground storage tank system in accordance with the applicable provisions of the regulations of the Office of the State Fire Marshal (41 Illinois Administrative Code Part 170.620 and 170.670, as amended).

(C) A holder who acquires a petroleum underground storage tank or underground storage tank system through foreclosure or its equivalents is not an "operator" of the underground storage tank or underground storage tank system for purposes of this Act, the first 15 days following foreclosure or its equivalents, provided the holder complies with item (2) of Section (e).

(f) Actions taken to protect human health and the environment. A holder is not considered to be an operator of an underground storage tank or underground storage tank system or to be participating in the management of an underground storage tank or underground storage tank system solely on the basis of undertaking actions under a federal or State law or regulation, provided that the holder does not otherwise participate in the management or daily operation of the underground storage tank or underground storage tank system. Such actions include, but are not limited to, release reporting, release response and corrective action, temporary or permanent closure of an

underground storage tank or underground storage tank system, underground storage tank upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements of this Act.

(g) Financial responsibility. A holder is exempt from the requirement to demonstrate financial responsibility under any State law or rule, provided the holder:

(1) does not participate in the management of the underground storage tank or underground storage tank system as defined in subsection (c);

(2) does not engage in petroleum production, refining, and marketing as defined in item (2) of subsection (b); and

(3) complies with the requirements of subsection (e).

(Source: P.A. 89-200, eff. 1-1-96; 89-626, eff. 8-9-96.)

(415 ILCS 5/57.13)

Sec. 57.13. Underground Storage Tank Program; transition. This Title applies to all underground storage tank releases for which a No Further Remediation Letter is issued on or after the effective date of this amendatory Act of the 96th General Assembly, provided that (i) costs incurred prior to the effective date of this amendatory Act shall be payable from the UST Fund in the same manner as allowed under the law in effect at the time the costs were incurred and (ii) releases for which corrective action was completed prior to the effective date of this amendatory Act shall be eligible for a No Further Remediation Letter in the same manner as allowed under the law in effect at the time the corrective action was completed.

(Source: P.A. 95-331, eff. 8-21-07; 96-908, eff. 6-8-10.)

(415 ILCS 5/57.14)

Sec. 57.14. (Repealed).

(Source: P.A. 91-357, eff. 7-29-99. Repealed by P.A. 91-798, eff. 7-9-00.)

(415 ILCS 5/57.14A)

Sec. 57.14A. Rules.

(a) The Agency shall propose and the Board shall adopt amendments to the rules governing the administration of this Title to make the rules consistent with the provisions herein.

(b) Until such time as the amended rules required under this Section take effect, the Agency shall administer this Title in accordance with the provisions herein.

(Source: P.A. 92-554, eff. 6-24-02.)

(415 ILCS 5/57.15)

Sec. 57.15. Authority to audit. The Agency has the authority to audit all data, reports, plans, documents and budgets submitted pursuant to this Title. If the data, report, plan, document or budget audited by the Agency pursuant to this Section fails to conform to all applicable requirements of this Title, the Agency may take appropriate actions.

(Source: P.A. 88-496.)

(415 ILCS 5/57.16)

Sec. 57.16. Severability. The provisions of this Title are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 88-496.)

(415 ILCS 5/57.17)

Sec. 57.17. (Repealed).

(Source: P.A. 88-496. Repealed by P.A. 98-822, eff. 8-1-14.)

(415 ILCS 5/57.18)

Sec. 57.18. Additional remedial action required by change in law; Agency's duty to propose amendment. If a change in State or federal law requires additional remedial action in response to releases for which No Further Remediation Letters have been issued, the Agency shall propose in the next convening of a regular session of the current General Assembly amendments to this Title to allow owners and operators to perform the additional remedial action and seek payment from the Fund for the costs of the action.

(Source: P.A. 96-908, eff. 6-8-10.)

(415 ILCS 5/57.19)

Sec. 57.19. Costs incurred after the issuance of a No Further Remediation Letter. The following shall be considered corrective action activities eligible for payment from the Fund even when an owner or operator conducts these activities after the issuance of a No Further Remediation Letter. Corrective action conducted under this Section and costs incurred under this Section must comply with the requirements of this Title and Board rules adopted under this Title.

(1) Corrective action to achieve residential property remediation objectives if the owner or operator demonstrates that property remediated to industrial/commercial property remediation objectives pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of this Act is being developed into residential property.

(2) Corrective action to address groundwater contamination if the owner or operator demonstrates that action is necessary because a groundwater ordinance used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of this Act can no longer be used as an institutional control.

(3) Corrective action to address groundwater contamination if the owner or operator demonstrates that action is necessary because an on-site groundwater use restriction used as an institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7 of this Act must be lifted in order to allow the installation of a potable water supply well due to public water supply service no longer being available for reasons other than an act or omission of the owner or operator.

(4) The disposal of soil that does not exceed industrial/commercial property remediation objectives, but that does exceed residential property remediation objectives, if industrial/commercial property remediation objectives were used pursuant to subdivision (c)(3)(A)(ii) of Section 57.7 of this Act and the owner or operator demonstrates that (i) the contamination is the result of the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the soil is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement.

(5) The disposal of water exceeding groundwater remediation objectives that is removed from an excavation on the site where the release occurred if a groundwater ordinance is used as an institutional control pursuant to subdivision (c)(3)(A)(iii) of Section 57.7 of this Act, or if an on-site groundwater use restriction is used as an

institutional control pursuant to subdivision (c)(3)(A)(iv) of Section 57.7, and the owner or operator demonstrates that (i) the excavation is located within the measured or modeled extent of groundwater contamination resulting from the release for which the owner or operator is eligible to seek payment from the Fund and (ii) disposal of the groundwater is necessary as a result of construction activities conducted after the issuance of a No Further Remediation Letter on the site where the release occurred, including, but not limited to, the following: tank, line, or canopy repair, replacement, or removal; building upgrades; sign installation; and water or sewer line replacement.

(Source: P.A. 96-908, eff. 6-8-10.)

(415 ILCS 5/Tit. XVII heading)

TITLE XVII: SITE REMEDIATION PROGRAM

(415 ILCS 5/58)

Sec. 58. Intent. It is the intent of this Title:

(1) To establish a risk-based system of remediation based on protection of human health and the environment relative to present and future uses of the site.

(2) To assure that the land use for which remedial action was undertaken will not be modified without consideration of the adequacy of such remedial action for the new land use.

(3) To provide incentives to the private sector to undertake remedial action.

(4) To establish expeditious alternatives for the review of site investigation and remedial activities, including a privatized review process.

(5) To assure that the resources of the Hazardous Waste Fund are used in a manner that is protective of human health and the environment relative to present and future uses of the site and surrounding area.

(6) To provide assistance to units of local government for remediation of properties contaminated or potentially contaminated by commercial, industrial, or other uses, to provide loans for the redevelopment of brownfields, and to establish and provide for the administration of the Brownfields Redevelopment Fund.

(Source: P.A. 90-123, eff. 7-21-97; 91-36, eff. 6-15-99.)

(415 ILCS 5/58.1)

Sec. 58.1. Applicability.

(a) (1) This Title establishes the procedures for the investigative and remedial activities at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities.

(2) Any person, including persons required to perform investigations and remediations under this Act, may elect to proceed under this Title unless (i) the site is on the National Priorities List (Appendix B of 40 CFR 300), (ii) the site is a treatment, storage, or disposal site for which a permit has been issued, or that is subject to closure requirements under federal or State solid or hazardous waste laws, (iii) the site is subject to federal or State underground storage tank laws, or (iv) investigation or remedial action at the site has been required by a federal court order or an order issued by the United States Environmental Protection Agency. To the extent allowed by federal law and regulations, the sites listed under

items (i), (ii), (iii), and (iv) may utilize the provisions of this Title, including the procedures for establishing risk-based remediation objectives under Section 58.5.

(b) Except for sites excluded under subdivision (a) (2) of this Section, the Remediation Applicant (RA) for any site that has not received an Agency letter under subsection (y) of Section 4 of this Act may elect to proceed under the provisions of this Title by submitting a written statement of the election to the Agency. In the absence of such election, the RA shall continue under the provisions of this Act as applicable prior to the effective date of this amendatory Act of 1995.

(c) Except for sites excluded under subdivision (a) (2) of this Section, agrichemical facilities may elect to undertake corrective action in conformance with this Title and rules promulgated by the Board thereunder and land application programs administered by the Department of Agriculture as provided under Section 19 of the Illinois Pesticide Act, and shall be eligible for the relief provided under Section 58.10.
(Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

(415 ILCS 5/58.2)

Sec. 58.2. Definitions. The following words and phrases when used in this Title shall have the meanings given to them in this Section unless the context clearly indicates otherwise:

"Agrichemical facility" means a site on which agricultural pesticides are stored or handled, or both, in preparation for end use, or distributed. The term does not include basic manufacturing facility sites.

"ASTM" means the American Society for Testing and Materials.

"Area background" means concentrations of regulated substances that are consistently present in the environment in the vicinity of a site that are the result of natural conditions or human activities, and not the result solely of releases at the site.

"Brownfields site" or "brownfields" means a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment.

"Class I groundwater" means groundwater that meets the Class I Potable Resource groundwater criteria set forth in the Board rules adopted under the Illinois Groundwater Protection Act.

"Class III groundwater" means groundwater that meets the Class III Special Resource Groundwater criteria set forth in the Board rules adopted under the Illinois Groundwater Protection Act.

"Carcinogen" means a contaminant that is classified as a Category A1 or A2 Carcinogen by the American Conference of Governmental Industrial Hygienists; or a Category 1 or 2A/2B Carcinogen by the World Health Organizations International Agency for Research on Cancer; or a "Human Carcinogen" or "Anticipated Human Carcinogen" by the United States Department of Health and Human Service National Toxicological Program; or a Category A or B1/B2 Carcinogen by the United States Environmental Protection Agency in Integrated Risk Information System or a Final Rule issued in a Federal Register notice by the USEPA as of the effective date of this amendatory Act of 1995.

