COLORADO

WATER QUALITY CONTROL AND ADMINISTRATION

LAWS AND REGULATIONS

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Dear Subscriber:

Enclosed is Supplement No. 5 (1981) for Colorado Water Quality Control and Administration: Laws and Regulations.

Please make the following corrections:

Replace the Roster in the front with the new one (the reorganization of the Water Quality Control Commission, effective July 1, 1981, will result in changes to the Roster - check with the Department of Health for those changes.)

Table of Contents	Replace Table of Contents with new one.
In Section B	Statutory Law Replace pages B-63/90 with pages B-63/90d (new Water Quality Control Act).
In Section C	Rules, Regulations and Standards Remove all of Section C, but retain tabs for future use. In the future, refer to The Code of Colorado Regulations (CCR) and its companion publication The Colorado Register (The Public Record Corporation, Denver, CO). The CCR is the official publication of administrative regulations of executive departments and agencies of the State of Colorado. The Colorado Register is published monthly and contains copies of all new or modified rules and regulations of the State. Many public libraries subscribe to these publications.
In Section E	Replace pages E-107/152 with pages E 107/152n. Remove pages E-175/189 and replace with pages E-175/317.

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December 1978

Dear Subscriber:

Enclosed is Supplement No. 4 (1978) for Colorado Water Quality Control and Administration: Laws and Regulations.

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Replace pages B-107 through B-110 with new ones (amendment to 25-9-105.5, addition of 25-9-106.5)

In Section C - Rules, Regulations and Standards
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Replace pages C.2-1 through C.2-11 with pages C.2-1 through C.2-37 (section 2.1 amended, section 2.2 added)
Replace pages C.3-1 through C.3-56 with C.3-i through C.3-56 (section 3.1 amended, sections 3.8 and 3.10 added)
Replace pages C.5-3 through C.5-20 with pages C.5-3 through C.5-29 (section 5.3 amended)
Replace page C.6-1 with pages C.6-1 through C.6-23 (Section 6.1 added)
Add pages C.7-20 through C.7-22 (section 7.4 added)
Replace pages C.8-7 through C.8-11 with pages C.8-7 through C.8-11g (section 8.3 amended)
Replace pages C.10-1 through C.10-4 with new ones (section 10.1 amended)
Add Tab C-XI and pages C.11-1 through 11-6 (new policies)
Add Tab C-XII and pages C.12-1 through 12-16 (new regulations)

In Section E - Federal Water Pollution Control Law
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Add Tab E-IV and pages E-107 through E-152 (new material)
Add Tab E-V and pages E-153 through E-173 (new material)
Add Tab E-VI and pages E-175 through E-189 (new material)
To make Tabs E-IV, E-V and E-VI, cross out numbers on Tabs C-XIII, C-XIV and C-XV (extra tabs) and assign the new numbers

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December 1977

Dear Subscriber:

Enclosed is Supplement No. 3 (1977) for Colorado Water Quality Control and Administration: Laws and Regulations.

Please make the following corrections:

Replace the Roster in the front with the new one.

Table of Contents - Replace pages iv through vii and xiv - xv with the new ones.

In Section B - Statutory Law
Replace pages B-29 through 39 with the new ones (miscellaneous changes and additions)
Replace pages B-69 through 70 with B-69 - 70a (miscellaneous changes and additions)
Replace pages B-75 through 80 with B-75 - 80b (miscellaneous changes and additions)
Replace pages B-83 through 84 with new ones (miscellaneous changes)
Replace pages (B-87 through 90 with new ones (miscellaneous changes and additions)
Replace pages B-204 through 205 with new ones (miscellaneous changes)
Replace pages B-208 through 209 with new ones (miscellaneous changes)

In Section C - Rules, Regulations and Standards
Remove the entire contents of section C and replace with the new pages using only Tabs C-I through C-X. Please keep the remaining C tabs for future use.

In Section F - References
Replace the Reference page (F-1)

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any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) (1) In the survey of 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 or 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 benefits of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this Act 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 Power 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 208 of this Act, and any State plan developed pursuant to section 303(e) of this Act.

(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.

(d) 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 Act, and the programs by which State and Federal agencies allocate quantities of water. Such report shall include recommendations concerning the policy in section 101(g) of the Act to improve coordination of efferts to reduce and eliminate pollution in concert with programs for managing water resources.

Interstate Cooperation and Uniform Laws

Sec. 103. (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.

Research, Investigations, Training, and Information

Sec. 104. (a) 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 Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 516; 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 Act; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) 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 sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5), 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; and

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

(c) 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, Education, and Welfare.

(d) 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 201 of this Act;

(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) 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 403 of this Act, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) 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) (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 retaining 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 insitutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional 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 Act, 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 sections 3648 and 3709 of the Revised Statutes;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including travel 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) 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) 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) 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 312 of this Act. 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) 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) (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 Act 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and shall submit a final report to Congress within 18 months after such date of enactment.

(n) (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, 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.

SUBSCRIPTION FORM

The initial costs of this volume to non-subscribers of the County Information Service is $15.00. Subscribers to the Service may purchase the Compilation for $10.00.

In order to insure that each purchaser of the Colorado Water Quality Control and Administration Compilation receives the current laws, regulations and changes to existing laws, it is necessary that a charge of $5.00 per year be assessed. This will insure that subscribers to the County Information Service receive current information as it becomes available as well as special interpretive reports.

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Foreword

Water quality control, like the management of water quantity and other natural resources, is of primary concern to the State of Colorado. Many legislative enactments and amendments have taken place since the original Water Pollution Control Act was passed in 1966. The Water Pollution Control Commission, created to implement that law, developed and adopted many rules and regulations for specific pollution problems and programs. The Water Quality Act, passed in 1973, changed the concept of water pollution control and re-established the Commission as the Water Quality Control Commission. Municipal, industrial, agricultural, and recreational sectors of the economy are integral parts of the water quality management impacts affected by the laws and control functions of the Commission.

This volume is a compilation of the state water pollution control and related legislation; rules, regulations, and guidelines promulgated by the Water Quality Control Commission; judicial decisions; Federal Water Pollution Control Act amendments of 1972; and significant regulations.

The compilation will be kept current through the use of periodic supplements and instructions for insertions. These numbered supplements will contain laws amended, added, or revised; rules and regulations adopted or cases decided relevant to water pollution control. Major sections and subsections have been tabulated to permit ready removal of dated material and inclusion of new information. Each subscriber will receive the supplements by completing and sending in the Supscription Form which follows the Foreword.

It is hoped that state officials, lawyers, engineers, businessmen, and others who are concerned with or affected by water quality control may find this compilation a valuable addition to their libraries and a useful tool in keeping abreast of the water pollution control efforts and laws in the state.

The major impetus and financial support for this publication was provided by the Office of Water Resources Research through a project entitled "Economic and Institutional Analysis of Water Quality Standards and Management."

This compilation has been reviewed and endorsed by the Colorado Water Quality Control Commission. We express our appreciation to the Commission for their cooperation in examining the contents to insure that all relevant materials have been included and for providing the rules and regulations as adopted.

Appreciation is extended to the other principal investigators on the project, Drs. K. C. Nobe, Chairman, and R. A. Young, Professor, of the Department of Economics, Colorado State University. In addition to the project sponsor and team, we wish to thank Dr. Norman Evans, Director of the Environmental Resources Center, for contributing to the publication's costs and for reviewing the draft compilation and the Colorado Cooperative Extension Service for providing financial assistance and the manpower bases through the Center of Economic Education from which the compilation and supplements will be distributed.

This compilation is a contribution to the County Information Service, located in the Department of Economics. A companion volume entitled Colorado Water Laws: A Compilation of Statutes, Regulations, Compacts and Selected Cases is also available from the County Information Service.

Questions regarding this compilation or other volumes in the County Data Book Series should be directed to:

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April 1974

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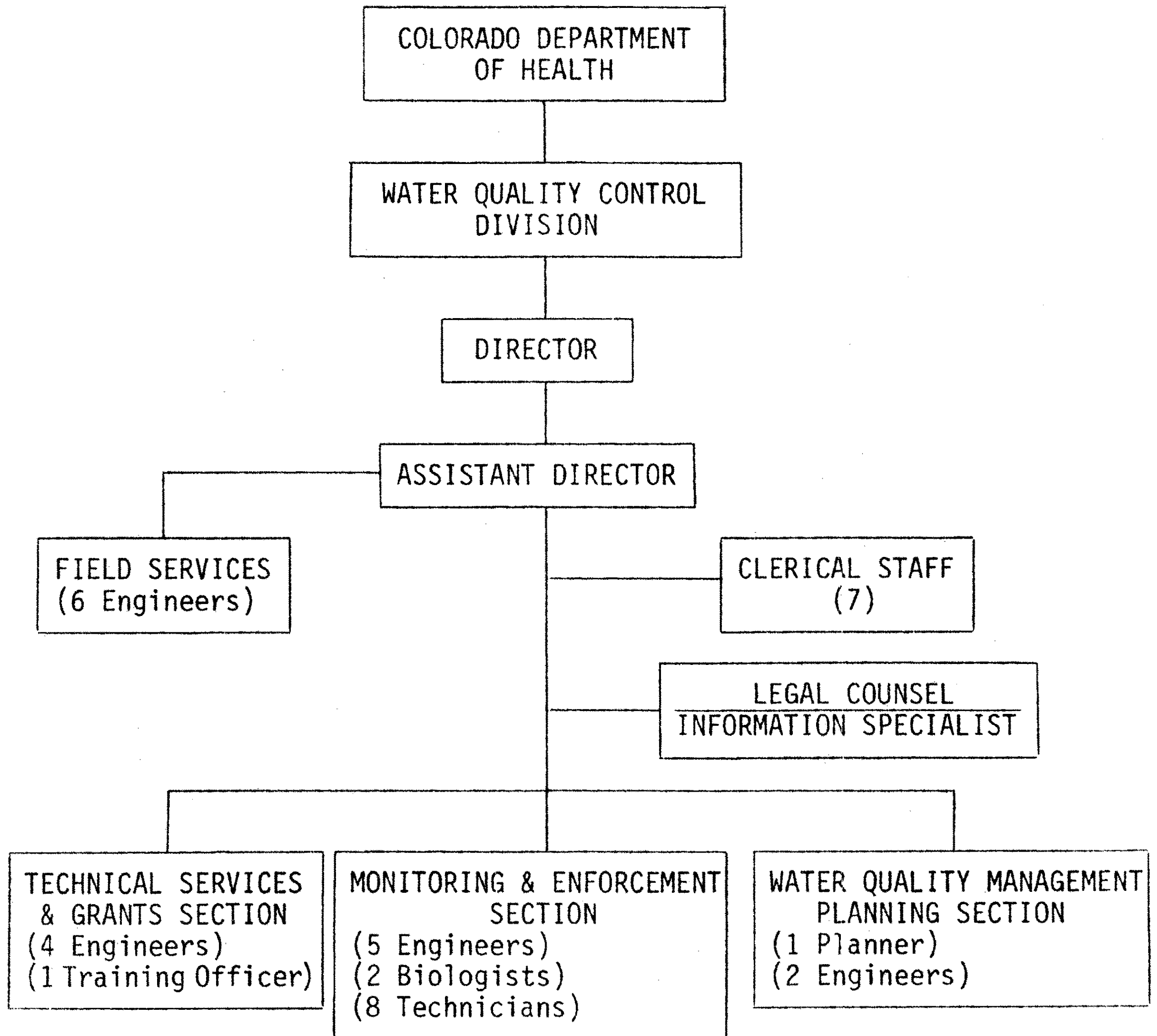

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(1 Lab. Assistant)

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TITLE 24

GOVERNMENT - STATE

ARTICLE 65

Colorado Land Use Act

24-65-101. Short title.--This article shall be known and may be cited as the "Colorado Land Use Act".

24-65-102. Legislative declaration.--
(1) The general assembly finds and declares that the rapid growth and development of the state and the resulting demands on its land resources make new and innovative measures necessary to encourage planned and orderly land use development; to provide for the needs of agriculture, forestry, industry, business, residential communities, and recreation in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to conserve soil, water, and forest resources; to protect the beauty of the landscape; and to promote the efficient and economical use of public resources. The general assembly further finds and declares that there is an increasing mutuality of interest and responsibility between the various levels of government in the state which calls for coordinate and unified policies in planning for growth and development in the interests of order and economy and that the most effective means of attaining the objects set forth in this article is the adoption of the statewide system of land use.