"Licensed Professional Engineer" (LPE) means a person, corporation, or partnership licensed under the laws of this State to practice professional engineering.

"Licensed Professional Geologist" means a person licensed under the laws of the State of Illinois to practice as a professional geologist.

"RELPEG" means a Licensed Professional Engineer or a

Licensed Professional Geologist engaged in review and evaluation under this Title.

"Man-made pathway" means constructed routes that may allow for the transport of regulated substances including, but not limited to, sewers, utility lines, utility vaults, building foundations, basements, crawl spaces, drainage ditches, or previously excavated and filled areas.

"Municipality" means an incorporated city, village, or town in this State. "Municipality" does not mean a township, town when that term is used as the equivalent of a township, incorporated town that has superseded a civil township, county, or school district, park district, sanitary district, or similar governmental district.

"Natural pathway" means natural routes for the transport of regulated substances including, but not limited to, soil, groundwater, sand seams and lenses, and gravel seams and lenses.

"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body including the United States Government and each department, agency, and instrumentality of the United States.

"Regulated substance" means any hazardous substance as defined under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) and petroleum products including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

"Remedial action" means activities associated with compliance with the provisions of Sections 58.6 and 58.7.

"Remediation Applicant" (RA) means any person seeking to perform or performing investigative or remedial activities under this Title, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site.

"Remediation costs" means reasonable costs paid for investigating and remediating regulated substances of concern consistent with the remedy selected for a site.

For purposes of Section 58.14, "remediation costs" shall not include costs incurred prior to January 1, 1998, costs incurred after the issuance of a No Further Remediation Letter under Section 58.10 of this Act, or costs incurred more than 12 months prior to acceptance into the Site Remediation Program.

For the purpose of Section 58.14a, "remediation costs" do not include any costs incurred before January 1, 2007, any costs incurred after the issuance of a No Further Remediation Letter under Section 58.10, or any costs incurred more than 12 months before acceptance into the Site Remediation Program.

"Residential property" means any real property that is used for habitation by individuals and other property uses defined by Board rules such as education, health care, child care and related uses.

"River Edge Redevelopment Zone" has the meaning set forth under the River Edge Redevelopment Zone Act.

"Site" means any single location, place, tract of land or parcel of property, or portion thereof, including contiguous property separated by a public right-of-way.

"Regulated substance of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the Remediation Applicant based upon reasonable inquiry.

(Source: P.A. 95-454, eff. 8-27-07.)

(415 ILCS 5/58.3)

Sec. 58.3. Site Investigation and Remedial Activities Program; Brownfields Redevelopment Fund.

(a) The General Assembly hereby establishes by this Title a Site Investigation and Remedial Activities Program for sites subject to this Title. This program shall be administered by the Illinois Environmental Protection Agency under this Title XVII and rules adopted by the Illinois Pollution Control Board.

(b) (1) The General Assembly hereby creates within the State Treasury a special fund to be known as the Brownfields Redevelopment Fund, consisting of 2 programs to be known as the "Municipal Brownfields Redevelopment Grant Program" and the "Brownfields Redevelopment Loan Program", which shall be used and administered by the Agency as provided in Sections 58.13 and 58.15 of this Act and the rules adopted under those Sections. The Brownfields Redevelopment Fund ("Fund") shall contain moneys transferred from the Response Contractors Indemnification Fund and other moneys made available for deposit into the Fund.

(2) The State Treasurer, ex officio, shall be the custodian of the Fund, and the Comptroller shall direct payments from the Fund upon vouchers properly certified by the Agency. The Treasurer shall credit to the Fund interest earned on moneys contained in the Fund. The Agency shall have the authority to accept, receive, and administer on behalf of the State any grants, gifts, loans, reimbursements or payments for services, or other moneys made available to the State from any source for purposes of the Fund. Those moneys shall be deposited into the Fund, unless otherwise required by the Environmental Protection Act or by federal law.

(3) Pursuant to appropriation, all moneys in the Fund shall be used by the Agency for the purposes set forth in subdivision (b)(4) of this Section and Sections 58.13 and 58.15 of this Act and to cover the Agency's costs of program development and administration under those Sections.

(4) The Agency shall have the power to enter into intergovernmental agreements with the federal government or the State, or any instrumentality thereof, for purposes of capitalizing the Brownfields Redevelopment Fund. Moneys on deposit in the Brownfields Redevelopment Fund may be used for the creation of reserve funds or pledged funds that secure the obligations of repayment of loans made pursuant to Section 58.15 of this Act. For the purpose of obtaining capital for deposit into the Brownfields Redevelopment Fund, the Agency may also enter into agreements with financial institutions and other persons for the purpose of selling loans and developing a secondary market for such loans. The Agency shall have the power to create and establish such reserve funds and accounts as may be necessary or desirable to accomplish its purposes under this subsection and to allocate its available moneys into such funds and accounts. Investment earnings on moneys held in the Brownfields Redevelopment Fund, including any reserve fund or pledged fund, shall be deposited into the Brownfields Redevelopment Fund.

(5) The Agency is authorized to administer funds made available to the Agency under federal law, including but not limited to the Small Business Liability Relief and Brownfields Revitalization Act, related to brownfields cleanup and reuse in accordance with that law and this Title.

(Source: P.A. 95-331, eff. 8-21-07.)

(415 ILCS 5/58.4)

Sec. 58.4. Permit waiver. A State permit or permit revision which is not otherwise required by federal law or regulations shall not be required for remedial action activities undertaken pursuant to the provisions of this Title that occur entirely on the site.

(Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

(415 ILCS 5/58.5)

Sec. 58.5. Risk-based remediation objectives.

(a) Determination of remediation objectives. This Section establishes the procedures for determining risk-based remediation objectives.

(b) Background area remediation objectives.

(1) Except as provided in subdivisions (b)(2) or (b)(3) of this Section, remediation objectives established under this Section shall not require remediation of regulated substances to levels that are less than area background levels.

(2) In the event that the concentration of a regulated substance of concern on the site exceeds a remediation objective adopted by the Board for residential land use, the property may not be converted to residential use unless such remediation objective or an alternate risk-based remediation objective for that regulated substance of concern is first achieved.

(3) In the event that the Agency has determined in writing that the background level for a regulated substance poses an acute threat to human health or the environment at the site when considering the post-remedial action land use, the RA shall develop appropriate risk-based remediation objectives in accordance with this Section.

(c) Regulations establishing remediation objectives and methodologies for deriving remediation objectives for individual or classes of regulated substances shall be adopted by the Board in accordance with this Section and Section 58.11.

(1) The regulations shall provide for the adoption of a three-tiered process for a RA to establish remediation objectives protective of human health and the environment based on identified risks and specific site characteristics at and around the site.

(2) The regulations shall provide procedures for using alternative tiers in developing remediation objectives for multiple regulated substances.

(3) The regulations shall provide procedures for determining area background contaminant levels.

(4) The methodologies adopted under this Section shall ensure that the following factors are taken into account in determining remediation objectives:

(A) potential risks posed by carcinogens and noncarcinogens; and

(B) the presence of multiple substances of concern and multiple exposure pathways.

(d) In developing remediation objectives under subsection (c) of this Section, the methodology proposed and adopted shall establish tiers addressing manmade and natural pathways of exposure, including but not limited to human ingestion, human inhalation, and groundwater protection. For carcinogens, soil and groundwater remediation objectives shall be established at exposures that represent an excess upper-bound lifetime risk of between 1 in 10,000 and 1 in 1,000,000 as appropriate for the post-remedial action use, except that remediation objectives protecting residential use shall be based on exposures that

represent an excess upper-bound lifetime risk of 1 in 1,000,000. No groundwater remediation objective adopted pursuant to this Section shall be more restrictive than the applicable Class I or Class III Groundwater Quality Standard adopted by the Board. At a minimum, the objectives shall include the following:

(1) Tier I remediation objectives expressed as a table of numeric values for soil and groundwater. Such objectives may be of different values dependent on potential pathways at the site and different land uses, including residential and nonresidential uses.

(2) Tier II remediation objectives shall include the formulae and equations used to derive the Tier II objectives and input variables for use in the formulae. The RA may alter the input variables when it is demonstrated that the specific circumstances at and around the site including land uses warrant such alternate variables.

(3) Tier III remediation objectives shall include methodologies to allow for the development of site-specific risk-based remediation objectives for soil or groundwater, or both, for regulated substances. Such methodology shall allow for different remediation objectives for residential and various categories of non-residential land uses. The Board's future adoption of a methodology pursuant to this Section shall in no way preclude the use of a nationally recognized methodology to be used for the development of site-specific risk-based objectives for regulated substances under this Section. In determining Tier III remediation objectives under this subsection, all of the following factors shall be considered:

(A) The use of specific site characteristic data.

(B) The use of appropriate exposure factors for the current and currently planned future land use of the site and adjacent property and the effectiveness of engineering, institutional, or legal controls placed on the current or future use of the site.

(C) The use of appropriate statistical methodologies to establish statistically valid remediation objectives.

(D) The actual and potential impact of regulated substances to receptors.

(4) For regulated substances that have a groundwater quality standard established pursuant to the Illinois Groundwater Protection Act and rules promulgated thereunder, site specific groundwater remediation objectives may be proposed under the methodology established in subdivision (d) (3) of this Section at values greater than the groundwater quality standards.

(A) The RA proposing any site specific groundwater remediation objective at a value greater than the applicable groundwater quality standard shall demonstrate:

(i) To the extent practical, the exceedance of the groundwater quality standard has been minimized and beneficial use appropriate to the groundwater that was impacted has been returned; and

(ii) Any threat to human health or the environment has been minimized.

(B) The rules proposed by the Agency and adopted by the Board under this Section shall include criteria required for the demonstration of the suitability of groundwater objectives proposed under subdivision (b) (4) (A) of this Section.

(e) The rules proposed by the Agency and adopted by the Board under this Section shall include conditions for the

establishment and duration of groundwater management zones by rule, as appropriate, at sites undergoing remedial action under this Title.

(f) Until such time as the Board adopts remediation objectives under this Section, the remediation objectives adopted by the Board under Title XVI of this Act shall apply to all environmental assessments and soil or groundwater remedial action conducted under this Title.

(Source: P.A. 91-909, eff. 7-7-00.)

(415 ILCS 5/58.6)

Sec. 58.6. Remedial investigations and reports.

(a) Any RA who proceeds under this Title may elect to seek review and approval for any of the remediation objectives provided in Section 58.5 for any or all regulated substances of concern. The RA shall conduct investigations and remedial activities for regulated substances of concern and prepare plans and reports in accordance with this Section and rules adopted hereunder. The RA shall submit the plans and reports for review and approval in accordance with Section 58.7. All investigations, plans, and reports conducted or prepared under this Section shall be under the supervision of a Licensed Professional Engineer (LPE) or, in the case of a site investigation only, a Licensed Professional Geologist in accordance with the requirements of this Title.

(b) (1) Site investigation and Site Investigation Report. The RA shall conduct a site investigation to determine the significant physical features of the site and vicinity that may affect contaminant transport and risk to human health, safety, and the environment and to determine the nature, concentration, direction and rate of movement, and extent of the contamination at the site.

(2) The RA shall compile the results of the investigations into a Site Investigation Report. At a minimum, the reports shall include the following, as applicable:

(A) Executive summary;

(B) Site history;

(C) Site-specific sampling methods and results;

(D) Documentation of field activities, including quality assurance project plan;

(E) Interpretation of results; and

(F) Conclusions.

(c) Remediation Objectives Report.

(1) If a RA elects to determine remediation objectives appropriate for the site using the Tier II or Tier III procedures under subsection (d) of Section 58.5, the RA shall develop such remediation objectives based on site-specific information. In support of such remediation objectives, the RA shall prepare a Remediation Objectives Report demonstrating how the site-specific objectives were calculated or otherwise determined.

(2) If a RA elects to determine remediation objectives appropriate for the site using the area background procedures under subsection (b) of Section 58.5, the RA shall develop such remediation objectives based on site-specific literature review, sampling protocol, or appropriate statistical methods in accordance with Board rules. In support of such remediation objectives, the RA shall prepare a Remediation Objectives Report demonstrating how the area background remediation objectives were determined.

(d) Remedial Action Plan. If the approved remediation objectives for any regulated substance established under Section

58.5 are less than the levels existing at the site prior to any remedial action, the RA shall prepare a Remedial Action Plan. The Remedial Action Plan shall describe the selected remedy and evaluate its ability and effectiveness to achieve the remediation objectives approved for the site. At a minimum, the reports shall include the following, as applicable:

(1) Executive summary;

(2) Statement of remediation objectives;

(3) Remedial technologies selected;

(4) Confirmation sampling plan;

(5) Current and projected future use of the property; and

(6) Applicable preventive, engineering, and institutional controls including long-term reliability, operating, and maintenance plans, and monitoring procedures.

(e) Remedial Action Completion Report.

(1) Upon completion of the Remedial Action Plan, the RA shall prepare a Remedial Action Completion Report. The report shall demonstrate whether the remedial action was completed in accordance with the approved Remedial Action Plan and whether the remediation objectives, as well as any other requirements of the plan, have been attained.

(2) If the approved remediation objectives for the regulated substances of concern established under Section 58.5 are equal to or above the levels existing at the site prior to any remedial action, notification and documentation of such shall constitute the entire Remedial Action Completion Report for purposes of this Title.

(f) Ability to proceed. The RA may elect to prepare and submit for review and approval any and all reports or plans required under the provisions of this Section individually, following completion of each such activity; concurrently, following completion of all activities; or in any other combination. In any event, the review and approval process shall proceed in accordance with Section 58.7 and rules adopted thereunder.

(g) Nothing in this Section shall prevent an RA from implementing or conducting an interim or any other remedial measure prior to election to proceed under Section 58.6.

(h) In accordance with Section 58.11, the Agency shall propose and the Board shall adopt rules to carry out the purposes of this Section.

(Source: P.A. 92-735, eff. 7-25-02.)

(415 ILCS 5/58.7)

Sec. 58.7. Review and approvals.

(a) Requirements. All plans and reports that are submitted pursuant to this Title shall be submitted for review or approval in accordance with this Section.

(b) Review and evaluation by the Agency.

(1) Except for sites excluded under subdivision (a) (2) of Section 58.1, the Agency shall, subject to available resources, agree to provide review and evaluation services for activities carried out pursuant to this Title for which the RA requested the services in writing. As a condition for providing such services, the Agency may require that the RA for a site:

(A) Conform with the procedures of this Title;

(B) Allow for or otherwise arrange site visits or other site evaluation by the Agency when so requested;

(C) Agree to perform the Remedial Action Plan as approved under this Title;

(D) Agree to pay any reasonable costs incurred

and documented by the Agency in providing such services;

(E) Make an advance partial payment to the Agency for such anticipated services in an amount, acceptable to the Agency, but not to exceed $5,000 or one-half of the total anticipated costs of the Agency, whichever sum is less; and

(F) Demonstrate, if necessary, authority to act on behalf of or in lieu of the owner or operator.

(2) Any moneys received by the State for costs incurred by the Agency in performing review or evaluation services for actions conducted pursuant to this Title shall be deposited in the Hazardous Waste Fund.

(3) An RA requesting services under subdivision (b) (1) of this Section may, at any time, notify the Agency, in writing, that Agency services previously requested are no longer wanted. Within 180 days after receipt of the notice, the Agency shall provide the RA with a final invoice for services provided until the date of such notifications.

(4) The Agency may invoice or otherwise request or demand payment from a RA for costs incurred by the Agency in performing review or evaluation services for actions by the RA at sites only if:

(A) The Agency has incurred costs in performing response actions, other than review or evaluation services, due to the failure of the RA to take response action in accordance with a notice issued pursuant to this Act;

(B) The RA has agreed in writing to the payment of such costs;

(C) The RA has been ordered to pay such costs by the Board or a court of competent jurisdiction pursuant to this Act; or

(D) The RA has requested or has consented to Agency review or evaluation services under subdivision (b) (1) of this Section.

(5) The Agency may, subject to available resources, agree to provide review and evaluation services for response actions if there is a written agreement among parties to a legal action or if a notice to perform a response action has been issued by the Agency.

(c) Review and evaluation by a Licensed Professional Engineer or Licensed Professional Geologist. A RA may elect to contract with a Licensed Professional Engineer or, in the case of a site investigation report only, a Licensed Professional Geologist, who will perform review and evaluation services on behalf of and under the direction of the Agency relative to the site activities.

(1) Prior to entering into the contract with the RELPEG, the RA shall notify the Agency of the RELPEG to be selected. The Agency and the RA shall discuss the potential terms of the contract.

(2) At a minimum, the contract with the RELPEG shall provide that the RELPEG will submit any reports directly to the Agency, will take his or her directions for work assignments from the Agency, and will perform the assigned work on behalf of the Agency.

(3) Reasonable costs incurred by the Agency shall be paid by the RA directly to the Agency in accordance with the terms of the review and evaluation services agreement entered into under subdivision (b) (1) of Section 58.7.

(4) In no event shall the RELPEG acting on behalf of the Agency be an employee of the RA or the owner or operator of the site or be an employee of any other person the RA has contracted to provide services relative to the site.

(d) Review and approval. All reviews required under this Title shall be carried out by the Agency or a RELPEG, both under the direction of a Licensed Professional Engineer or, in the case of the review of a site investigation only, a Licensed Professional Geologist.

(1) All review activities conducted by the Agency or a RELPEG shall be carried out in conformance with this Title and rules promulgated under Section 58.11.

(2) Subject to the limitations in subsection (c) and this subsection (d), the specific plans, reports, and activities that the Agency or a RELPEG may review include:

(A) Site Investigation Reports and related activities;

(B) Remediation Objectives Reports;

(C) Remedial Action Plans and related activities; and

(D) Remedial Action Completion Reports and related activities.

(3) Only the Agency shall have the authority to approve, disapprove, or approve with conditions a plan or report as a result of the review process including those plans and reports reviewed by a RELPEG. If the Agency disapproves a plan or report or approves a plan or report with conditions, the written notification required by subdivision (d) (4) of this Section shall contain the following information, as applicable:

(A) An explanation of the Sections of this Title that may be violated if the plan or report was approved;

(B) An explanation of the provisions of the rules promulgated under this Title that may be violated if the plan or report was approved;

(C) An explanation of the specific type of information, if any, that the Agency deems the applicant did not provide the Agency;

(D) A statement of specific reasons why the Title and regulations might not be met if the plan or report were approved; and

(E) An explanation of the reasons for conditions if conditions are required.

(4) Upon approving, disapproving, or approving with conditions a plan or report, the Agency shall notify the RA in writing of its decision. In the case of approval or approval with conditions of a Remedial Action Completion Report, the Agency shall prepare a No Further Remediation Letter that meets the requirements of Section 58.10 and send a copy of the letter to the RA.

(5) All reviews undertaken by the Agency or a RELPEG shall be completed and the decisions communicated to the RA within 60 days of the request for review or approval. The RA may waive the deadline upon a request from the Agency. If the Agency disapproves or approves with conditions a plan or report or fails to issue a final decision within the 60 day period and the RA has not agreed to a waiver of the deadline, the RA may, within 35 days, file an appeal to the Board. Appeals to the Board shall be in the manner provided for the review of permit decisions in Section 40 of this Act.

(e) Standard of review. In making determinations, the following factors, and additional factors as may be adopted by the Board in accordance with Section 58.11, shall be considered by the Agency when reviewing or approving plans, reports, and related activities, or the RELPEG, when reviewing plans, reports, and related activities:

(1) Site Investigation Reports and related

activities: Whether investigations have been conducted and the results compiled in accordance with the appropriate procedures and whether the interpretations and conclusions reached are supported by the information gathered. In making the determination, the following factors shall be considered:

(A) The adequacy of the description of the site and site characteristics that were used to evaluate the site;

(B) The adequacy of the investigation of potential pathways and risks to receptors identified at the site; and

(C) The appropriateness of the sampling and analysis used.