(2) In order to provide the leadership necessary to meet the objectives of this article, the general assembly authorizes the Colorado land use commission to develop and hold hearings upon state land use plans and maps and related implementation techniques. It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.

24-65-103. Establishment of commission.--
(1) (a) There is hereby established, within the office of the governor, the Colorado land use commission, referred to in this article as the "commission". The commission shall consist of nine members who shall be appointed in the manner and shall serve for terms as set forth in this section. The commission shall assume its duties June 1, 1970, and all terms of commission members shall commence on that date.

(b) Five members shall be appointed by the governor, one from each congressional district, one of whom shall reside west of the continental divide, but no more than three members shall be from any one major political party. Appointments made to take effect on January 1,

1973, shall be made in accordance with section 24-1-135, and thereafter the terms of office of the members appointed under this paragraph (b) shall be five years. Any vacancies shall be filled by appointment of the governor for the unexpired term.

(c) The governor shall also appoint four members who shall serve at his pleasure, one of whom shall reside in southwest Colorado and one in northwest Colorado.

(2) The commission shall elect a chairman from among its members. The members shall receive no compensation for their service on the commission but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(3) The commission is authorized to utilize its own staff or to contract for services in the performance of its duties. The departments and agencies of state and local government shall make available to the commission such data and information as are necessary for it to perform its duties. The commission may receive and utilize funds from federal or other governmental agencies and grants and gifts from any other sources. It shall adopt rules for its conduct and maintain a public record of its activities, accomplishments, and recommendations.

24-65-104. Duties of the commission - temporary emergency power.-- (1) (a) In order to carry out the purposes of this article, the commission is authorized and directed to develop, hold hearings upon, and submit to the general assembly a progress report by February 1, 1972, an interim plan by September 1, 1972, and a final land use planning program by December 1, 1973. All such submittals shall relate to a total land use planning program for the state of Colorado and shall include related implementation techniques, which may include but need not be limited to an environmental matrix, management matrix, growth monitoring system, and impact model. In developing the land use planning program, the commission shall utilize and recognize, to the fullest extent possible, all existing uses, plans, policies, standards, and procedures affecting land use at the local, state, and federal levels and particularly note where, in its opinion, deficiencies exist. The land use planning program shall also specify development policy and procedures for the future.

(b) In developing its land use planning program, the commission shall recognize that the decision-making authority as to the character and use of land shall be at the lowest level of government possible consistent with the purposes of this article. In this regard, the commission may establish criteria by which land use management problems will be classified as matters of state concern, matters of regional concern, matters of local concern, or such other classification as the commission may deem necessary and proper. Furthermore, the commission shall specifically include in its land use planning program the roles, responsibilities, and authority of the various levels and agencies of government.

(c) The commission shall appoint, with approval of the governor, and consult with an advisory committee in the preparation of the land use planning program. Such advisory committee shall exist until January 10, 1974, and shall include but need not be limited to one representative of each of the following interests: Utilities, communication, transportation, petroleum, municipal government, county government, regional planning commissions, conservation, livestock, construction, Negro community, Mexican-American community, mining, industry, agriculture, land development, recreation, timber, real estate, and water, but at least one member of the advisory committee shall be appointed from each planning region of the state designated by the division of planning.

(d) Four members of the general assembly shall also be appointed to the advisory committee to the commission to serve until January 10, 1974. Two members shall be appointed by the speaker of the house of representatives, one member from each of the two major political parties; and two members shall be appointed by the president of the senate, one member from each of the two major political parties.

(e) In the preparation of the land use planning program, the commission shall hold such public hearings as it deems necessary, but in any event at least one meeting shall be held in each planning region of the state designated by the division of planning.

(2) (a) Whenever in the normal course of its duties as set forth in this article the commission determines that there is in progress or proposed a land development activity which constitutes a danger of irreparable injury, loss, or damage of serious and major proportions to the public health, welfare, or safety, the commission shall immediately give written notice to the board of county commissioners of each county involved of the pertinent facts and dangers with respect to such activity. If the said board of county commissioners does not remedy the situation within a reasonable time, the commission may request the governor to review such facts and dangers with respect to such activity. If the governor grants such request, such review shall be conducted by the governor at a meeting with the commission and the boards of county commissioners of the counties involved. If, after such review, the governor determines that such activity does constitute such a danger, the governor may direct the commission to issue its written cease and desist order to the person in control of such activity. Such order shall require that such person immediately discontinue such activity. If such activity, notwithstanding such order, is continued, the commission may apply to the district court for the county in which such activity is located for a temporary restraining order, preliminary injunction, or permanent injunction, as provided for in the Colorado rules of civil procedure. Any such action shall be given procedence over all other matters pending in such district court. The institution of such action shall confer upon said district court exclusive jurisdiction to determine finally the subject matter thereof.

(b) In the event the commission issues such cease and desist order or a district court issues such a temporary restraining order, preliminary injunction, or permanent injunction, the commission shall

proceed immediately to establish the planning criteria necessary to eliminate or avoid such danger. The appropriate local governmental agency shall then take immediate action to implement the aforementioned planning criteria.

(c) Where such a land development activity is located wholly within a city, city and county, or town, the city council or board of trustees shall have such jurisdiction and be subject to such requirements of this subsection (2) as are otherwise applicable to the board of county commissioners.

24-65-105. Model resolutions - subdivisions - improvement notices.-- (1) The commission shall, after consultation with its advisory committee, develop model resolutions to serve as guidelines for county planning commissions in developing the subdivision regulations required by section 30-28-133, C.R.S. 1973. Such resolutions shall be developed prior to January 1, 1972. Such model resolutions shall include provisions for criteria, standards, technical processes, and operational procedures as required by section 30-28-133, C.R.S. 1973, or as may be required by any other law setting or authorizing state standards for subdivisions.

(2) (a) The commission shall, after consultation with its advisory committee, develop model resolutions to serve as guidelines for boards of county commissioners, city councils, town boards, and special districts and authorities in developing land uses and construction controls within designated floodways.

(b) The commission shall, in its progress report, due February 1, 1972, designate critical areas in the state where a one hundred-year (storm return frequency) floodway should be identified and shall aid the state agencies and local governments having jurisdiction over such critical areas in adopting a program for such identification. The purpose of identifying a floodway is to insure that life and property are protected, that the expenditure of public funds to clean up flood damage is kept to a minimum, that a high volume of water runoff can be accommodated, and that impediments to this flow are held to a minimum. The commission shall designate critical conservation and recreation areas and recommend state involvement in land use in such areas.

(c) The commission shall include a report on land uses and construction within floodways in its interim and final land use planning programs.

TITLE 24

GOVERNMENT - STATE

ARTICLE 65.1

Areas and Activities of State Interest

PART 1

GENERAL PROVISIONS

24-65.1-101. Legislative declaration.--
(1) In addition to the legislative declaration contained in section 24-65-102, the general assembly finds and declares that:

(a) The protection of the utility, value, and future of all lands within the state, including the public domain as well as privately owned land, is a matter of the public interest;

(b) Adequate information on land use and systematic methods of definition, classification, and utilization thereof are either lacking or not readily available to land use decision makers;

(c) It is the intent of the general assembly that land use, land use planning, and quality of development are matters in which the state has responsibility for the health, welfare, and safety of the people of the state and for the protection of the environment of the state.

(2) It is the purpose of this article that:

(a) The general assembly shall describe areas which may be of state interest and activities which may be of state interest and establish criteria for the administration of such areas and activities;

(b) Local governments shall be encouraged to designate areas and activities of state interest and, after such designation, shall administer such areas and activities of state interest and promulgate guidelines for the administration thereof; and

(c) Appropriate state agencies shall assist local governments to identify, designate, and adopt guidelines for administration of matters of state interest.

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24-65.1-102. General definitions.--As used in this article, unless the context otherwise requires:

(1) "Development" means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs.

(2) "Local government" means a municipality or county.

(3) "Local permit authority" means the governing body of a local government with which an application for development in an area of state interest or for conduct of an activity of state interest must be filed for the designee thereof.

(4) "Matter of state interest" means an area of state interest or an activity of state interest or both.

(5) "Municipality" means a home rule or statutory city, town, or city and county or a territorial charter city.

(6) "Person" means any individual, partnership, corporation, association, company, or other public or corporate body, including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the state.

24-65.1-103. Definitions pertaining to natural hazards.--As used in this article, unless the context otherwise requires:

(1) "Aspect" means the cardinal direction the land surface faces, characterized by north-facing slopes generally having heavier vegetation cover.

(2) "Avalanche" means a mass of snow or ice and other material which may become incorporated therein as such mass moves rapidly down a mountain slope.

(3) "Corrosive soil" means soil which contains soluble salts which may produce serious detrimental effects in concrete, metal, or other substances that are in contact with such soil.

(4) "Debris-fan floodplain" means a floodplain which is located at the mouth of a mountain valley tributary stream as such stream enters the valley floor.

(5) "Dry wash channel and dry wash floodplain" means a small watershed with a very high percentage of runoff after torrential rainfall.

(6) "Expansive soil and rock" means soil and rock which contains clay and which expands to a significant degree upon wetting and shrinks upon drying.

(7) "Floodplain" means an area adjacent to a stream, which area is subject to flooding as the result of the occurrence of an intermediate regional flood and which area thus is so adverse to past, current, or

foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Mainstream floodplains;

(b) Debris-fan floodplains; and

(c) Dry wash channels and dry wash floodplains.

(8) "Geologic hazard" means a geologic phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes;

(b) Seismic effects;

(c) Radioactivity; and

(d) Ground subsidence.

(9) "Geologic hazard area" means an area which contains or is directly affected by a geologic hazard.

(10) "Ground subsidence" means a process characterized by the downward displacement of surface material caused by natural phenomena such as removal of underground fluids, natural consolidation, or dissolution of underground minerals or by man-made phenomena such as underground mining.

(11) "Mainstream floodplain" means an area adjacent to a perennial stream that is subject to periodic flooding.

(12) "Mudflow" means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff.

(13) "Natural hazard" means a geologic hazard, a wildfire hazard, or a flood.

(14) "Natural hazard area" means an area containing or directly affected by a natural hazard.

(15) "Radioactivity" means a condition related to various types of radiation emitted by natural radioactive minerals that occur in natural deposits of rock, soil, and water.

(16) "Seismic effects" means direct and indirect effects caused by an earthquake or an underground nuclear detonation.

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(17) "Siltation" means a process which results in an excessive rate of removal of soil and rock materials from one location and rapid deposit thereof in adjacent areas.

(18) "Slope" means the gradient of the ground surface which is definable by degree or percent.

(19) "Unstable or potentially unstable slope" means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.

(20) "Wildfire behavior" means the predictable action of a wildfire under given conditions of slope, aspect, and weather.

(21) "Wildfire hazard" means a wildfire phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

(a) Slope and aspect;

(b) Wildfire behavior characteristics; and

(c) Existing vegetation types.

(22) "Wildfire hazard area" means an area containing or directly affected by a wildfire hazard.

24-65.1-104. Definitions pertaining to other areas and activities of state interest.--As used in this article, unless the context otherwise requires:

(1) "Airport" means any municipal or county airport or airport under the jurisdiction of an airport authority.

(2) "Area around a key facility" means an area immediately and directly affected by a key facility.

(3) "Arterial highway" means any limited-access highway which is part of the federal-aid interstate system or any limited-access highway constructed under the supervision of the state department of highways.

(4) "Collector highway" means a major thoroughfare serving as a corridor or link between municipalities, unincorporated population centers or recreation areas, or industrial centers and constructed under guidelines and standards established by, or under the supervision of, the state department of highways. Collector highway does not include a city street or local service road or a county road designed for local service and constructed under the supervision of local government.

(5) "Domestic water and sewage treatment system" means a wastewater treatment plant, water treatment plant, or water supply system, as

defined in section 25-9-102 (5), (6), and (7), C.R.S. 1973, and any system of pipes, structures, and facilities through which wastewater is collected for treatment.

(6) "Historical or archaeological resources of statewide importance" means resources which have been officially included in the national register of historic places, designated by statute, or included in an established list of places compiled by the state historical society.

(7) "Key facilities" means:

(a) Airports;

(b) Major facilities of a public utility;

(c) Interchanges involving arterial highways;

(d) Rapid or mass transit terminals, stations, and fixed guideways.

(8) "Major facilities of a public utility" means:

(a) Central office buildings of telephone utilities;

(b) Transmission lines, power plants, and substations of electrical utilities; and

(c) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives.

(9) "Mass transit" means a coordinated system of transit modes providing transportation for use by the general public.

(10) "Mineral" means an inanimate constituent of the earth, in either solid, liquid, or gaseous state which, when extracted from the earth, is usable in its natural form or is capable of conversion into usable form as a metal, a metallic compound, a chemical, an energy source, a raw material for manufacturing, or construction material. This definition does not include surface or ground water subject to appropriation for domestic, agricultural, or industrial purposes, nor does it include geothermal resources.

(11) "Mineral resource area" means an area in which minerals are located in sufficient concentration in veins, deposits, bodies, beds, seams, fields, pools, or otherwise, as to be capable of economic recovery. The term includes but is not limited to any area in which there has been significant mining activity in the past, there is significant mining activity in the present, mining development is planned or in progress, or mineral rights are held by mineral patent or valid mining claim with the intention of mining.

(12) "Natural resources of statewide importance" is limited to shorelands of major publicly-owned reservoirs and significant wildlife habitats in which the wildlife species, as identified by the division of wildlife of the department of natural resources, in a proposed area could be endangered.

(13) "New communities" means the major revitalization of existing municipalities or the establishment of urbanized growth centers in unincorporated areas.

(14) "Rapid transit" means the element of a mass transit system involving a mechanical conveyance on an exclusive lane or guideway constructed solely for that purpose.

24-65.1-105. Effect of article - public utilities.--

(1) With regard to public utilities, nothing in this article shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the public utilities commission. Any order, rule, or directive issued by any governmental agency pursuant to this article shall not be inconsistent with or in contravention of any decision, order, or finding of the public utilities commission with respect to public convenience and necessity. The public utilities commission and public utilities shall take into consideration and, when feasible, foster compliance with adopted land use master plans of local governments, regions, and the state.

(2) Nothing in this article shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

24-65.1-106. Effect of article - rights of property owners - water rights.--

(1) Nothing in this article shall be construed as:

(a) Enhancing or diminishing the rights of owners of property as provided by the state constitution or the constitution of the United States;

(b) Modifying or amending existing laws or court decrees with respect to the determination and administration of water rights.

24-65.1-107. Effect of article - developments in areas of state interest and activities of state interest meeting certain conditions.--

(1) This article shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of the effective date of this article:

(a) The development or activity is covered by a current building permit issued by the appropriate local government; or

(b) The development or activity has been approved by the electorate; or

(c) The development or activity is to be on land:

(I) Which has been conditionally or finally approved by the appropriate local government for planned unit development or for a use substantially the same as planned unit development; or

(II) Which has been zoned by the appropriate local government for the use contemplated by such development or activity; or

(III) With respect to which a development plan has been conditionally or finally approved by the appropriate governmental authority.

24-65.1-108. Effect of article - state agency or commission responses.--

(1) Whenever any person desiring to carry out development as defined in section 24-65.1-102(1) is required to obtain a permit, to be issued by any state agency or commission for the purpose of authorizing or allowing such development, pursuant to this or any other statute or regulation promulgated thereunder, such agency shall establish a reasonable time period, which shall not exceed sixty days following receipt of such permit application, within which such agency must respond in writing to the applicant, granting or denying said permit or specifying all reasonable additional information necessary for the agency or commission to respond. If additional information is required said agency or commission shall set a reasonable time period for response following the receipt of such information.

(2) Whenever a state agency or commission denies a permit, the denial must specify:

(a) The regulations, guidelines, and criteria or standards used in evaluating the application;

(b) The reasons for denial and the regulations, guidelines, and criteria or standards the application fails to satisfy; and

(c) The action that the applicant would have to take to satisfy the state agency's or commission's permit requirements.

(3) Whenever an application for a permit as provided under this section contains a statement describing the proposed nature, uses, and activities in conceptual terms for the development intended to be accomplished and is not accompanied with all additional information, including, without limitation, engineering studies, detailed plans and specifications, zoning approval, or where a hearing is required by the statutes, regulations, rules, ordinances, or resolutions thereof prior to the issuance of the requested permit, the agency or commission shall, within the time provided in this section for response, indicate its acceptance or denial of the permit on the basis of the concept expressed in the statement of the proposed uses and activities contained in the application. Such conceptual approval shall be made subject to the applicant filing and completing all prerequisite detailed additional information in accordance with the usual filing requirements of the agency or commission within a reasonable period of time.

(4) All agencies or commissions authorized or required to issue permits for development shall adopt rules and regulations, or amend existing rules and regulations, so as to require that such agency or commission respond in the time and manner required in this section.

(5) Nothing in this section shall shorten the time allowed for responses provided by federal statute dealing with, or having a bearing on, the subject of any such application for permit.

(6) The provisions of this section shall not apply to applications approved, denied, or processed by a unit of local government.

PART 2

AREAS AND ACTIVITIES DESCRIBED -

CRITERIA FOR ADMINISTRATION

24-65.1-201. Areas of state interest - as determined by local governments. (1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain areas of state interest from among the following:

(a) Mineral resource areas;

(b) Natural hazard areas;

(c) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance; and

(d) Areas around key facilities in which development may have a material effect upon the facility or the surrounding community.

24-65.1-202. Criteria for administration of areas of state interest. (1) (a) Mineral resource areas designated as areas of state interest shall be protected and administered in such a manner as to permit the extraction and exploration of minerals therefrom, unless extraction and exploration would cause significant danger to public health and safety. If the local government having jurisdiction, after weighing sufficient technical or other evidence, finds that the economic value of the minerals present therein is less than the value of another existing or requested use, such other use should be given preference; however, other uses which would not interfere with the extraction and exploration of minerals may be permitted in such areas of state interest.

(b) Areas containing only sand, gravel, quarry aggregate, or limestone used for construction purposes shall be administered as provided by part 3 of article 1 of title 34, C.R.S. 1973.

(c) The extraction and exploration of minerals from any area shall be accomplished in a manner which causes the least practicable environmental disturbance, and surface areas disturbed thereby shall be reclaimed in accordance with the provisions of article 32 or article 40 of title 34, C.R.S. 1973, whichever is applicable.

(d) Unless an activity of state interest has been designated or identified or unless it includes part or all of another area of state interest, an area of oil and gas or

geothermal resource development shall not be designated as an area of state interest unless the state oil and gas conservation commission identifies such area for designation.

(2) (a) Natural hazard areas shall be administered as follows:

(I) Floodplains shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado water conservation board shall promulgate a model floodplain regulation no later than September 30, 1974. Open space activities such as agriculture, recreation, and mineral extraction shall be encouraged in the floodplains. Any combination of these activities shall be conducted in a mutually compatible manner. Building of structures in the floodplain shall be designed in terms of the availability of flood protection devices, proposed intensity of use, effects on the acceleration of floodwaters, potential significant hazards to public health and safety or to property, and other impact of such development on downstream communities such as the creation of obstructions during floods. Activities shall be discouraged which, in time of flooding, would create significant hazards to public health and safety or to property. Shallow wells, solid waste disposal sites, and septic tanks and sewage disposal systems shall be protected from inundation by floodwaters. Unless an activity of state interest is to be conducted therein, an area of corrosive soil, expansive soil and rock, or siltation shall not be designated as an area of state interest unless the Colorado soil conservation board, through the local soil conservation district, identifies such area for designation.

(II) Wildfire hazard areas in which residential activity is to take place shall be administered so as to minimize significant hazards to public health and safety or to property. The Colorado state forest service shall promulgate a model wildfire hazard area control regulation no later than September 30, 1974. If development is to take place, roads shall be adequate for service by fire trucks and other safety equipment. Firebreaks and other means of reducing conditions conducive to fire shall be required for wildfire hazard areas in which development is authorized.

(III) In geologic hazard areas all developments shall be engineered and administered in a manner that will minimize significant hazards to public health and safety or to property due to a geologic hazard. The Colorado geological survey shall promulgate a model geologic hazard area control regulation no later than September 30, 1974.

(b) After promulgation of guidelines for land use in natural hazard areas by the Colorado water conservation board, the Colorado soil conservation board through the soil conservation districts, the Colorado state forest service, and the Colorado geological survey, natural hazard areas shall be

administered by local government in a manner which is consistent with the guidelines for land use in each of the natural hazard areas.

(3) Areas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance, as determined by the state historical society, the department of natural resources, and the appropriate local government, shall be administered by the appropriate state agency in conjunction with the appropriate local government in a manner that will allow man to function in harmony with, rather than be destructive to, these resources. Consideration is to be given to the protection of those areas essential for wildlife habitat. Development in areas containing historical, archaeological, or natural resources shall be conducted in a manner which will minimize damage to those resources for future use.

(4) The following criteria shall be applicable to areas around key facilities:

(a) If the operation of a key facility may cause a danger to public health and safety or to property, as determined by local government, the area around the key facility shall be designated and administered so as to minimize such danger; and

(b) Areas around key facilities shall be developed in a manner that will discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services as determined by local government. Compatibility with nonmotorized traffic shall be encouraged. A development that imposes burdens or deprivation on the communities of a region cannot be justified on the basis of local benefit alone.

(5) In addition to the criteria described in subsection (4) of this section, the following criteria shall be applicable to areas around particular key facilities:

(a) Areas around airports shall be administered so as to:

(I) Encourage land use patterns for housing and other local government needs that will separate uncontrollable noise sources from residential and other noise-sensitive areas; and

(II) Avoid danger to public safety and health or to property due to aircraft crashes.

(b) Areas around major facilities of a public utility shall be administered so as to:

(I) Minimize disruption of the service provided by the public utility; and

(II) Preserve desirable existing community patterns.

(c) Areas around interchanges involving arterial highways shall be administered so as to:

(I) Encourage the smooth flow of motorized and nonmotorized traffic;

(II) Foster the development of such areas in a manner calculated to preserve the smooth flow of such traffic; and

(III) Preserve desirable existing community patterns.

(d) Areas around rapid or mass transit terminals, stations, or guideways shall be developed in conformance with the applicable municipal master plan adopted pursuant to section 31-23-106, C.R.S. 1973, or any applicable master plan adopted pursuant to section 30-28-108, C.R.S. 1973. If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, flood waters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such development in such areas shall be made with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction of the applicable local government.

24-65.1-203. Activities of state interest as determined by local governments. (1) Subject to the procedures set forth in part 4 of this article, a local government may designate certain activities of state interest from among the following:

(a) Site selection and construction of major new domestic water and sewage treatment systems and major extension of existing domestic water and sewage treatment systems;

(b) Site selection and development of solid waste disposal sites;

(c) Site selection of airports;

(d) Site selection of rapid or mass transit terminals, stations, and fixed guideways;

(e) Site selection of arterial highways and interchanges and collector highways;

(f) Site selection and construction of major facilities of

a public utility;

(g) Site selection and development of new communities;

(h) Efficient utilization of municipal and industrial water projects; and

(i) Conduct of nuclear detonations.

24-65.1-204. Criteria for administration of activities of state interest. (1) (a) New domestic water and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.

(b) Major extensions of domestic water and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accomodated within the financial and enviornmental capacity of the area to sustain wuch growth and development.

(2) Major solid waste disposal sites shall be developed in accordance with sound conservation practices and shall emphasize, where feasible, the recycling of waste materials. Consideration shall be given to longevity and subsequent use of waste disposal sites, soil and wind conditions, the potential problems on pollution inherent in the proposed site, and the impact on adjacent property owners, compared with alternate locations.

(3) Airports shall be located or expanded in a manner which will minimize disruption to the enviornment of existing communities, will minimize the impact on existing community services, and will complement the economic and transportation needs of the state and the area.

(4) (a) Rapid or mas transit terminals, stations, or guideways shall be located in conformance with the applicable municipal master plan adopted pursuant to section 31-23-106, C.R.S. 1973, or to any applicable master plan adopted pursuant to section 30-28-108, C.R.S. 1973. If no such master plan has been adopted, such areas shall be developed in a manner designed to minimize congestion in the streets; to secure safety from fire, flood waters, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Activities shall be conducted with reasonable consideration, among other things, as to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land

throughout the jurisdiction of the applicable local government.

(b) Proposed locations of rapid or mass transit terminals, stations, and fixed guideways which will not require the demolition of residences or businesses shall be given preferred consideration over competing alternatives.

(c) A proposed location of a rapid or mass transit terminal, station, or fixed guideway that imposes a burden or deprivation on a local government cannot be justified on the basis of local benefit alone, nor shall a permit for such a location be denied solely because the location places a burden or deprivation on one local government.