(2) Remediation Objectives Reports: Whether the remediation objectives are consistent with the requirements of the applicable method for selecting or determining remediation objectives under Section 58.5. In making the determination, the following factors shall be considered:

(A) If the objectives were based on the determination of area background levels under subsection (b) of Section 58.5, whether the review of current and historic conditions at or in the immediate vicinity of the site has been thorough and whether the site sampling and analysis has been performed in a manner resulting in accurate determinations;

(B) If the objectives were calculated on the basis of predetermined equations using site specific data, whether the calculations were accurately performed and whether the site specific data reflect actual site conditions; and

(C) If the objectives were determined using a site specific risk assessment procedure, whether the procedure used is nationally recognized and accepted, whether the calculations were accurately performed, and whether the site specific data reflect actual site conditions.

(3) Remedial Action Plans and related activities: Whether the plan will result in compliance with this Title, and rules adopted under it and attainment of the applicable remediation objectives. In making the determination, the following factors shall be considered:

(A) The likelihood that the plan will result in the attainment of the applicable remediation objectives;

(B) Whether the activities proposed are consistent with generally accepted engineering practices; and

(C) The management of risk relative to any remaining contamination, including but not limited to, provisions for the long-term enforcement, operation, and maintenance of institutional and engineering controls, if relied on.

(4) Remedial Action Completion Reports and related activities: Whether the remedial activities have been completed in accordance with the approved Remedial Action Plan and whether the applicable remediation objectives have been attained.

(f) All plans and reports submitted for review shall include a Licensed Professional Engineer's certification that all investigations and remedial activities were carried out under his or her direction and, to the best of his or her knowledge and belief, the work described in the plan or report has been completed in accordance with generally accepted engineering practices, and the information presented is accurate and

complete. In the case of a site investigation report prepared or supervised by a Licensed Professional Geologist, the required certification may be made by the Licensed Professional Geologist (rather than a Licensed Professional Engineer) and based upon generally accepted principles of professional geology.

(g) In accordance with Section 58.11, the Agency shall propose and the Board shall adopt rules to carry out the purposes of this Section. At a minimum, the rules shall detail the types of services the Agency may provide in response to requests under subdivision (b) (1) of this Section and the recordkeeping it will utilize in documenting to the RA the costs incurred by the Agency in providing such services.

(h) Public participation.

(1) The Agency shall develop guidance to assist RA's in the implementation of a community relations plan to address activity at sites undergoing remedial action pursuant to this Title.

(2) The RA may elect to enter into a services agreement with the Agency for Agency assistance in community outreach efforts.

(3) The Agency shall maintain a registry listing those sites undergoing remedial action pursuant to this Title.

(4) Notwithstanding any provisions of this Section, the RA of a site undergoing remedial activity pursuant to this Title may elect to initiate a community outreach effort for the site.

(Source: P.A. 95-331, eff. 8-21-07.)

(415 ILCS 5/58.8)

Sec. 58.8. Duty to record; compliance.

(a) The RA receiving a No Further Remediation Letter from the Agency pursuant to Section 58.10, shall submit the letter to the Office of the Recorder or the Registrar of Titles of the county in which the site is located within 45 days of receipt of the letter. The Office of the Recorder or the Registrar of Titles shall accept and record that letter in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(b) A No Further Remediation Letter shall not become effective until officially recorded in accordance with subsection (a) of this Section. The RA shall obtain and submit to the Agency a certified copy of the No Further Remediation Letter as recorded.

(c) (Blank).

(d) In the event that a No Further Remediation Letter issues by operation of law pursuant to Section 58.10, the RA may, for purposes of this Section, file an affidavit stating that the letter issued by operation of law. Upon receipt of the No Further Remediation Letter from the Agency, the RA shall comply with the requirements of subsections (a) and (b) of this Section.

(Source: P.A. 94-272, eff. 7-19-05; 94-314, eff. 7-25-05.)

(415 ILCS 5/58.9)

Sec. 58.9. Liability.

(a) Cost assignment.

(1) Notwithstanding any other provisions of this Act to the contrary, including subsection (f) of Section 22.2, in no event may the Agency, the State of Illinois, or any person bring an action pursuant to this Act or the Groundwater Protection Act to require any person to conduct remedial action or to seek recovery of costs for remedial activity conducted by the State of Illinois or any person

beyond the remediation of releases of regulated substances that may be attributed to being proximately caused by such person's act or omission or beyond such person's proportionate degree of responsibility for costs of the remedial action of releases of regulated substances that were proximately caused or contributed to by 2 or more persons.

(2) Notwithstanding any provisions in this Act to the contrary, including subsection (f) of Section 22.2, in no event may the State of Illinois or any person require the performance of remedial action pursuant to this Act against any of the following:

(A) A person who neither caused nor contributed to in any material respect a release of regulated substances on, in, or under the site that was identified and addressed by the remedial action taken pursuant to this Title.

(B) Notwithstanding a landlord's rights against a tenant, a landlord, if the landlord did not know, and could not have reasonably known, of the acts or omissions of a tenant that caused or contributed to, or were likely to have caused or contributed to, a release of regulated substances that resulted in the performance of remedial action at the site.

(C) The State of Illinois or any unit of local government if it involuntarily acquires ownership or control of the site by virtue of its function as a sovereign through such means as escheat, bankruptcy, tax delinquency, or abandonment, unless the State of Illinois or unit of local government takes possession of the site and exercises actual, direct, and continual or recurrent managerial control in the operation of the site that causes a release or substantial threat of a release of a regulated substance resulting in removal or remedial activity.

(D) The State of Illinois or any unit of local government if it voluntarily acquires ownership or control of the site through purchase, appropriation, or other means, unless the State of Illinois or the unit of local government takes possession of the site and exercises actual, direct, and continual or recurrent managerial control in the operation of the site that causes a release or substantial threat of a release of a regulated substance resulting in removal or remedial activity.

(E) A financial institution, as that term is defined in Section 2 of the Illinois Banking Act and to include the Illinois Housing Development Authority, that has acquired the ownership, operation, management, or control of a site through foreclosure, a deed in lieu of foreclosure, receivership, by exercising of an assignment of rents, as mortgagee in possession or otherwise under the terms of a security interest held by the financial institution, or under the terms of an extension of credit made by the financial institution, unless the financial institution takes actual physical possession of the site and, in so doing, directly causes a release of a regulated substance that results in removal or remedial activity.

(F) A corporate fiduciary that has acquired ownership, operation, management, or control of a site through acceptance of a fiduciary appointment unless the corporate fiduciary directly causes a release of a

regulated substance resulting in a removal or remedial activity.

(b) In the event that the State of Illinois seeks to require a person who may be liable pursuant to this Act to conduct remedial activities for a release or threatened release of a regulated substance, the Agency shall provide notice to such person. Such notice shall include the necessity to conduct remedial action pursuant to this Title and an opportunity for the person to perform the remedial action.

(c) In any instance in which the Agency has issued notice pursuant to subsection (b) of this Section, the Agency and the person to whom such notice was issued may attempt to determine the costs of conducting the remedial action that are attributable to the releases to which such person or any other person caused or contributed. Determinations pursuant to this Section may be made in accordance with rules promulgated by the Board.

(d) The Board shall adopt, not later than January 1, 1999, pursuant to Sections 27 and 28 of this Act, rules and procedures for determining proportionate share. Such rules shall, at a minimum, provide for criteria for the determination of apportioned responsibility based upon the degree to which a person directly caused or contributed to a release of regulated substances on, in, or under the site identified and addressed in the remedial action; procedures to establish how and when such persons may file a petition for determination of such apportionment; and any other standards or procedures which the Board may adopt pursuant to this Section. In developing such rules, the Board shall take into consideration any recommendations and proposals of the Agency and the Site Remediation Advisory Committee established in Section 58.11 of this Act and other interested participants.

(e) Nothing in this Section shall limit the authority of the Agency to provide notice under subsection (q) of Section 4 or to undertake investigative, preventive, or corrective action under any other applicable provisions of this Act. The Director of the Agency is authorized to enter into such contracts and agreements as may be necessary to carry out the Agency's duties and responsibilities under this Section as expeditiously as possible.

(f) This Section does not apply to any cost recovery action brought by the State under Section 22.2 to recover costs incurred by the State prior to July 1, 1996.

(Source: P.A. 89-443, eff. 7-1-96; 90-484, eff. 8-17-97.)

(415 ILCS 5/58.10)

Sec. 58.10. Effect of completed remediation; liability releases.

(a) The Agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under this Act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under this Act, so long as the site is utilized in accordance with the terms of the No Further Remediation Letter.

(b) Within 30 days of the Agency's approval of a Remedial Action Completion Report, the Agency shall issue a No Further Remediation Letter applicable to the site. In the event that the Agency fails to issue the No Further Remediation Letter within 30 days after approval of the Remedial Action Completion Report, the No Further Remediation Letter shall issue by operation of law. A No Further Remediation Letter issued pursuant to this Section shall be limited to and shall include all of the

following:

(1) An acknowledgment that the requirements of the Remedial Action Plan and the Remedial Action Completion Report were satisfied;

(2) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries;

(3) The level of the remediation objectives, specifying, as appropriate, any land use limitation imposed as a result of such remediation efforts;

(4) A statement that the Agency's issuance of the No Further Remediation Letter signifies a release from further responsibilities under this Act in performing the approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under the Act, so long as the site is utilized in accordance with the terms of the No Further Remediation Letter;

(5) The prohibition against the use of any site in a manner inconsistent with any land use limitation imposed as a result of such remediation efforts without additional appropriate remedial activities;

(6) A description of any preventive, engineering, and institutional controls required in the approved Remedial Action Plan and notification that failure to manage the controls in full compliance with the terms of the Remedial Action Plan may result in voidance of the No Further Remediation Letter;

(7) The recording obligations pursuant to Section 58.8;

(8) The opportunity to request a change in the recorded land use pursuant to Section 58.8;

(9) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act (5 ILCS 140); and

(10) If only a portion of the site or only selected regulated substances at a site were the subject of corrective action, any other provisions agreed to by the Agency and the RA.