(5) Arterial highways and interchanges and collector highways shall be located so that:

(a) Community traffic needs are met;

(b) Desirable community patterns are not disrupted; and

(c) Direct conflicts with adopted local government, regional, and state master plans are avoided.

(6) Where feasible, major facilities of public utilities shall be located so as to avoid direct conflict with adopted local government, regional, and state master plans.

(7) When applicable, or as may otherwise be provided by law, a new community design shall, at a minimum, provide for transportation, waste disposal, schools, and other governmental services in a manner that will not overload facilities of existing communities of the region. Priority shall be given to the development of total communities which provide for commercial and industrial activity, as well as residences, and for internal transportation and circulation patterns.

(8) Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.

(9) Nuclear detonations shall be conducted so as to present no material danger to public health and safety. Any danger to property shall not be disproportionate to the benefits to be derived from a detonation.

PART 3

LEVELS OF GOVERNMENT INVOLVED AND THEIR FUNCTIONS

24-65.1-301. Functions of local government. (1) Pursuant to this article, it is the function of local government to:

(a) Designate matters of state interest after public hearing, taking into consideration:

(I) The intensity of current and foreseeable development pressures; and

(II) Applicable guidelines for designation issued by the applicable state agencies;

(b) Hold hearings on applications for permits for development in areas of state interest and for activities of state interest;

(c) Grant or deny applications for permits for development in areas of state interest and for activities of state interest;

(d) Receive recommendations from state agencies and other local governments relating to matters of state interest;

(e) Send recommendations to other local governments and the Colorado land use commission relating to matters of state interest; and

(f) Act, upon request of the Colorado land use commission, with regard to specific matters of state interest.

24-65.1-302. Functions of other state agencies. (1) Pursuant to this article, it is the function of other state agencies to:

(a) Send recommendations to local governments and the Colorado land use commission relating to designation of matters of state interest on the basis of current and developing information; and

(b) Provide technical assistance to local governments concerning designation of and guidelines for matters of state interest.

(2) Primary responsibility for the recommendation and provision of technical assistance functions described in subsection (1) of this section is upon:

(a) The Colorado water conservation board, acting in cooperation with the Colorado soil conservation board, with regard to floodplains;

(b) The Colorado state forest service, with regard to wildfire hazard areas;

(c) The Colorado geological survey, with regard to geologic hazard areas, geologic reports, and the identification of mineral resource areas;

(d) The Colorado division of mines, with regard to mineral extraction and the reclamation of land disturbed thereby;

(e) The Colorado soil conservation board and soil conservation districts, with regard to resource data inventories, soils, soil suitability, erosion and sedimentation, floodwater problems, and watershed protection; and

(f) The division of wildlife of the department of natural resources, with regard to significant wildlife habitats.

(3) Pursuant to section 24-65.1-202 (1) (d), the oil and gas conservation commission of the state of Colorado may identify an area of oil and gas development for designation by local government as an area of state interest.

PART 4

DESIGNATION OF MATTERS

OF STATE INTEREST - GUIDELINES FOR ADMINISTRATION

24-65.1-401. Designation of matters of state interest. (1) After public hearing, a local government may designate matters of state interest within its jurisdiction, taking into consideration:

(a) The intensity of current and foreseeable development pressures; and

(b) Applicable guidelines for designation issued by the Colorado land use commission after recommendation from other state agencies, if appropriate. In adopting such guidelines, the Colorado land use commission shall be guided by the standards set forth in this article applicable to local governments.

(2) A designation shall:

(a) Specify the boundaries of the proposed area; and

(b) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

24-65.1-402. Guidelines - regulations. (1) The local government shall develop guidelines for administration of the designated matters of state interest. The content of such guidelines shall be such as to facilitate administration of matters of state interest consistent with sections 24-65.1-202and 24-65.1-202.

(2) A local government may adopt regulations interpreting and applying its adopted guidelines in relation to specific developments in areas of state interest and to specific activities of state interest.

(3) No provision in this article shall be construed as prohibiting a local government from adopting guidelines or regulations containing requirements which are more stringent than the requirements of the criteria listed in sections 24-65.1-202and 24-65.1-204.

24-65.1-403. Technical and financial assistance. (1) Appropriate state agencies shall provide technical assistance to local governments in order to assist local governments in designating matters of state interest and adopting guidelines for the administration thereof.

(2) (a) The department of local affairs shall oversee and coordinate the provision of technical assistance and provide financial assistance as may be authorized by law.

(b) The department of local affairs shall determine whether technical or financial assistance or both are to be given to a local government on the basis of the local government's:

(I) Showing that current or reasonably foreseeable development pressures exist within the local government's jurisdiction; and

(II) Plan describing the proposed use of technical assistance and expenditure of financial assistance.

24-65.1-404. Public hearing - designation of an area or activity of state interest and adoption of guidelines by order of local government. (1) The local government shall hold a public hearing before designating an area or activity of state interest and adopting guidelines for administration thereof.

(2) (a) Notice, stating the time and place of the hearing and the place at which materials relating to the matter to be designated and guidelines may be examined, shall be published once at least thirty and not more than sixty days before the public hearing in a newspaper of general circulation in the county. The local government shall send written notice to the Colorado land use commission of a public hearing to be held for the purpose of designation and adoption of guidelines at least thirty days and not more than sixty days before such hearing.

(b) Any person may request, in writing, that his name and address be placed on a mailing list to receive notice of all hearings held pursuant to this section. If the local government decides to maintain such a mailing list, it shall mail notices to each person paying an annual fee reasonably related to the cost of production, handling, and mailing such notice. In order to have his name and address retained on said mailing list, the person shall resubmit his name and address and pay such fee before January 31 of each year.

(3) Within thirty days after completion of the public hearing, the local government, by order, may adopt, adopt with modification, or reject the particular designation and guidelines; but the local government, in any case, shall have the duty to designate any matter which has been finally determined to be a matter of state interest and adopt guidelines for the administration thereof.

(4) After a matter of state interest is designated pursuant to this section, no person shall engage in development in such area and no such activity shall be conducted until the designation and guidelines for such area or activity are finally determined pursuant to this article.

(5) Upon adoption by order, all relevant materials relating to the designation and guidelines shall be forwarded to the Colorado land use commission for review.

24-65.1-405. Report of local government's progress. (1) Not later than one hundred eighty days after the effective date of this article, each local government shall report to the Colorado land use commission, on a form to be furnished by the Colorado land use commission, the progress made toward designation and adoption of guidelines for administration of matters of state interest.

(2) Upon the basis of the information contained in such reports and any information received pursuant to any other relevant provision of this article, the Colorado land use commission may take appropriate action pursuant to section 106-4-3(2)(a).

24-65.1-406. Colorado land use commission review of local government order containing designation and guidelines. (1) Not later than thirty days after receipt of a local government order designating a matter of state interest and adopting guidelines for the administration thereof, the Colorado land use commission shall review the contents of such order on the basis of the relevant provisions of part 2 of this article and shall accept the designation and guidelines or recommend modification thereof.

(2) If the Colorado land use commission decides that modification of the designation or guidelines is required, the Colorado land use commission shall, within said thirty-day period, submit to the local government written notification of its recommendations and shall specify in writing the modifications which the Colorado land use commission deems necessary for compliance with the relevant provisions of part 2 of this article.

(3) Not later than thirty days after receipt of the modifications reccmmended by the Colorado land use commission, a local government shall:

(a) Modify the original order in a manner consistent with the recommendations of the Colorado land use commission and resubmit the order to the Colorado land use commission; or

(b) Notify the Colorado land use commission that the Colorado land use commission's recommendations are rejected.

24-65.1-407. Colorado land use commission may initiate identification, designation, and promulgation of guidelines for matters of state interest. (1) (a) The Colorado land use commission may submit a formal request to a local government to take action with regard to a specific matter which said commission considers to be of state interest within the local government's jurisdiction. Such request shall identify the specific matter and shall set forth the information required in section 24-65.1-401 (2) (a) and (2) (b). Not later than thirty days after receipt of such request, the local government shall publish notice and hold a hearing within sixty days pursuant to the provisions of section 24-65.1-404 and issue its order thereunder.

(b) After receipt by a local government of a request from the Colorado land use commission pursuant to paragraph (a) of this subsection (1), no person shall engage in development in the area or conduct the activity specifically described in said request until the local government has held its hearing and issued its order relating thereto.

(c) If the local government's order fails to designate such matter and adopt guidelines therefor, or, after designation, fails to adopt guidelines therefor pursuant to standards set forth in this article applicable to local governments, the Colorado land use commission may seek judicial review of such order or guidelines by a trial de novo in the district court for the judicial district in which the local government is located. During the pendency of such court proceedings, no person shall engage in development in the area or conduct the activity specifically described in said request except on such terms and conditions as authorized by the court.

PART 5

PERMITS FOR DEVELOPMENT IN AREAS OF STATE INTEREST AND FOR CONDUCT OF ACTIVITIES OF STATE INTEREST

24-65.1-501. Permit for development in area of state interest or for conduct of an activity of state interest required. (1) (a) Any person desiring to engage in development in an area of state interest or to conduct an activity of state interest shall file an application for a permit with the local government in which such development or activity is to take place. The application shall be filed on a form prescribed by the Colorado land use commission. A reasonable fee determined by the local government sufficient to cover the cost of processing the application, including the cost of holding the necessary hearings, shall be paid at the time of filing such application.

(b) The requirement of paragraph (a) of this subsection (1) that a public utility obtain a permit shall not be deemed to waive the requirements of article 5 of title 40, C.R.S. 1973, that a public utility obtain a certificate of public convenience and necessity.

(2) (a) Not later than thirty days after receipt of an application for a permit, the local government shall publish notice of a hearing on said application. Such notice shall be published once in a newspaper of general circulation in the county, not less than thirty nor more than sixty days before the date set for hearing, and shall be given to the Colorado land use commission. The Colorado land use commission may give notice to such other persons as it determines not later than fourteen days before such hearing.

(b) If a person proposes to engage in development in an area of state interest or for conduct of an activity of state interest not previously designated and for which guidelines have not been adopted, the local government may hold one hearing for determination of designation and guidelines and granting or denying the permit.

(c) The local government may maintain a mailing list and send notice of hearings relating to permits in a manner similar to that described in section 24-65.1-404 (2)(b).

(3) The local government may approve an application for a permit to engage in development in an area of state interest if the proposed development complies with the local government's guidelines and regulations governing such area. If the proposed development does not comply with the guidelines and regulations, the permit shall be denied.

(4) The local government may approve an application for a

permit for conduct of an activity of state interest if the proposed activity complies with the local government's regulations and guidelines for conduct of such activity. If the proposed activity does not comply with the guidelines and regulations, the permit shall be denied.

(5) The local government conducting a hearing pursuant to this section shall:

(a) State, in writing, reasons for its decision, and its findings and conclusions; and

(b) Preserve a record of such proceedings.

(6) After the effective date of this article, any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest who does not obtain a permit pursuant to this section may be enjoined by the Colorado land use commission or the appropriate local government from engaging in such development or conducting such activity.

24-65.1-502. Judicial review. The denial of a permit by a local government agency shall be subject to judicial review in the district court for the judicial district in which the major development or activity is to occur.

TITLE 25

HEALTH

ARTICLE 1

ADMINISTRATION

PART 1

DEPARTMENT OF HEALTH

25-1-101. Construction of terms.--
(1) When any law of this state refers to the executive director of the state department of public health, said law shall be construed as referring to the executive director of the department of health.

(2) Whenever any law of this state refers to the state department of public health, said law shall be construed as referring to the department of health.

25-1-102. Department created -- executive director -- divisions.
(1) There is hereby created a department of health, referred to in this part 1 as the "department". The head of the department shall be the executive director of the department of health, which office is hereby created. The governor shall appoint said executive director, with the consent of the senate, and the executive director shall serve at the pleasure of the governor. The executive director shall administer the department, subject to the authority of the state board of health, the air pollution control commission, and the state water quality control commisson.
(2) The department shall consist of the following divisions:
(a) The division of administration, and such sections and units established as provided by law;
(b) The division of alcohol and drug abuse.

25-1-103. State board of health created. There is hereby created a state board of health, referred to in this part 1 as the "board", which shall consist of nine members, of which one member shall be appointed by the governor, with the consent of the senate, from each congressional district and the remainder from the state at large. Appointments made to take effect on January 1, 1973, shall be made in accordance with section 24-1-135, C.R.S. 1973. Appointments thereafter to the board shall be made, with the consent of the senate, for terms of four years each, and shall be made so that no business or professionsl group shall constitute a majority of the board.