(c) The Agency may deny a No Further Remediation Letter if fees applicable under the review and evaluation services agreement have not been paid in full.

(d) The No Further Remediation Letter shall apply in favor of the following persons:

(1) The RA or other person to whom the letter was issued.

(2) The owner and operator of the site.

(3) Any parent corporation or subsidiary of the owner of the site.

(4) Any co-owner, either by joint-tenancy, right of survivorship, or any other party sharing a legal relationship with the owner of the site.

(5) Any holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, involving the site.

(6) Any mortgagee or trustee of a deed of trust of the owner of the site or any assignee, transferee, or any successor-in-interest thereto.

(7) Any successor-in-interest of the owner of the site.

(8) Any transferee of the owner of the site whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.

(9) Any heir or devisee of the owner of the site.

(10) Any financial institution, as that term is defined in Section 2 of the Illinois Banking Act and to include the Illinois Housing Development Authority, that has acquired the ownership, operation, management, or control of a site through foreclosure or under the terms of a security interest held by the financial institution, under the terms of an extension of credit made by the financial institution, or any successor in interest thereto.

(11) In the case of a fiduciary (other than a land trustee), the estate, trust estate, or other interest in property held in a fiduciary capacity, and a trustee, executor, administrator, guardian, receiver, conservator, or other person who holds the remediated site in a fiduciary capacity, or a transferee of such party.

(e) The No Further Remediation Letter shall be voidable if the site activities are not managed in full compliance with the provisions of this Title, any rules adopted under it, or the approved Remedial Action Plan or remediation objectives upon which the issuance of the No Further Remediation Letter was based. Specific acts or omissions that may result in voidance of the No Further Remediation Letter include, but shall not be limited to:

(1) Any violation of institutional controls or land use restrictions, if applicable;

(2) The failure of the owner, operator, RA, or any subsequent transferee to operate and maintain preventive or engineering controls or comply with a groundwater monitoring plan, if applicable;

(3) The disturbance or removal of contamination that has been left in place in accordance with the Remedial Action Plan;

(4) The failure to comply with the recording requirements of Section 58.8;

(5) Obtaining the No Further Remediation Letter by fraud or misrepresentation;

(6) Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the No Further Remediation Letter was based, that pose a threat to human health or the environment; or

(7) The failure to pay the No Further Remediation Assessment required under subsection (g) of this Section.

(f) If the Agency seeks to void a No Further Remediation Letter, it shall provide notice by certified letter to the current title holder of the site and to the RA at his or her last known address. The notice shall specify the cause for the voidance and describe facts in support of that cause.

(1) Within 35 days of the receipt of the notice of voidance, the RA or current title holder may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of this Act. If the Board fails to take final action on the petition within 120 days, unless such time period is waived by the petitioner, the petition shall be deemed denied and the petitioner shall be entitled to an Appellate Court order pursuant to subsection (d) of Section 41 of this Act. The Agency shall have the burden of proof in any such action.

(2) If the Agency's action is not appealed, the Agency shall submit the notice of voidance to the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title for the site.

(3) If the Agency's action is appealed, the action shall not become effective until the appeal process has been exhausted and a final decision reached by the Board or courts.

(4) Upon receiving notice of appeal, the Agency shall file a notice of lis pendens with the Office of the Recorder or the Registrar of Titles for the county in which the site is located. The notice shall be filed in accordance with Illinois law so that it becomes a part of the chain of title for the site. However, if the Agency's action is not upheld on appeal, the notice of lis pendens shall be removed in accordance with Illinois law within 45 days of receipt of the final decision of the Board or the courts.

(g) Within 30 days after the receipt of a No Further Remediation Letter issued by the Agency or by operation of law pursuant to this Section, the recipient of the letter shall forward to the Agency a No Further Remediation Assessment in the amount of the lesser of $2,500 or an amount equal to the costs incurred for the site by the Agency under Section 58.7. The assessment shall be made payable to the State of Illinois, for deposit in the Hazardous Waste Fund. The No Further Remediation Assessment is in addition to any other costs that may be incurred by the Agency pursuant to Section 58.7.
(Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96; 89-626, eff. 8-9-96.)

(415 ILCS 5/58.11)

Sec. 58.11. Regulations and Site Remediation Advisory Committee.

(a) There is hereby established a 10-member Site Remediation Advisory Committee, which shall be appointed by the Governor. The Committee shall include one member recommended by the Illinois State Chamber of Commerce, one member recommended by the Illinois Manufacturers' Association, one member recommended by the Chemical Industry Council of Illinois, one member recommended by the Consulting Engineers Council of Illinois, one member recommended by the Illinois Bankers Association, one member recommended by the Community Bankers Association of Illinois, one member recommended by the National Solid Waste Management Association, and 3 other members as determined by the Governor. Members of the Advisory Committee may organize themselves as they deem necessary and shall serve without compensation.

(b) The Committee shall:

(1) Review, evaluate, and make recommendations regarding State laws, rules, and procedures that relate to site remediations.

(2) Review, evaluate, and make recommendations regarding the review and approval activities of the Agency and Review and Evaluation Licensed Professional Engineers and Geologists.

(3) Make recommendations relating to the State's efforts to implement this Title.

(4) Review, evaluate, and make recommendations regarding the procedures for determining proportionate degree of responsibility for a release of regulated substances.

(5) Review, evaluate, and make recommendations regarding the reports prepared by the Agency in accordance with subsection (e) of this Section.

(c) Within 9 months after the effective date of this amendatory Act of 1995, the Agency, after consideration of the recommendations of the Committee, shall propose rules prescribing procedures and standards for its administration of

this Title. Within 9 months after receipt of the Agency's proposed rules, the Board shall adopt, pursuant to Sections 27 and 28 of this Act, rules that are consistent with this Title, including classifications of land use and provisions for the voidance of No Further Remediation Letters.

(d) Until such time as the rules required under this Section take effect, the Agency shall administer its activities under this Title in accordance with Agency procedures and applicable provisions of this Act.

(e) By July 1, 1997 and as deemed appropriate thereafter, the Agency shall prepare reports to the Governor and the General Assembly concerning the status of all sites for which the Agency has expended money from the Hazardous Waste Fund. The reports shall include specific information on the financial, technical, and cost recovery status of each site.

(Source: P.A. 92-735, eff. 7-25-02.)

(415 ILCS 5/58.12)

Sec. 58.12. Severability. The provisions of this Title XVII are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 89-431, eff. 12-15-95; 89-443, eff. 7-1-96.)

(415 ILCS 5/58.13)

Sec. 58.13. Municipal Brownfields Redevelopment Grant Program.

(a) (1) The Agency shall establish and administer a program of grants, to be known as the Municipal Brownfields Redevelopment Grant Program, to provide municipalities in Illinois with financial assistance to be used for coordination of activities related to brownfields redevelopment, including but not limited to identification of brownfields sites, including those sites within River Edge Redevelopment Zones, site investigation and determination of remediation objectives and related plans and reports, development of remedial action plans, and implementation of remedial action plans and remedial action completion reports. The plans and reports shall be developed in accordance with Title XVII of this Act.

(2) Grants shall be awarded on a competitive basis subject to availability of funding. Criteria for awarding grants shall include, but shall not be limited to the following:

(A) problem statement and needs assessment;

(B) community-based planning and involvement;

(C) implementation planning; and

(D) long-term benefits and sustainability.

(3) The Agency may give weight to geographic location to enhance geographic distribution of grants across this State.

(4) Except for grants to municipalities with designated River Edge Redevelopment Zones, grants shall be limited to a maximum of $240,000, and no municipality shall receive more than this amount under this Section. For grants to municipalities with designated River Edge Redevelopment Zones and grants to municipalities awarded from funds provided under the American Recovery and Reinvestment Act of 2009, grants shall be limited to a maximum of $2,000,000 and no municipality shall receive more than this amount under this Section. For grants to municipalities awarded from funds provided under the American Recovery and Reinvestment Act of 2009, grants shall be limited to a maximum of $1,000,000 and no municipality shall receive more than this amount under this Section.

(5) Grant amounts shall not exceed 70% of the project

amount, with the remainder to be provided by the municipality as local matching funds.

(b) The Agency shall have the authority to enter into any contracts or agreements that may be necessary to carry out its duties or responsibilities under this Section. The Agency shall have the authority to adopt rules setting forth procedures and criteria for administering the Municipal Brownfields Redevelopment Grant Program. The rules adopted by the Agency may include but shall not be limited to the following:

(1) purposes for which grants are available;

(2) application periods and content of applications;

(3) procedures and criteria for Agency review of grant applications, grant approvals and denials, and grantee acceptance;

(4) grant payment schedules;

(5) grantee responsibilities for work schedules, work plans, reports, and record keeping;

(6) evaluation of grantee performance, including but not limited to auditing and access to sites and records;

(7) requirements applicable to contracting and subcontracting by the grantee;

(8) penalties for noncompliance with grant requirements and conditions, including stop-work orders, termination of grants, and recovery of grant funds;

(9) indemnification of this State and the Agency by the grantee; and

(10) manner of compliance with the Local Government Professional Services Selection Act.

(c) Moneys in the Brownfields Redevelopment Fund may be used by the Agency to take whatever preventive or corrective action, including but not limited to removal or remedial action, is necessary or appropriate in response to a release or substantial threat of a release of:

(1) a hazardous substance or pesticide; or

(2) petroleum from an underground storage tank.

The State, the Director, and any State employee shall be indemnified for any damages or injury arising out of or resulting from any action taken pursuant to this subsection (c) and subsection (d)(2) of Section 4 of this Act. The Agency has the authority to enter into such contracts and agreements as may be necessary, and as expeditiously as necessary, to carry out preventive or corrective action pursuant to this subsection (c) and subsection (d)(2) of Section 4 of this Act.
(Source: P.A. 96-45, eff. 7-15-09.)