25-1-104. State board--organization.--The board shall elect from its members a president, vice-president and such other board officers as it shall determine. The executive director of the department, in the

discretion of the board, may serve as secretary of the board but shall not be eligible to appointment as a member. All board officers shall hold their offices at the pleasure of the board. Regular meetings of the board shall be held not less than once every three months at such times as may be fixed by resolution of the board. Special meetings may be called by the president, by the executive director of the department, or by a majority of the members of the board at any time on three days' prior notice by mail or, in case of emergency, on twenty-fours' notice by telephone or telegraph. The board shall adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the board. Members shall serve without compensation but shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their places of residence in attendance at meetings. All meetings of the board, in every suit and proceeding, shall be taken to have been duly called and regularly held, and all orders and proceedings of the board to have been authorized, unless the contrary is proved.

25-1-105. Executive director - qualifications - salary - office. The executive director of the department shall have the following qualifications: A degree of doctor of medicine from a medical school approved by the council on medical education and hospitals, or its successor, of the American medical association, at least one year of graduate study in a school of public health approved by said council, and not less than three years' experience in administrative practice as a full-time public health officer. The executive director shall receive such salary as may be fixed by the board subject to the constitution and state personnel system laws of the state and within the limits of funds made available to the department by appropriation of the general assembly or otherwise. He shall be allowed traveling and subsistence expenses actually actually and necessarily incurred in the performance of his official duties when absent from his place of residence. He shall maintain his office at the state capital and shall be custodian of all property and records of the department of health.

25-1-106. Divisional personnel. The executive director of the department shall appoint the director of the division of administration, pursuant to the provisions of section 13 of article XII of the state constitution. Each subdivision (and section) of the division of administration shall be under the management of a head, and such heads and all other subordinate personnel of the division shall be appointed by the director of the division, subject to the constitution and state personnel system laws of the state, and possess qualifications approved by the board. All personnel shall receive such compensation as fixed by the executive director with the approval of the board, subject to the constitution and state personnel system laws of the state and within the limist of funds made available to the department by appropriation of the general assemble or otherwise. With the approval of the executive director, employees shall also be allowed traveling and subsistence expenses actually and necessarily incurred in the performance of

their official duties when absent from their places of residence.

25-1-107. Powers and duties of the department.
(1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(a) To investigate and control the causes of epidemic and communicable diseases affecting the public health;

(b) To establish, maintain, and enforce isolation and quarantine, and, in pursuance thereof, and for this purpose only, to exercise such physical control over property and over the persons of the people within this state as the department may find necessary for the protection of the public health;

(c) To close theatres, schools and other public places, and to forbid gatherings of people when necessary to protect the public health;

(d) To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health;

(e) To establish and enforce minimum general sanitary standards as to the quality of wastes discharged upon land and the quality of fertilizer derived from excreta of human beings or from the sludge of sewage disposal plants;

(f) To collect, compile, and tabulate reports of marriages, dissolution of marriages, declaration of invalidity of marriages, births, deaths, and morbidity, and to require any person having information with regard to the same to make such reports and submit such information as the board shall by rule or regulation provide;

(g) To regulate the disposal, transportation, interment and disinterment of the dead;

(h) To establish, maintain and approve chemical, bacteriological and biological laboratories, and to conduct such laboratory investigations and examinations as it may deem necessary or proper for the protection of the public health;

(i) To make, approve and establish standards for diagnostic tests by chemical, bacteriological and biological laboratories, and to require such laboratories to conform thereto; and to prepare, distribute and require the completion of forms or certificates with respect thereto;

(j) To purchase, and to distribute to licensed physicians and veterinarians, with or without charge, as the board may determine upon considerations of emergency or need, such vaccines, serums, toxoids and other approved biological or therapeutic products as may be necessary for the protection of the public health;

(k) To impound any and all vegetables and other edible crops and meat and animal products intended for and unfit for human consumption, and, upon five days' notice and after affording reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health;

(l) (I) To annually license and to establish and enforce standards for the operation of general hospitals, psychiatric hospitals, community clinics, rehabilitation centers, convalescent centers, community mental health centers, facilities for the mentally retarded, habilitation centers for brain damaged children, chiropractic centers and hospitals, maternity hospitals, nursing care facilities, intermediate care facilities, residential care facilities, and other institutions of a like nature, except those wholly owned and operated by any governmental unit or agency. The issuance, suspension, renewal, revocation, annulment, or modification of licenses shall be governed by the provisions of sections 24-4-104, C.R.S. 1973, and 25-3-102, and all licenses shall bear the date of issue and cover a twelve-month period. Nothing contained in this paragraph (l) shall be construed to prevent the department from adopting and enforcing, with respect to projects for which federal assistance has been obtained or shall be requested, such higher standards as may be required by applicable federal laws or regualtions of federal agencies reqponsible for the administration of such federal laws.

(II) To establish and enforce standards for the operation and maintenance of the health institutions named in subparagraph (I) of this paragraph (l), wholly owned and operated by the state or any of its political subdivisions, and no such institution shall be operated or maintained without an annual certificate of compliance;

(III) (A) For purposes of this paragraph (l), the term "community mental health center: means wither a physical plant or a group of services under unified administration and including at least the following: Inpatient services; outpatient services; day hospitalization; emergency services; and consultation and educational services, which services are provided principally for mentally ill persons residing in a particular community in or near which the facility is situated.

(B) The term "facility for the mentally retarded: means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarede, including facilities for training specialists and sheltered workshops for the mentally retarded, but only if such workshops are part of facilities which privide or will provide comprehensive services for the mentally retarted.

(m) To establish and enforce sanitary standards for the operation and maintenance of orphanages, day care nurseries, foster homes, family care homes, summer camps for children, lodging houses, hotels, public conveyances and stations, schools, factories, workshops, industrial and labor camps, recreational resorts and camps, swimming pools, public baths, and other buildings, centers, and places used for public gatherings;

(n) To establish sanitary standards and make sanitary, sewerage, and health inspections and examinations for charitable, penal, and other public institutions, and, with respect to the state institutions under the department of institutions specified in section 27-1-104, C.R.S. 1973, such inspections and examinations shall be made at least once a year. Reports on such inspections of institutions under his control shall be made to the executive director of the department of institutions for appropriate action, if any.

(o) To promulgate rules and regulations for the grading, labeling and classification of milk and milk products for fluid consumption, including cottage cheese; to establish minimum general sanitary standards of quality of all milk and cream and other dairy products sold for human consumption in this state; to inspect and supervise, in plants handling any milk or milk products for fluid consumption, the sanitation of production, processing and distribution of all milk and cream and other dairy products sold for human consumption in this state, and to this end to take samples of market milk and cream for bacteriological, sedimentation and other analyses, and to enforce the sanitary standards for milk products in such plants as provided by law; to issue, for the fees established by law, licenses and temporary permits to operate milk plants and receiving stations handling any milk or milk products for fluid consumption;

(p) To establish and enforce sanitary standards for the operation of slaughtering, packing, canning and rendering establishments and stores, shops, and vehicles wherein meat and animal products intended for human consumption may be offered for sale or transported, but this shall not be construed to authorize any state officer or employee to interfere with regulations or inspections made by anyone acting under the laws of the United States;

(q) To disseminate public health information;

(r) To examine plans, specifications, and other related data pertaining to the proposed construction of any and all publicly or privately owned community water facilities submitted for review of sanitary engineering features prior to construction of such facilities;

(s) To establish and enforce standards for exposure to toxic materials in the gaseous, liquid, or solid phase that may be deemed necessary for the protection of public health;

(t) To establish and enforce standards for exposure to enviornmental conditions, including radiation, that may be deemed necessary for the protection of the public health;

(u) (I) To study the problem of alcoholism, including methods and facilities available for the care, custody, detention, treatment, employment, and rehabilitation of persons addicted to the intemperate use of spirituous or intoxicating liquors. It shall develop information on the subject of alcoholism for the assistance and guidance of courts, welfare agencies, hospitals, and the public. Such information shall include information existing private agencies and services which are available to persons suffering from alcoholism. The department shall from time to time submit, together with its annual report, a special report containing the following:

(A) The financial cost to the state and its political subdivisions directly or indirectly attributable to alcoholism;

(B) The feasibility and need of establishing state-supported institutions to provide for the care, custody, and treatment of alcoholics;

(C) If the establishment of state institutions for the care of alcoholics is recommended, specific recommendations in detail concerning: The type od institution, location, cost of acquisition or construction, required staffing, costs of operation, source of funds, and such other information as may be deemed necessary to present concrete legislative prospects to the general assembly upon the subject of the responsibility, care, and treatment of residents of Colorado affected with alcoholism;

(D) Recommendations on statutory procedure to govern the admittance, commitment, parole, transfer, and discharge of voluntary and involuntary alcoholic patients.

(II) The department may accept or refuse to accept, on behalf of and in the name of the state, gifts, donations, and grants for any purpose connected with the work and program of the department. Any such property so given shall be held by the state treasurer, but the department, with the approval of the governor, shall have the power to direct the disposition of any property so given for any purpose consistent with the terms and conditions under which such gift was created.

(III) The executive director shall establish within the department a separate division which shall administer the duties imposed upon the department by this paragraph (u).

(v) To carry out the policies of the state as set forth in part 1 of article 6 of this title with respect to family planning.

(w) To carry out the policies of the state as set forth in article 17 of title 10, C.R.S. 1973.

(x) (I) To adopt and enforce minimum general sanitary standards and regulations to protect the quality of drinking water supplied to the public, including the authority to require disinfection of such water.

(II) Standards and regulations adopted pursuant to this paragraph (x) may also include such minimum standards and regulations as are necessary to assume enforcement of the federal "Safe Drinking Water Act" with regard to public water systems, including, but not limited to, requirements for:

(A) Review and approval by the department, prior to construction, of plans and specifications for new waterworks or for improvements or modifications to existing waterworks to ensure that such facilities will be capable of complying with adopted drinking water standards. The department may impose conditions in approving such plans and specifications to assure continued compliance with applicable standards, rules, and regulations of the department. Such approval shall not relieve the supplier of water from compliance with adopted standards and regulations of the department. For the purpose of this subparagraph (II), "waterworks" means only the facility which produces or treats drinking water to be supplied to the public.

(B) Maintenance of records by the supplier of water relating to the results of tests and procedures required by the standards and regulations, including filing periodic reports with the department;

(C) Public notification by the supplier of water, pursuant to the provisions of the federal "Safe Drinking Water Act".

(D) Granting exemptions and variances from the minimum general sanitary standards to allow appropriate time for compliance, when such procedure can be effected without seriously jeopardizing the public health.

(III) (A) Upon presentation of proper credentials, authorized inspectors of the department may enter and inspect, at any reasonable time and in a reasonable manner, any property, premises, or place for the purpose of investigating any actual, suspected, or potential violations of minimum general sanitary standards adopted pursuant to this subsection (1). Samples of drinking water may be obtained by such inspectors, and a portion of any samples to be used as evidence in an enforcement action shall be left with the owner, operator, or person in charge of the premises. A copy of the results of any analysis of such sample shall be furnished promptly to the owner, operator, or person in charge.

(B) If such entry or inspection is denied or not consented to, the department is empowered to and shall obrain, from the district or county court for the judicial district or county in which such property, premises, or place is located, a warrant to enter and inspect said property, premises, or place. The said district and county courts of the state are empowered to issue such warrants upon a proper showing of the need for such entry and inspection, and a copy of any inspection report shall be provided the court within a reasonable time after making the inspection.

(IV) The department may advise with municipalities, utilities, institutions, organizations, and individuals concerning the methods or processes believed best suited to provide the protection or purification

of water to meet minimum general sanitary standards adopted pursuant to this paragraph (x).

(V) As used in this section, "public water systems" means systems for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:

(A) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

(B) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(VI) As used in this section, "supplier of water" means any person who owns or operates a public water system.

(VII) Except as otherwise provides in the federal "Safe Drinking Water Act", the provisions of this section shall apply to each public water system in this state; except that the provisions of this section shall not apply to a public water system:

(A) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(B) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(C) Which does not sell water to any person; and

(D) Which is not a carrier which conveys passengers in interstate commerce.