(415 ILCS 5/58.14)

Sec. 58.14. Environmental Remediation Tax Credit review.

(a) Prior to applying for the Environmental Remediation Tax Credit under Section 201 of the Illinois Income Tax Act, Remediation Applicants shall first submit to the Agency an application for review of remediation costs. The application and review process shall be conducted in accordance with the requirements of this Section and the rules adopted under subsection (g). A preliminary review of the estimated remediation costs for development and implementation of the Remedial Action Plan may be obtained in accordance with subsection (d).

(b) No application for review shall be submitted until a No Further Remediation Letter has been issued by the Agency and recorded in the chain of title for the site in accordance with Section 58.10. The Agency shall review the application to determine whether the costs submitted are remediation costs, and whether the costs incurred are reasonable. The application shall be on forms prescribed and provided by the Agency. At a minimum,

the application shall include the following:

(1) information identifying the Remediation Applicant and the site for which the tax credit is being sought and the date of acceptance of the site into the Site Remediation Program;

(2) a copy of the No Further Remediation Letter with official verification that the letter has been recorded in the chain of title for the site and a demonstration that the site for which the application is submitted is the same site as the one for which the No Further Remediation Letter is issued;

(3) a demonstration that the release of the regulated substances of concern for which the No Further Remediation Letter was issued were not caused or contributed to in any material respect by the Remediation Applicant. After the Pollution Control Board rules are adopted pursuant to the Illinois Administrative Procedure Act for the administration and enforcement of Section 58.9 of the Environmental Protection Act, determinations as to credit availability shall be made consistent with those rules;

(4) an itemization and documentation, including receipts, of the remediation costs incurred;

(5) a demonstration that the costs incurred are remediation costs as defined in this Act and its rules;

(6) a demonstration that the costs submitted for review were incurred by the Remediation Applicant who received the No Further Remediation Letter;

(7) an application fee in the amount set forth in subsection (e) for each site for which review of remediation costs is requested and, if applicable, certification from the Department of Commerce and Economic Opportunity that the site is located in an enterprise zone;

(8) any other information deemed appropriate by the Agency.

(c) Within 60 days after receipt by the Agency of an application meeting the requirements of subsection (b), the Agency shall issue a letter to the applicant approving, disapproving, or modifying the remediation costs submitted in the application. If the remediation costs are approved as submitted, the Agency's letter shall state the amount of the remediation costs to be applied toward the Environmental Remediation Tax Credit. If an application is disapproved or approved with modification of remediation costs, the Agency's letter shall set forth the reasons for the disapproval or modification and state the amount of the remediation costs, if any, to be applied toward the Environmental Remediation Tax Credit.

If a preliminary review of a budget plan has been obtained under subsection (d), the Remediation Applicant may submit, with the application and supporting documentation under subsection (b), a copy of the Agency's final determination accompanied by a certification that the actual remediation costs incurred for the development and implementation of the Remedial Action Plan are equal to or less than the costs approved in the Agency's final determination on the budget plan. The certification shall be signed by the Remediation Applicant and notarized. Based on that submission, the Agency shall not be required to conduct further review of the costs incurred for development and implementation of the Remedial Action Plan and may approve costs as submitted.

Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the

review of permits in Section 40 of this Act.

(d) (1) A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of the Remedial Action Plan by submitting a budget plan along with the Remedial Action Plan. The budget plan shall be set forth on forms prescribed and provided by the Agency and shall include but shall not be limited to line item estimates of the costs associated with each line item (such as personnel, equipment, and materials) that the Remediation Applicant anticipates will be incurred for the development and implementation of the Remedial Action Plan. The Agency shall review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable.

(2) If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan shall be revised accordingly and resubmitted for Agency review.

(3) The budget plan shall be accompanied by the applicable fee as set forth in subsection (e).

(4) Submittal of a budget plan shall be deemed an automatic 60-day waiver of the Remedial Action Plan review deadlines set forth in this Section and its rules.

(5) Within the applicable period of review, the Agency shall issue a letter to the Remediation Applicant approving, disapproving, or modifying the estimated remediation costs submitted in the budget plan. If a budget plan is disapproved or approved with modification of estimated remediation costs, the Agency's letter shall set forth the reasons for the disapproval or modification.

(6) Within 35 days after receipt of an Agency letter disapproving or modifying a budget plan, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of this Act.

(e) The fees for reviews conducted under this Section are in addition to any other fees or payments for Agency services rendered pursuant to the Site Remediation Program and shall be as follows:

(1) The fee for an application for review of remediation costs shall be $1,000 for each site reviewed.

(2) The fee for the review of the budget plan submitted under subsection (d) shall be $500 for each site reviewed.

(3) In the case of a Remediation Applicant submitting for review total remediation costs of $100,000 or less for a site located within an enterprise zone (as set forth in paragraph (i) of subsection (l) of Section 201 of the Illinois Income Tax Act), the fee for an application for review of remediation costs shall be $250 for each site reviewed. For those sites, there shall be no fee for review of a budget plan under subsection (d).

The application fee shall be made payable to the State of Illinois, for deposit into the Hazardous Waste Fund.

Pursuant to appropriation, the Agency shall use the fees collected under this subsection for development and administration of the review program.

(f) The Agency shall have the authority to enter into any contracts or agreements that may be necessary to carry out its duties and responsibilities under this Section.

(g) Within 6 months after July 21, 1997, the Agency shall propose rules prescribing procedures and standards for its administration of this Section. Within 6 months after receipt of

the Agency's proposed rules, the Board shall adopt on second notice, pursuant to Sections 27 and 28 of this Act and the Illinois Administrative Procedure Act, rules that are consistent with this Section. Prior to the effective date of rules adopted under this Section, the Agency may conduct reviews of applications under this Section and the Agency is further authorized to distribute guidance documents on costs that are eligible or ineligible as remediation costs.
(Source: P.A. 94-793, eff. 5-19-06; 94-1021, eff. 7-12-06; 95-454, eff. 8-27-07.)

(415 ILCS 5/58.14a)

Sec. 58.14a. River Edge Redevelopment Zone Site Remediation Tax Credit Review.

(a) Prior to applying for the River Edge Redevelopment Zone site remediation tax credit under subsection (n) of Section 201 of the Illinois Income Tax Act, a Remediation Applicant must first submit to the Agency an application for review of remediation costs. The Agency shall review the application. The application and review process must be conducted in accordance with the requirements of this Section and the rules adopted under subsection (g). A preliminary review of the estimated remediation costs for development and implementation of the Remedial Action Plan may be obtained in accordance with subsection (d).

(b) No application for review may be submitted until a No Further Remediation Letter has been issued by the Agency and recorded in the chain of title for the site in accordance with Section 58.10. The Agency shall review the application to determine whether the costs submitted are remediation costs and whether the costs incurred are reasonable. The application must be on forms prescribed and provided by the Agency. At a minimum, the application must include the following:

(1) information identifying the Remediation Applicant, the site for which the tax credit is being sought, and the date of acceptance of the site into the Site Remediation Program;

(2) a copy of the No Further Remediation Letter with official verification that the letter has been recorded in the chain of title for the site and a demonstration that the site for which the application is submitted is the same site as the one for which the No Further Remediation Letter is issued;

(3) a demonstration that the release of the regulated substances of concern for which the No Further Remediation Letter was issued were not caused or contributed to in any material respect by the Remediation Applicant. Determinations as to credit availability shall be made consistent with the Pollution Control Board rules for the administration and enforcement of Section 58.9 of this Act;

(4) an itemization and documentation, including receipts, of the remediation costs incurred;

(5) a demonstration that the costs incurred are remediation costs as defined in this Act and its rules;

(6) a demonstration that the costs submitted for review were incurred by the Remediation Applicant who received the No Further Remediation Letter;

(7) an application fee in the amount set forth in subsection (e) for each site for which review of remediation costs is requested and, if applicable, certification from the Department of Commerce and Economic Opportunity that the site is located in a River Edge Redevelopment Zone; and

(8) any other information deemed appropriate by the Agency.

(c) Within 60 days after receipt by the Agency of an application meeting the requirements of subsection (b), the Agency shall issue a letter to the applicant approving, disapproving, or modifying the remediation costs submitted in the application. If the remediation costs are approved as submitted, then the Agency's letter must state the amount of the remediation costs to be applied toward the River Edge Redevelopment Zone site remediation tax credit. If an application is disapproved or approved with modification of remediation costs, then the Agency's letter must set forth the reasons for the disapproval or modification and must state the amount of the remediation costs, if any, to be applied toward the River Edge Redevelopment Zone site remediation tax credit.

If a preliminary review of a budget plan has been obtained under subsection (d), then the Remediation Applicant may submit, with the application and supporting documentation under subsection (b), a copy of the Agency's final determination accompanied by a certification that the actual remediation costs incurred for the development and implementation of the Remedial Action Plan are equal to or less than the costs approved in the Agency's final determination on the budget plan. The certification must be signed by the Remediation Applicant and notarized. Based on that submission, the Agency is not required to conduct further review of the costs incurred for development and implementation of the Remedial Action Plan, and it may approve the costs as submitted. Within 35 days after the receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits under Section 40 of this Act.

(d) A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of the Remedial Action Plan by submitting a budget plan along with the Remedial Action Plan. The budget plan must be set forth on forms prescribed and provided by the Agency and must include, without limitation, line-item estimates of the costs associated with each line item (such as personnel, equipment, and materials) that the Remediation Applicant anticipates will be incurred for the development and implementation of the Remedial Action Plan. The Agency shall review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable.

If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, then the corresponding budget plan must be revised accordingly and resubmitted for Agency review.

The budget plan must be accompanied by the applicable fee as set forth in subsection (e).

The submittal of a budget plan is deemed to be an automatic 60-day waiver of the Remedial Action Plan review deadlines set forth in this Section and its rules.