(2) The phrase "minimum general sanitary standards" as used in this section and section 25-1-109 (1) (h) means the minimum standards reasonably consistent with protection of the public health, and, in the case of minimum general sanitary standards as to the quality of water supplied to the public, the same shall in no event be more than the drinking water standards promulgated pursuant to the federal "Safe Drinking Water Act". The word "standards" as used in this section and section 25-1-109 (1) (h) means standards reasonably designed to promote and protect the public health.

25-1-108. Powers and duties of the state board of health.

(1) In addition to all other powers and duties conferred and imposed upon the state board of health by the provisions of this part 1, the board has the following specific powers and duties:

(a) To determine general policies to be followed by the division of administration in administering and enforcing the public health laws and the orders, standards, rules, and regulations of the board;

(b) To act in an advisory capacity to the executive director of the department on a-l matters pertaining to public health;

(c) (I) To issue from time to time such orders, to adopt such rules and regulations, and to establish such standards as the board may deem necessary or proper to carry out the provisions and purposes of this part 1 and to adminster and enforce the public health laws of this state.

(II) The rules and regulations adopted or the standards established concerning building regulations and fire safety for nursing homes shall not exceed whichever of the following standards is the highest: The 1958 edition of the uniform building code, volume 1, second printing, for new construction; the building exists code, fourteenth edition, N.F.P.A. 101-1057, for existing construction; the standards imposed by any city, city and county, town, county, or other political subdivision, in which a nursing home is located as provided in section 25-1-110.

(III) All rules, regulations, and standards adopted prior to February 21, 1947, the board concerning building regulations or fire safety for nursing homes which are more strict than those provided by the highest standards as set forth in this paragraph (c) are nullified by this section, but nothing contained in this paragraph (c) shall be construed to prevent the department from adopting and enforcing, with respect to projects for which federal assistance has been obtained or shall be requested, such higher standards as may be required by applicable federal laws or regulations of federal agencies responsible for the administration of such federal laws.

(IV) For the purpose of this part 1, all rules, regulations, and standards adopted prior to February 21, 1947, by the board or any board, office, or bureau whose duties are by virtue of this section transferred to the board or the department, in effect immediately prior to February 21, 1947, and not inconsistent with the authority of the board as provided in this part 1 shall remain in full force and effect until superseded by rules, regulations, or standards duly adopted pursuant to this paragraph (c) by the board in conformance with this

part 1, to the same effect as though such rules, regulations, and standards were adopted subsequent to the passage of this part 1 in full conformance therewith.

(d) To hold hearings, adminster oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon the board;

(e) To establish and appoint, as the board may deem necessary or advisable, special advisory committees to advise and confer with the board concerning the public health aspects of any business, profession, or industry within the state of Colorado. Any committee established and appointed under the provisions of this section shall act only in an advisory capacity to the board and shall meet with the board at least once each year at such regular times as such committee may be called into meeting by the president of the board. Members of any special advisory committee shall serve without compensation but may, in the discretion of the board, be allowed actual and necessary traveling and subsistence expenses when in attendance at meetings away from their places of residence.

(f) To accept and, through the division of administration, use, disburse, and adminster all federal aid or other property, services, and moneys allotted to the department for state and local public works or public health functions, or allotted without designation of a specific agency for purposes which are not inconsistent with the laws of this state, the conditions under which such property, services, or moneys shall be accepted and administered. On behalf of the state, the board is empowered to make such agreements, with the approval of the attorney general, not inconsistent with the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance.

(2) The board shall act only by resolution adopted at a duly called meeting of the board, and no individual member of the board shall exercise individually any administrative authority with respect to the department.

25-1-109. Powers and duties of the division of administration.
(1) In addition to the other powers and duties conferred and imposed in this part 1 upon the division of administration, the division, through the director or, upon his direction and under his supervision, through the other officers and employees of the division, has the following powers and duties:

(a) To administer and enforce the public health laws of the state of Colorado and the standards, orders, rules, and regulations established, issued, or adopted by the board;

(b) To exercise all powers and duties conferred and imposed upon the department not expressly delegated to the board by the provisions of this part 1;

(c) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance

of the powers and duties vested in or imposed upon the division of administration;

(d) To prepare and transmit annually, in the form and manner prescribed by the controller pursuant of the provisions of section 24-30-208, C.R.S. 1973, a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the department or to any subdivision thereof;

(e) To supervise all subdivisions and boards of the department to determine that publications of the department and of any subdivisions thereof circulated in quantity outside the executive branch are issued in accordance with fiscal rules promulgated by the controller pursuant to the provisions of section 24-30-208, C.R.S. 1973.

(f) To appoint, pursuant to section 13 of article XII of the state constitution, a chief health inspector and such deputy inspectors as may be authorized. Such inspectors have the power to enter any workplace as provided in sections 8-1-116 and 8-11-106, C.R.S. 1973, and have the duty to inspect as provided in section 8-11-107 (1), C.R.S. 1973. All expenses incurred by the division and its employees, pursuant to the provisions of this section, shall be paid from the funds appropriated for its use, upon approval of the director.

(g) To enter into cooperative agreements with the director of the division of labor to carry out occupational health and safety programs and inspections required by section 8-11-105, C.R.S. 1973.

(h) To administer and enforce the minimum general sanitary standards and regulations adopted pursuant to section 25-1-107 (1) (x).

25-1-110. Higher standards permissible. Nothing in this part 1 shall prevent any incorporated city, city and county, town, county, or other political subdivision of the state from imposing and enforcing higher standards than are imposed under this part 1.

25-1-111. Revenues of the department.

(1) Except as otherwise specifically provided by law, the department has no revenue or license collecting functions, and any tax or license fee fixed and determined in conformity with law by the department shall be certified by the appropriate division or officer to the department of revenue for collection

(2) The department of the treasury of this state is designated as custodian of all funds allotted to the state for the purpose outlined by section 25-1-108 (1) (f). Such funds and all other funds of the department shall be payable only on voucher signed by the executive director of the department and by the president of the board and shall be paid by warrant of the controller.

25-1-112. Legal adviser and actions. The attorney general shall be the legal adviser for the department and shall defend it in all actions and proceedings brought against it. The district attorney of the judicial district in which a cause of action may arise shall bring any action, civil or criminal, requested by the executive director of the department to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or to prosecute for the violation of or for the enforcement of the public health laws or the standards, orders, rules, and regulations of the department established by or issued under the provisions of this part 1. If the district

attorney fails to act, the executive director may bring any such action and shall be represented by the attorney general or, with the approval of the board, by special counsel.

25-1-113. Judicial review of decisions.
(1) Any person aggrieved and affected by a decision of the board or the executive director of the department is entitled to judicial review by filing in the district court of the county of his residence, or of the city and county of Denver, within ninety days after the public announcement of the decision, an appropriate action requesting such review. The court may make any interested person a party to the action. The review shall be conducted by the court without a jury and shall be confined to the record, it a complete record in presented; except that, in cases of alleged irregularities in the record or in the procedure before the board or the division of administration, testimony may be taken in the court. The court may affirm the decision or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings and decisions of the board being: Contrary to constitutional rights or privileges; or in excess of the statutory authority or jurisdiction of the board or the executive director of the department, or affected by any error of law; or made or promulgated upon unlawful procedure; or unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious.

(2) Any party may have a review of the final judgement or dicision of the district court by appellate review in accordance with law and the Colorado appellate rules.

25-1-114. Unlawful acts - penalties.
(1) It is unlawful for any person, association, or corporation, and the officers thereof:

(a) To willfully violate, disobey, or disregard the provisions of the public health laws or terms of any lawful notice, order, standard, rule, or regulation issued pursuant thereto; or

(b) To fail to make or file reports required by law or rule of the board relating to the existence of disease or other facts and statistics relating to the public health; or

(c) To conduct any business or activity over which the department possesses the power to license and regulate without such license or permit as required by the department; or

(d) To willfully and falsely make or alter any certificate or license or certified copy thereof issued pursuant to the public health laws; or

(e) To knowingly transport or accept for transportation, interment, or other disposition a dead body without an accompanying permit issued in accordance with the public health laws or the rules of the board; or

(f) To willfully fail to remove from private property under his control at his own expense, within forty-eight hours after being ordered so to do by the health authorities, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of the department, whether such person, association, or corporation is the owner, tenant, or occupant of such private property; except that, if such condition is due to an act of God, it shall be removed at public expense; or

(g) To pay, give, present, or otherwise convey to any officer or employee of the department any gift, remuneration, or other consideration, directly or indirectly, which such officer or employee is forbidden to receive by the provisions of this part 1; or

(h) To make, install, maintain, or permit any cross-connection between any water system supplying drinking water to the public and any pipe, plumbing fixture, or water system which contains water of a quality below the minimum general sanitary stardards as to the quality of drinking water supplied to the public or to fail to remove such connection wihtin ten days after being ordered in writing by the department to remove the same. For the purposes of this paragraph (h), "cross-connection" means any connection which would allow water to flow from any pipe, plumbing fixture, or water system into a water system supplying drinking water to the public.

(2) It is unlawful for any officer or employee of the department or member of the board to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect of improper performance of the duties imposed upon him by or on behalf of the department.

(3) It is unlawful:

(a) For any officer or employee of the department to perform any work, labor, or services other than the duties assigned to him by or on beholf of the department during the hours such officer or employee is regularly employed by the department, or to perform his duties as an officer or employee of the department under any condition or arrangement that involves a violation of this or any other law of the state of Colorado;

(b) For any officer or employee of the department other than members of the board to perform any work, labor, or services which consist of the private practice of medicine, veterinary surgery, sanitary engineering, nursing, or any other profession which is or may be of special benefit to any private person, association, or corporation as distinguished from the department or the public generally, and which is performed by such officer or employee, directly or indirectly, for remuneration, whether done in an active, advisory, or consultative capacity or performed within or without the hours of such officer or employee is regularly employed by the department.

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(4) Any person, association, or corporation, or the officers thereof, who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment and, in addition to such fine and imprisonment, shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. Conviction under the penalty provisions of this part 1 or any other public health law shall not relieve any person from any civil action in damages that may exist for an injury resulting from any violation of the public health laws.

25-1-114.1. Civil penalties.
(1) The division of administration of the department may institute a civil action against any person who violates a final enforcement order of the department issued for a willful violation of any minimum general sanitary standard or regulation adopted pursuant to section 25-1-107 (1) (x). Such action shall be brought in the district court in which the violation of the standard or regulation is alleged to have occurred.

(2) Upon finding that a final enforcement order of the department has been violated and that the willful violation of the standard or regulation described in the order in fact occurred, the court shall:

(a) Impose a civil penalty on the violator of not more than one thousand dollars per day for each day the violation of the standard or regulation occurred; or

(b) Enter such order as the public health may require, taking into consideration, where appropriate, the cost and time necessary to comply; or

(c) Impose such civil penalty and enter such order.

25-1-115. Treatment - religious belief. Nothing in this part 1 shall authorize the department to impose any mode of treatment inconsistent with the religious faith or belief of any person.

25-1-116. Licensed healing systems not affected. Nothing in this part 1 shall be construed or used to amend or restrict any statute in force pertaining to the scope of practice of any state licensed healing system.

25-1-117. Acquisition of federal surplus property. The governor of the state of Colorado is authorized, for and on behalf of the state of Colorado, to make application for and secure the transfer to the state of Colorado of federal surplus property for the purpose of establishing state public health facilities in the state of Colorado; and to do and perform any acts and things which may be necessary to carry out the

above, including the preparing, making, and filing of plans, applications, reports, and other documents, and the execution, acceptance, delivery, and recordation of agreements, deeds, and other instruments pertaining to the transfer of said property. The governor is further authorized to expend available general revenue funds, or such other funds as may be made available by the general assembly, for the purpose of making the above application and securing the transfer of said property in accordance with federal laws and with rules and regulations and requirements of the United States department of health, education, and welfare.

25-1-118. Rental properties - salvage - fund created.
(1) If any federal surplus property which has been acquired by the governor pursuant to the provisions of section 25-1-117 consists of rental property, the executive director of the department of institutions is authorized to continue renting such property for such rentals as he deems reasonable.

(2) The executive director is also authorized to sell any salvage resulting from the repair, remodeling, or demolition of the facilities of any such properties acquired under the provisions of said section 25-1-117.

(3) Any moneys received from such rentals and from any such salvage shall be deposited with the state treasurer and credited by him to the Fort Logan state hospital fund, which fund is hereby created.

25-1-119. Disposition and expenditures of moneys from fund.
(1) Any moneys credited to the Fort Logan state hospital fund received from rentals and salvage as provided in section 25-1-118 shall be held for the following purposes subject to appropriation as provided in paragraph (b) of this subsection (1):

(a) The executive director of the department of institutions shall compute the cost of operation and maintenance of the rental properties and of repair, remodeling, or demolition of any facilities acquired in accordance with section 25-1-118.

(b) If, after computing said costs set forth in paragraph (a) of this subsection (1), any sum remains from said rentals and salvage and if the law, contract, deed, or conveyance under which the state acquired such property requires that any net profits, or any part thereof, realized from such rentals or salvage shall be paid to the federal government, then such payments shall be made to the federal government upon vouchers and warrants drawn according to law without further appropriation.

TITLE 25

HEALTH

PART 5

County and District Health Departments

25-1-501. Establishment of county or district health departments. Any county, by resolution of its board of county commissioners, may establish and maintain a county health department. Any two or more adjacent counties, by resolutions of the boards of county commissioners of the respective counties, may establish and maintain a district health department. Reference in this part 5 to a "department" means a county or district health department. A department shall consist of a board of health, a public health officer, and all other personnel employed or retained under the provisions ot this part 5.

25-1-502. County and district boards of health.
(1) Within thirty days after the adoption of a resolution to establish and maintain a department, the board of county commissioners shall proceed to organize such department by the appointment of a county of district board of health.

(2) Every county board of health shall consist of five members to be appointed by the board of county commissioners for five-year terms; except that the members first appointed shall be so designated so that one serves for one year, one for two years, one for three years, one for four years, and one for five years from the date of appointment. Thereafter full term appointments shall be made for five years. All members shall be residents of the county. Appointments shall be made to the board so that no business or professional group shall constitute a majority of the board. Any vacancy on the board shall be filled in the same manner as full term appointments by the appointment of a qualified person for the unexpired term.

(3) Every district board of health shall consist of seven members to be appointed by a committee composed of one member of each of the boards of county commissioners of the counties comprising the district. Such committee member may be the chairman or any other member of the board of county commissioners specifically designated by the chairman for such purpose. The members of the board of health first appointed shall be so designated so that one shall serve for one year, two for two years, one for three years, two for four years and one for five years from the date of appointment. Thereafter full term appointments shall be for five years. Each member shall be a resident of any one of the counties comprising the district. Appointments shall be made to the board so that no business or professional group shall constitute a majority of the board. Any vacancy on the board shall be filled in the same manner as full term appointments by the appointment of a qualified person for the unexpired term.

25-1-503. Organization of boards of health.

(1) A board, at its organization meetion, shall elect from its members a president and such other officers as it shall determins. The public health officer of the department, in the discretion of the board, may serve as secretary but shall not be a member of the board. All officers shall hold office at the pleasure of a board.

(2) Regular meetings of a board shall be held at least once every three months, at such times as may be fixed by resolution of the board. Special meetings of the board may be called by the president, by the county or district public health officer, or by a majority of the members of the board at any time on three days' prior notice by amil, or in case of emergency, on twenty-four hours' notice by telephone or telegraph. A board may adopt, and at any time may amend, by-laws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of a board. Members shall serve without compensation byt shall be reimbursed for their actual and necessary traveling and subsistence expenses when absent from their places of residence in attendance of meetings. All meetings of a board in every suit and proceeding are deemed duty called and regularly held, and all orders and proceedings of a board are deemed authorized, unles the contrary is proved.

25-1-504. Jurisdiction of health departments.

(1) (a) The jurisdiction of any department shall extend over all unincorporated area and over all municipal corporations within the territorial limits of the county or the counties comprising the district, but not over the territory of any municipal corporation which has a population in excess of forty thousand and which maintains its own health department and employs a supervising health officer. Any such municipal corporation not otherwise within the jurisdiction of a department, by agreement of its city council, board of trustees, of other governing body and the board of county commissioners of the county wherein such municipal corporation is situated, if such county has a county health department or the district board of health, if such county is within a district health department, may merge its department with the county or district health department.

(b) In the event of the merger of a health department of a municipal corporation with that of a county or district, the agreement of merger, among other things, shall provide that such number of members of the county or district board of health as is specified in the agreement shall be appointed by the city council or board of trustees of the municipal corporation rather than as provided in section 25-1-502, and the number of members specified in such agreement shall be appointed by such city council or board of trustees and the remaining members shall be appointed as provided in section 25-1-502.

(c) The board of county commissioners, in order to give said municipal corporation representation on a county board of health

previously established may declare vacancies in said county board of health and permit said vacancies to be filled by the city council or board of trustees.

(2) All local boards of health existing within the county or district, except those of any municipal corporation which has a population in excess of forty thousand and which maintains its own local health department and employs a supervising health officer and which does not elect to merge its health activities with the county or district health department, shall be dissolved upon the organization of a county or district health department under the provisions of this part 5 or upon the acceptance of a county into a district already established.

(3) In the event of the dissolution of any county or district health department, or the withdrawal of a county from an established district, or the withdrawal of a municipal corporation, which has voluntarily merged its health department with a county or district health department, from such department, local boards of health shall again be established under the provisions of
duties conferred upon such local boards.

25-1-505. Health Departments--personnel.

(1) The administrative and executive head of each county and district health department shall be a public health officer, which office is hereby created. The public health officer shall be appointed by the board to serve at the pleasure of the board and shall possess such qualifications as may be prescribed by the state board of health. He shall be employed on a full time basis and shall receive such annual compensation and expense allowance as may be fixed by the board. He shall maintain his office at such place as the board may designate and shall be custodian of all property and records of the department.

(2) In the case of a county health department, the county treasurer, as a part of his official duties as county treasurer, shall serve as treasurer of the department, and his official bond as county treasurer shall extend to and cover his duties as treasurer of the department. In the case of a district health department, the county treasurer of the county in the district having the largest population as determined by the last federal census, as a part of his official duties as county treasurer, shall serve as treasurer of the department, and his official bond as county treasurer shall extend to and cover his duties as treasurer of the department.

(3) All other personnel required by a department shall be appointed by the public health officer and shall possess qualifications approved by the board. All personnel shall receive such compensation and expense allowance as fixed by the public health officer with the approval of the board. All personnel shall perform such duties as prescribed by the public health officer.

25-1-506. Powers and duties of health departments.

(1) Each county and district health department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(a) To administer and enforce the laws pertaining to public health, and vital statistics and water pollution control and the orders, rules, regulations, and standards of the state board of health and the state water quality control commission, and to enforce the orders of the division of administration of the department of health with respect to air pollution control;

(b) To investigate and control the causes of epidemic and communicable diseases affecting the public health;

(c) To establish, maintain and enforce isolation and quarantine, and in pursuance thereof, and for this purpose only, to exercies such physical control over property and over the persons of the people within the jurisdiction of the department as the department may find necessary for the protection of the public health;

(d) To close theatres, schools and other public places, and to forbid gatherings of people when necessary to protect the public health;

(e) To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health;

(f) To establish, maintain, or make available chemical, bacteriological and biological laboratories, and to conduct such laboratory investigations and examinations as it may deem necessary for the protection of the public health;

(g) To purchase, and to distribute to licensed physicians and veterinarians, with or without charge, as the board may determine upon considerations of emergency or need, such vaccines, serums, toxoids, and other approved biological or therapeutic products as may be necessary for the protection of the public health;

(h) To initiate and carry out health programs, not inconsistent with the law, that may be deemed necessary or desirable for the protection of the public health and the control of disease;

(i) To collect, compile, and tabulate reports of marriages, dissolutions of marriage, and declarations of invalidity of marriage, births, deaths, and morbidity, and to require any person having information with regard to the same to make such reports and submit such information as is required by the law or the rules and regulations of the state board of health;

(j) To make any necessary sanitary and health investigations and inspections, on its own initiative or in co-operation with the department of health, as to any matters affecting public health within the jurisdiction and control of the department;

(k) To cooperate with the department of health and the state board of health in all matters pertaining to the public health, with the state water quality control commission in all matters pertaining to water quality control, and with the air pollution control commission, the variance board, and the division of administration of the department of health in all matters pertaining to air pollution.

25-1-507. Powers and duties of boards of health.
(1) In addition to all other powers and duties conferred and imposed upon county and district boards of health by the provisions of this part 5, such boards have and exercise the following specific powers and duties:

(a) To provide, equip, and maintain suitable offices and all necessary facilities for the proper administration and operation of the department;

(b) To determine general policies to be followed by the public health officer in administering and enforcing the public health laws, the orders, rules, and regulations of the board, and the orders, rules, regulations, and standards of the state board of health;

(c) To act in an advisory capacity to the public health officer on all metters pertaining to public health;

(d) To issue such orders and to adopt such rules and regualtions, not inconsistent with the public health laws of this state nor with the orders, rules, and regulations of the state board of health, as the board may deem necessary for the proper exercise of the powers and duties vested in or imposed upon a department or board of health by this part 5;

(e) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon a county or district board of health;

(f) To accept and, through the public health officer, to use, disburse, and administer all federal aid, state aid, or other property, services, or moneys allotted to a department for local public health functions, or allotted without designation of a specific agency for purposes which are within the functions of a department, and to prescribe, by rule or regulation not inconsistent with the laws of this state, the conditions under which such property, services, or moneys shall be accepted and administered. The board is empowered to make such agreements, not inconsistent with the laws of this state, as may be required as a condition precedent to receiving such funds or other assistance.

(g) To establish and to prescribe, by rule and regulation, the conditions under which fees for personal health services rendered by the local department may be accepted and administered, such fees not

to exceed the actual cost of rendering such service. Personal home health care services may include, but not be limited to, home health care, physical and speech therapy, orthopedic and dental services for children, and such other home health care services as may be established by federal or state law, but no person shall be denied personal health service for failure to pay said fee.

25-1-508. Powers and duties of public health officer.
(1) In addition to the other powers and duties conferred by this part 5 and upon a public health officer, such officer, in person or through other officers and employees of the department, has the following powers and duties:

(a) To administer and enforce the public health laws of the state of Colorado; the orders, rules, regulations, and standards of the state board of health; and the orders, rules, regulations of the county or district board of health;

(b) To exercise all powers and duties conferred and imposed upon departments not expressly delegated to county or district boards of health by the provisions of this part 5;

(c) To hold hearings, administer oaths, subpoena witnesses and take testimony in all matters relating to the exercise and performance of his powers and duties;

(d) To act as the local registrar of vital statistics for the area over which his department has jurisdiction.

25-1-109. Health department funds.
(1) The treasurer of a department, upon organization of the department, shall create a county or district health department fund, to which shall be credited:

(a) Any moneys appropriated from the county general fund or funds;

(b) Any moneys received from state, federal, or other grants, or fees for local health purposes.

(2) Any moneys credited to said funds shall be expended only for the purposes of this part 5, and claims or demands against said funds shall be allowed only if certified by the public health officer and by the president of the board or any other member of the board designated by the president for such purpose.

(3) A county board of health, before September first of each year, shall estimate the total cost of maintaining the department for the ensuing fiscal year, and also the amount of moneys that may be available from unexpended surpluses or from state or federal funds or other grants or donations. Said estimates shall be submitted in the form of a budget, on or before September first of each year, to the board of county commissioners. The board is authorized to provide any moneys necessary, over estimated moneys from surpluses, grants, and donations, to cover

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the total cost of maintaining the department for the ensuing fiscal year by an appropriation from the county general fund.

(4) A district board of health, before September first of each year, shall estimate the total cost of maintaining the department for the ensuing fiscal year, and also the amount of moneys that may be available from unexpended surpluses or from state or federal funds or other grants or donations. Said estimates shall be submitted in the form of a budget, on or before September first of each year, to a committee composed of the chairmen of the boards of county commissioners of all the counties comprising the district. The cost for maintaining the department, over estimated moneys from surpluses, grants, or donations, shall be approtioned by the committee amony the counties comprising the district in proportion as the population of each county in the district bears to the total population of all counties in the district, population figures to be based on the last federal census. The boards of county commissioners of the respective counties are authorized to provide any moneys necessary to cover the proportionate shares of their county, by the appropriation from the county general fund.

25-1-510. Dissolution of health department. Any department may be dissolved and discontinued by resolution of the board of county commissioners of a county maintaining a county health department or by resolutions of the boards of county commissioners of the counties maintaining a district health department. No department shall be dissolved within the two-year period following the date of its establishment. Within ninety days after the passage of a resolution dissolving a department, the county or district board of health shall proceed to terminate the affairs of the department. After payment of all obligations, any moneys remaining in the county health department fund shall be credited to the general fund of the county, and any moneys remaining in a district health department fund shall be apportioned among the counties comprising the district in the same manner as the cost of maintaining the department was apportioned among the counties and credited to their respective general funds. All other property of the county or district health department shall be disposed of as agreed upon by the county or district board of health.