Within the applicable period of review, the Agency shall issue a letter to the Remediation Applicant approving, disapproving, or modifying the estimated remediation costs submitted in the budget plan. If a budget plan is disapproved or approved with modification of estimated remediation costs, then the Agency's letter must set forth the reasons for the disapproval or modification.

Within 35 days after receipt of an Agency letter disapproving or modifying a budget plan, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits under Section 40 of

this Act.

(e) Any fee for a review conducted under this Section is in addition to any other fees or payments for Agency services rendered under the Site Remediation Program. The fees under this Section are as follows:

(1) the fee for an application for review of remediation costs is $250 for each site reviewed; and

(2) there is no fee for the review of the budget plan submitted under subsection (d).

The application fee must be made payable to the State of Illinois, for deposit into the Hazardous Waste Fund. Pursuant to appropriation, the Agency shall use the fees collected under this subsection for development and administration of the review program.

(f) The Agency has the authority to enter into any contracts or agreements that may be necessary to carry out its duties and responsibilities under this Section.

(g) The Agency shall adopt rules prescribing procedures and standards for its administration of this Section. Prior to the effective date of rules adopted under this Section, the Agency may conduct reviews of applications under this Section. The Agency may publish informal guidelines concerning this Section to provide guidance.

(Source: P.A. 102-444, eff. 8-20-21.)

(415 ILCS 5/58.15)

Sec. 58.15. Brownfields Programs.

(A) Brownfields Redevelopment Loan Program.

(a) The Agency shall establish and administer a revolving loan program to be known as the "Brownfields Redevelopment Loan Program" for the purpose of providing loans to be used for site investigation, site remediation, or both, at brownfields sites. All principal, interest, and penalty payments from loans made under this subsection (A) shall be deposited into the Brownfields Redevelopment Fund and reused in accordance with this Section.

(b) General requirements for loans:

(1) Loans shall be at or below market interest rates in accordance with a formula set forth in regulations promulgated under subdivision (A)(c) of this subsection (A).

(2) Loans shall be awarded subject to availability of funding based on the order of receipt of applications satisfying all requirements as set forth in the regulations promulgated under subdivision (A)(c) of this subsection (A).

(3) The maximum loan amount under this subsection (A) for any one project is $1,000,000.

(4) In addition to any requirements or conditions placed on loans by regulation, loan agreements under the Brownfields Redevelopment Loan Program shall include the following requirements:

(A) the loan recipient shall secure the loan repayment obligation;

(B) completion of the loan repayment shall not exceed 15 years or as otherwise prescribed by Agency rule; and

(C) loan agreements shall provide for a confession of judgment by the loan recipient upon default.

(5) Loans shall not be used to cover expenses incurred prior to the approval of the loan application.

(6) If the loan recipient fails to make timely payments or otherwise fails to meet its obligations as provided in this subsection (A) or implementing regulations, the Agency is authorized to pursue the collection of the

amounts past due, the outstanding loan balance, and the costs thereby incurred, either pursuant to the Illinois State Collection Act of 1986 or by any other means provided by law, including the taking of title, by foreclosure or otherwise, to any project or other property pledged, mortgaged, encumbered, or otherwise available as security or collateral.

(c) The Agency shall have the authority to enter into any contracts or agreements that may be necessary to carry out its duties or responsibilities under this subsection (A). The Agency shall have the authority to promulgate regulations setting forth procedures and criteria for administering the Brownfields Redevelopment Loan Program. The regulations promulgated by the Agency for loans under this subsection (A) shall include, but need not be limited to, the following elements:

(1) loan application requirements;

(2) determination of credit worthiness of the loan applicant;

(3) types of security required for the loan;

(4) types of collateral, as necessary, that can be pledged for the loan;

(5) special loan terms, as necessary, for securing the repayment of the loan;

(6) maximum loan amounts;

(7) purposes for which loans are available;

(8) application periods and content of applications;

(9) procedures for Agency review of loan applications, loan approvals or denials, and loan acceptance by the loan recipient;

(10) procedures for establishing interest rates;

(11) requirements applicable to disbursement of loans to loan recipients;

(12) requirements for securing loan repayment obligations;

(13) conditions or circumstances constituting default;

(14) procedures for repayment of loans and delinquent loans including, but not limited to, the initiation of principal and interest payments following loan acceptance;

(15) loan recipient responsibilities for work schedules, work plans, reports, and record keeping;

(16) evaluation of loan recipient performance, including auditing and access to sites and records;

(17) requirements applicable to contracting and subcontracting by the loan recipient, including procurement requirements;

(18) penalties for noncompliance with loan requirements and conditions, including stop-work orders, termination, and recovery of loan funds; and

(19) indemnification of the State of Illinois and the Agency by the loan recipient.

(d) Moneys in the Brownfields Redevelopment Fund may be used as a source of revenue or security for the principal and interest on revenue or general obligation bonds issued by the State or any political subdivision or instrumentality thereof, if the proceeds of those bonds will be deposited into the Fund.

(B) Brownfields Site Restoration Program.

(a)(1) The Agency must establish and administer a program for the payment of remediation costs to be known as the Brownfields Site Restoration Program. The Agency, through the Program, shall provide Remediation Applicants with financial assistance for the investigation and remediation of abandoned or underutilized properties. The investigation and remediation

shall be performed in accordance with this Title XVII of this Act.

(2) For each State fiscal year in which funds are made available to the Agency for payment under this subsection (B), the Agency must, subject to the availability of funds, allocate 20% of the funds to be available to Remediation Applicants within counties with populations over 2,000,000. The remaining funds must be made available to all other Remediation Applicants in the State.

(3) The Agency must not approve payment in excess of $750,000 to a Remediation Applicant for remediation costs incurred at a remediation site. Eligibility must be determined based on a minimum capital investment in the redevelopment of the site, and payment amounts must not exceed the net economic benefit to the State of the remediation project. In addition to these limitations, the total payment to be made to an applicant must not exceed an amount equal to 20% of the capital investment at the site.

(4) Only those remediation projects for which a No Further Remediation Letter is issued by the Agency after December 31, 2001 are eligible to participate in the Brownfields Site Restoration Program. The program does not apply to any sites that have received a No Further Remediation Letter prior to December 31, 2001 or for costs incurred prior to the Agency approving a site eligible for the Brownfields Site Restoration Program.

(5) Brownfields Site Restoration Program funds shall be subject to availability of funding and distributed based on the order of receipt of applications satisfying all requirements as set forth in this Section.

(b) Prior to applying to the Agency for payment, a Remediation Applicant shall first submit to the Agency its proposed remediation costs. The Agency shall make a pre-application assessment, which is not to be binding upon future review of the project, relating only to whether the Agency has adequate funding to reimburse the applicant for the remediation costs if the applicant is found to be eligible for reimbursement of remediation costs. If the Agency determines that it is likely to have adequate funding to reimburse the applicant for remediation costs, the Remediation Applicant may then submit to the Agency an application for review of eligibility. The Agency must review the eligibility application to determine whether the Remediation Applicant is eligible for the payment. The application must be on forms prescribed and provided by the Agency. At a minimum, the application must include the following:

(1) Information identifying the Remediation Applicant and the site for which the payment is being sought and the date of acceptance into the Site Remediation Program.

(2) Information demonstrating that the site for which the payment is being sought is abandoned or underutilized property. "Abandoned property" means real property previously used for, or that has the potential to be used for, commercial or industrial purposes that reverted to the ownership of the State, a county or municipal government, or an agency thereof, through donation, purchase, tax delinquency, foreclosure, default, or settlement, including conveyance by deed in lieu of foreclosure; or privately owned property that has been vacant for a period of not less than 3 years from the time an application is made to the Agency. "Underutilized property" means real property of which less than 35% of the commercially usable space of the property and improvements thereon are used for their most commercially profitable and economically productive uses.

(3) Information demonstrating that remediation of the site for which the payment is being sought will result in a net economic benefit to the State of Illinois. The "net economic benefit" must be determined based on factors including, but not limited to, the capital investment, the number of jobs created, the number of jobs retained if it is demonstrated the jobs would otherwise be lost, capital improvements, the number of construction-related jobs, increased sales, material purchases, other increases in service and operational expenditures, and other factors established by the Agency. Priority must be given to sites located in areas with high levels of poverty, where the unemployment rate exceeds the State average, where an enterprise zone exists, or where the area is otherwise economically depressed as determined by the Agency.

(4) An application fee in the amount set forth in subdivision (B)(c) for each site for which review of an application is being sought.

(c) The fee for eligibility reviews conducted by the Agency under this subsection (B) is $1,000 for each site reviewed. The application fee must be made payable to the Agency for deposit into the Brownfields Redevelopment Fund. These application fees shall be used by the Agency for administrative expenses incurred under this subsection (B).

(d) Within 60 days after receipt by the Agency of an application meeting the requirements of subdivision (B)(b), the Agency must issue a letter to the applicant approving the application, approving the application with modifications, or disapproving the application. If the application is approved or approved with modifications, the Agency's letter must also include its determination of the "net economic benefit" of the remediation project and the maximum amount of the payment to be made available to the applicant for remediation costs. The payment by the Agency under this subsection (B) must not exceed the "net economic benefit" of the remediation project.

(e) An application for a review of remediation costs must not be submitted to the Agency unless the Agency has determined the Remediation Applicant is eligible under subdivision (B)(d). If the Agency has determined that a Remediation Applicant is eligible under subdivision (B)(d), the Remediation Applicant may submit an application for payment to the Agency under this subsection (B). Except as provided in subdivision (B)(f), an application for review of remediation costs must not be submitted until a No Further Remediation Letter has been issued by the Agency and recorded in the chain of title for the site in accordance with Section 58.10. The Agency must review the application to determine whether the costs submitted are remediation costs and whether the costs incurred are reasonable. The application must be on forms prescribed and provided by the Agency. At a minimum, the application must include the following:

(1) Information identifying the Remediation Applicant and the site for which the payment is being sought and the date of acceptance of the site into the Site Remediation Program.

(2) A copy of the No Further Remediation Letter with official verification that the letter has been recorded in the chain of title for the site and a demonstration that the site for which the application is submitted is the same site as the one for which the No Further Remediation Letter is issued.

(3) A demonstration that the release of the regulated substances of concern for which the No Further Remediation Letter was issued was not caused or contributed to in any

material respect by the Remediation Applicant. The Agency must make determinations as to reimbursement availability consistent with rules adopted by the Pollution Control Board for the administration and enforcement of Section 58.9 of this Act.

(4) A copy of the Agency's letter approving eligibility, including the net economic benefit of the remediation project.

(5) An itemization and documentation, including receipts, of the remediation costs incurred.

(6) A demonstration that the costs incurred are remediation costs as defined in this Act and rules adopted under this Act.

(7) A demonstration that the costs submitted for review were incurred by the Remediation Applicant who received the No Further Remediation Letter.

(8) An application fee in the amount set forth in subdivision (B)(j) for each site for which review of remediation costs is requested.

(9) Any other information deemed appropriate by the Agency.

(f) An application for review of remediation costs may be submitted to the Agency prior to the issuance of a No Further Remediation Letter if the Remediation Applicant has a Remedial Action Plan approved by the Agency under the terms of which the Remediation Applicant will remediate groundwater for more than one year. The Agency must review the application to determine whether the costs submitted are remediation costs and whether the costs incurred are reasonable. The application must be on forms prescribed and provided by the Agency. At a minimum, the application must include the following:

(1) Information identifying the Remediation Applicant and the site for which the payment is being sought and the date of acceptance of the site into the Site Remediation Program.

(2) A copy of the Agency letter approving the Remedial Action Plan.

(3) A demonstration that the release of the regulated substances of concern for which the Remedial Action Plan was approved was not caused or contributed to in any material respect by the Remediation Applicant. The Agency must make determinations as to reimbursement availability consistent with rules adopted by the Pollution Control Board for the administration and enforcement of Section 58.9 of this Act.

(4) A copy of the Agency's letter approving eligibility, including the net economic benefit of the remediation project.

(5) An itemization and documentation, including receipts, of the remediation costs incurred.

(6) A demonstration that the costs incurred are remediation costs as defined in this Act and rules adopted under this Act.

(7) A demonstration that the costs submitted for review were incurred by the Remediation Applicant who received approval of the Remediation Action Plan.

(8) An application fee in the amount set forth in subdivision (B)(j) for each site for which review of remediation costs is requested.

(9) Any other information deemed appropriate by the Agency.

(g) For a Remediation Applicant seeking a payment under subdivision (B)(f), until the Agency issues a No Further Remediation Letter for the site, no more than 75% of the allowed payment may be claimed by the Remediation Applicant. The

remaining 25% may be claimed following the issuance by the Agency of a No Further Remediation Letter for the site. For a Remediation Applicant seeking a payment under subdivision (B)(e), until the Agency issues a No Further Remediation Letter for the site, no payment may be claimed by the Remediation Applicant.

(h)(1) Within 60 days after receipt by the Agency of an application meeting the requirements of subdivision (B)(e) or (B)(f), the Agency must issue a letter to the applicant approving, disapproving, or modifying the remediation costs submitted in the application. If an application is disapproved or approved with modification of remediation costs, then the Agency's letter must set forth the reasons for the disapproval or modification.

(2) If a preliminary review of a budget plan has been obtained under subdivision (B)(i), the Remediation Applicant may submit, with the application and supporting documentation under subdivision (B)(e) or (B)(f), a copy of the Agency's final determination accompanied by a certification that the actual remediation costs incurred for the development and implementation of the Remedial Action Plan are equal to or less than the costs approved in the Agency's final determination on the budget plan. The certification must be signed by the Remediation Applicant and notarized. Based on that submission, the Agency is not required to conduct further review of the costs incurred for development and implementation of the Remedial Action Plan and may approve costs as submitted.

(3) Within 35 days after receipt of an Agency letter disapproving or modifying an application for approval of remediation costs, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of this Act.

(i)(1) A Remediation Applicant may obtain a preliminary review of estimated remediation costs for the development and implementation of the Remedial Action Plan by submitting a budget plan along with the Remedial Action Plan. The budget plan must be set forth on forms prescribed and provided by the Agency and must include, but is not limited to, line item estimates of the costs associated with each line item (such as personnel, equipment, and materials) that the Remediation Applicant anticipates will be incurred for the development and implementation of the Remedial Action Plan. The Agency must review the budget plan along with the Remedial Action Plan to determine whether the estimated costs submitted are remediation costs and whether the costs estimated for the activities are reasonable.

(2) If the Remedial Action Plan is amended by the Remediation Applicant or as a result of Agency action, the corresponding budget plan must be revised accordingly and resubmitted for Agency review.

(3) The budget plan must be accompanied by the applicable fee as set forth in subdivision (B)(j).

(4) Submittal of a budget plan must be deemed an automatic 60-day waiver of the Remedial Action Plan review deadlines set forth in this subsection (B) and rules adopted under this subsection (B).

(5) Within the applicable period of review, the Agency must issue a letter to the Remediation Applicant approving, disapproving, or modifying the estimated remediation costs submitted in the budget plan. If a budget plan is disapproved or approved with modification of estimated remediation costs, the Agency's letter must set forth the reasons for the disapproval or modification.

(6) Within 35 days after receipt of an Agency letter

disapproving or modifying a budget plan, the Remediation Applicant may appeal the Agency's decision to the Board in the manner provided for the review of permits in Section 40 of this Act.

(j) The fees for reviews conducted by the Agency under this subsection (B) are in addition to any other fees or payments for Agency services rendered pursuant to the Site Remediation Program and are as follows:

(1) The fee for an application for review of remediation costs is $1,000 for each site reviewed.

(2) The fee for the review of the budget plan submitted under subdivision (B)(i) is $500 for each site reviewed.

The application fee and the fee for the review of the budget plan must be made payable to the State of Illinois, for deposit into the Brownfields Redevelopment Fund.

(k) Moneys in the Brownfields Redevelopment Fund may be used for the purposes of this Section, including payment for the costs of administering this subsection (B). Any moneys remaining in the Brownfields Site Restoration Program Fund on the effective date of this amendatory Act of the 92nd General Assembly shall be transferred to the Brownfields Redevelopment Fund. Total payments made to all Remediation Applicants by the Agency for purposes of this subsection (B) must not exceed $1,000,000 in State fiscal year 2002.

(l) The Agency is authorized to enter into any contracts or agreements that may be necessary to carry out the Agency's duties and responsibilities under this subsection (B).

(m) Within 6 months after the effective date of this amendatory Act of 2002, the Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity) and the Agency must propose rules prescribing procedures and standards for the administration of this subsection (B). Within 9 months after receipt of the proposed rules, the Board shall adopt on second notice, pursuant to Sections 27 and 28 of this Act and the Illinois Administrative Procedure Act, rules that are consistent with this subsection (B). Prior to the effective date of rules adopted under this subsection (B), the Department of Commerce and Community Affairs (now Department of Commerce and Economic Opportunity) and the Agency may conduct reviews of applications under this subsection (B) and the Agency is further authorized to distribute guidance documents on costs that are eligible or ineligible as remediation costs.

(Source: P.A. 102-444, eff. 8-20-21.)

(415 ILCS 5/58.16)

Sec. 58.16. Construction of school; requirements. This Section applies only to counties with a population of more than 3,000,000. In this Section, "school" means any public school located in whole or in part in a county with a population of more than 3,000,000. No person shall commence construction on real property of a building intended for use as a school unless:

(1) a Phase I Environmental Audit, conducted in accordance with Section 22.2 of this Act, is obtained;

(2) if the Phase I Environmental Audit discloses the presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, to, or from the real property, a Phase II Environmental Audit, conducted in accordance with Section 22.2 of this Act, is obtained; and

(3) if the Phase II Environmental Audit discloses the presence or likely presence of a release or a substantial threat of a release of a regulated substance at, on, to, or from the real property: (i) the real property is enrolled in

the Site Remediation Program, and (ii) the remedial action plan is approved by the Agency, if a remedial action plan is required by Board regulations.

No person shall cause or allow any person to occupy a building intended to be used as a school for which a remedial action plan is required by Board regulations unless all work pursuant to the remedial action plan is completed.

(Source: P.A. 98-756, eff. 7-16-14.)

(415 ILCS 5/58.17)

Sec. 58.17. Environmental Land Use Control. No later than 2 months after July 7, 2000, the Agency, after consideration of the recommendations of the Regulations and Site Remediation Advisory Committee, shall propose rules creating an instrument to be known as the Environmental Land Use Control (ELUC). Within 6 months after receipt of the Agency's proposed rules, the Board shall adopt, pursuant to Sections 27 and 28 of this Act, rules creating the ELUC that establish land use limitations or obligations on the use of real property when necessary to manage risk to human health or the environment arising from contamination left in place pursuant to the procedures set forth in Section 58.5 of this Act or 35 Ill. Adm. Code 742. The rules shall include provisions addressing establishment, content, recording, duration, and enforcement of ELUCs.

(Source: P.A. 91-909, eff. 7-7-00; 92-574, eff. 6-26-02.)

(415 ILCS 5/58.18)

Sec. 58.18. (Repealed).

(Source: P.A. 92-486, eff. 1-1-02. Repealed by P.A. 92-715, eff. 7-23-02.)

NON-MANDATORY PRE-BID MEETING

RFP 23-08 Mechanical Dredging at the Church Street Boat Ramp

Date & Time: February 2, 2023, Civic Center Room 2403

In Person

Attendee/Name	Company Name	Address	Phone Number	Email Address
Rob Rinkenberger	AIDRIDGE		815 347-0797	-
John Kono	John Kono + Co		773 380 0700	ESTIMATING@JohnKono.com
Mike Gora	G&L Contractors, Inc.		847-674-7986	MGORA@GL-CONTRACTORS.COM