25-1-511. Enlargement of or withdrawal from a health department.
(1) Any county adjacent to a district maintaining a district health department may become a part of such district by agreement between its board of county commissioners and the boards of county commissioners of the counties comprising the district. Any such county, upon being accepted into the district, shall thereupon become subject to all the provisions of this part 5 as though it were originally a part of the district.

(2) Any county in a district may withdraw from the district by resolution of its board of county commissioners. No county may withdraw from a district witnin the two-year period following the establishment of the district or the county's becoming a part of the district, and then only after one year's written notice given to the department. In the event of withdrawal of a county from a district, any funds which had been appropriated by the county before withdrawal to cover its proportionate share of maintaining the district shall not be returned to the county withdrawing.

25-1-512. Legal actions and adviser. The district attorney of the judicial district in which a cause of action arises shall bring any civil or criminal action requested by a public health officer to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, rules, and regulations of the state board of health or a county or district board of health. If the district attorney fails to act, the public health officer may bring any such action and be represented by special counsel employed by him with the approval of the board. A department, through its board of health, may employ or retain and compensate an attorney to be the legal adviser of the department and to defend all actions and proceedings brought against the department or the officers and employees thereof.

25-1-513. Judicial review of decisions.
(1) Any person aggrieved and affected by a decision of a board or a public health officer acting under the provisions of this part 5 shall be entitled to judicial review by filing, in the district court of any county over which such board or public health officer has jurisdiction, an appropriate action requesting such review within ninety days after the public announcement of the decision. The court may make any interested person a party to the action. The review shall be conducted by the court without a jury and shall be confined to the record, if a complete record is presented. In cases of alleged irregularities in the record or in the procedure before the board or public health officer, testimony may be taken in the court. The court may affirm the decision or may reverse or modify it if the substantial rights of the appellant have been prejudiced as a result of the findings and decision of the board being: Contrary to constitutional rights or privileges; or in excess of the statutory authority or jurisdiction of the board or public health officer; or affected by any error of law; or made or promulgated upon unlawful procedure; or unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious.

(2) Any party may have a review of the final judgment or decision of the district court by appellate review in accordance with law and the Colorado appellate rules.

25-1-514. Unlawful acts and penalties.
(1) It is unlawful for any person, association, or corporation and the officers thereof:

(a) To willfully violate, disobey, or disregard the provisions of the public health laws or the terms of any lawful notice, order, standard, rule, or regulation issued pursuant thereto; or

(b) To fail to make or file reports required by law or rule of the board relating to the existence of disease or other facts and statistics relating to the public health; or

(c) To willfully and falsely make or alter any certificate or certified copy thereof issued pursuant to the public health laws; or

(d) To willfully fail to remove from provate property under his control at his own expense, within forty-eight hours after being ordered so to do by the health authorities, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of the department whether such person, association, or corporation is the owner, tenent, or occupant of such private property; except that, when any such condition is due to an act of God, it shall be removed at public expense; or

(e) To pay, give, present, or otherwise convey any officer or employee of a department any gift, remuneration or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon him by or on behalf of such health department or by the provisions of this part 5.

(3) It shall be unlawful:

(a) For any officer or employee of a department to perform any work, labor, or services other than the duties assigned to him by or on behalf of the department during the hours such officer or employee is regularly employed by the department or to perform his duties as an officer or employee of a county or under any condition or arrangement that involves a violation of this or any other law of the state of Colorado;

(b) For any officer or employee of a department who is employed or retained on the basis of regular full time employment to perform any work, labor, or services consisting of the private practive of medicine, veterinary surgery, sanitary engineering, nursing, or any other profession which is or may be of special benefit to any private person, association, or corporation as distinguished from the department or the public generally and which is performed by such officer or employee, directly or indirectly, for remuneration, whether done in an active, advisory, or consultative capacity or performed within or without the hours such officer or employee is regularly employed by the department.

(4) Any person, association, or corporation, or the officers thereof, who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition to such fine and imprisonment, he shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness. Conviction under the penalty provisions of this part 5 or any other public health law shall not relieve any person from any civil action in damages that may exist for an injury resulting from any violation of the public health laws.

25-1-515. Mode of treatment inconsistent with religious creed or tenent. Nothing in this part 5 authorizes a county or district board of health to impose on any person any mode of treatment inconsistent with the creed or tenets of any religious denomination of which he is an adherent if sanitary and quarantine laws, rules, and regulations are complied with by any such person.

25-1-516. Allocation of moneys.

(1) The department of health is authorized to allocate money for local health services to each local department organized pursuant to this part 5 and to each county board of health in the state as provided for in section 25-1-608, as follows:

(a) The state shall provide support on a per capita basis for local and regional health services of which no more than eighty-five percent shall be for supporting local health services and not less than an additional fifteen percent for supporting regional health services. "Regional health services" means two or more local county or district health departments or county boards of health providing joint services. The state board of health has review power over the formation, establishment, and support of regional health services.

(b) In order to qualify for state assistance, each county and city and county shall contribute a minimum of one dollar and fifty cents per capita for its local health services and may contribute such additional amounts as it may determins necessary to meet its local health needs.

(c) Federally and state funded special projects and demonstrations shall be in addition to the above allottments.

TITLE 25

HEALTH

PART 7

Regional Health Departments

25-1-701. Legislative declaration. The general assembly declares that the purpose of this part 7 is to provide more effective, efficient, and expanded local community health service to citizens of this state by authorizing the formation of regional health departments while insuring local participation in the formation and administration of such regional health departments.

25-1-702. Establishment of regional health departments.
(1) One or more local health departments, organized pursuant to part 5 of this article, or boards of county commissioners may make application to the state board of health for the establishment of a regional health department, referred to in this part 7 as the "department", that coincides with one or more of the regions, or portions thereof exceeding two hundred thousand population, established by the division of planning. Such application shall set forth the reasons and advantages for establishing the proposed health department and shall contain the following data and information regarding the area involved:

(a) Population size, density, and distribution;

(b) Existing health resources and services, their location, and their availability to serve the region;

(c) Availability of qualified health personnel and physical facilities;

(d) Social characteristics of the population such as age, sex, socio-economic status, and proportion of ethnic groups;

(e) Geographic and topographic characteristics;

(f) Health service needs as related to those of the national population;

(g) Economic factors, including existing and proposed industrial development, tax base, and tax structure.

(2) The state board of health, upon receipt of said application, shall conduct a public hearing, pursuant of section 24-4-105, C.R.S. 1973, on the advisability of establishing the proposed regional health department. The state board of health shall then forthwith approve or disapprove said application based on testimony presented at said hearing and on information received pursuant to this section.

25-1-703. Regional health departments and boards of health-composition. A regional health department shall consist of a regional board of health, referred to in this part 7 as the "board", a public health officer, and all other personnel employed or retained under the provisions of this part 7. Every regional board of health shall consist of at least seven members or such number as would be necessary to provide one member from each county and in addition one from each city over thirty-five thousand population, and one member for each additional fifty thousand population. Such board members shall be appointed by a committee composed of one member of each of the boards of county commissioners of the counties comprising the region, and one member of the council of each city over thirty-five tousand population, designated by the council chairman. The members of the board of health shall be appointed for five-year terms; except that the members first appointed shall be designated so that one shall serve for one year, two for two years, one for three years, two for four years, and one for five years from the date of appointment. When the board consists of more than seven members, the length of the terms of the additional members shall be made by the committee at the time of initial appointments. Each member shall be a resident of one of the counties comprising the region. Appointments shall be made to the board so that no business or professional group constitutes a majority of the board. Any vacancy on the board shall be filled in the same manner as full-term appointments by the appointment of a qualified person for the unexpired term.

25-1-704. Organization of regional boards of health.

(1) A regional board of health, at its organizational meeting, shall elect from its members a president and such other officers as it deems necessary. The public health officer of the regional health department at the discretion of the board, may serve as secretary, but shall not be a member of a board. All officers shall hold office at the pleasure of the board.

(2) Regular meetings of a board shall be held not less than once every three months at such time and place as may be fixed by resolution of the board. Special meetings of a board may be called by the president, by the regional public health officer, or by a majority of the members of the board at any time on three days' prior notice by mail or, in case of emergency, on twenty-four houts' notice by telephone or telegraph. A board may adopt, and at any time may amend, bylaws in relation to its meetings and the transaction of its business. A majority shall constitute a quorum of the board. Members shall serve without compensation but shall be reimbursed for their actual and necessary expenses while engaged in performance of their official duties. All meetings of the board in every suit and proceeding shall be taken to have been duly called and regularly held and all orders and proceedings of a board to have been authorized unles the contrary be proved.

25-1-705. Jurisdiction of regional health departments. The Jurisdiction of any regional health department shall extend over all unincorporated areas and over all municipal corporations within the territorial limits of the counties comprising the region.

25-1-706. Functions of regional boards of health. The functions of the local boards of health shall be legislative, judicial, and advisory, but not executive or administrative. Board functions shall include: Selection and employment of the health officer; adoption of local health ordinances, rules, and regulations not inconsistent with the public health laws of the state nor with the orders, rules, and regulations of the state board of health; conducting hearings, administering oaths, subpoenaing witnesses, and taking testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon a regional board of health; adoption of the annual budget and setting of tax levy necessary to insure local funds required for meeting the region's contribution to the total budget; and serving in an advisory capacity to the public health officer in all matters pertaining to the administration of the regional health department. The public health officer shall serve as executive director of the department.

25-1-707. Regional health departments -- personnel.
(1) The administrative and executive head of each regional health department shall be a public health officer, which office is hereby created. The public health officer shall be appointed by the regional board of health to serve at the pleasure of the board and shall possess such qualifications as may be prescribed by the state board of health. He shall be employed on a full-time basis and shall receive such annual compensation and expense allowance as may be fixed by the board. He shall maintain his office at such place as the board may designate and shall be custodian of all property and records of the department. In addition, all other professional personnel of the local health department shall meet qualifications prescribed by the Colorado department of health.

(2) The county treasurer of the county in the region having the largest population as determined by the last federal census, as a part of his official duties as county treasurer, shall serve as treasurer of the department, and his official bond as county treasurer shall extend to and cover his duties as treasurer of the department.

(3) All other personnel required by a regional department shall be appointed by the public health officer and shall possess qualifications approved by the regional board of health. All personnel shall receive such compensation and expense allowance as fixed by the public health officer with the approval of the board. All personnel shall perform such duties as prescribed by the public health officer.

25-1-708. Regional health departments -- duties -- powers.
(1) Each regional health department has, in addition to any other duties imposed upon it by law, the following duties:

(a) To administer and enforce the laws pertaining to public health, vital statistics, and water pollution control, and the orders, rules, regulations, and standards of the Colorado department of health and the state air pollution and water quality control commissions;

(b) To investigate and control the causes of epidemic and communicable diseases affecting the public health;

(c) To establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, and for this purpose only, to exercise such physical control over property and over the persons of the people within the jurisdiction of the department as the department may find necessary for the protection of the public health;

(d) To close theatres, schools, and other public places, and to forbid gatherings of people when necessary to protect the public health;

(e) To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health;

(f) To collect, compile, and tabulate reports of marriages, dissolutions of marriage, declarations of invalidity of marriage, births, deaths, and morbidity and to require any person having information with regard to the same to make such information available and submit such reports as are required by law or by the rules and regulations of the state board of health;

(g) To cooperate with the Colorado department of health and the state board of health in all matters pertaining to the public health, and with the state air and water pollution control commissions in all matters pertaining to air and water pollution control;

(h) To provide uniform health services to all areas of the region, to promote personal and environmental health, including assistance in pollution control.

(2) A regional health department has power to:

(a) Establish and maintain chemical, bacteriological, and biological laboratories, and to conduct such laboratory investigations and examinations as it may deem necessary or proper for the protection of the public health;

(b) Makes any necessary sanitary and health investigations and inspections, on its own initiative or in cooperation with the Colorado department of health, as to any matters affecting public health, within the jurisdiction and control of the regional health department;

(c) Purchase, and to distribute to licensed physicians and veterinarians, with or without charge, as the board may determine upon considerations of emergency or need, such vaccines, serums, toxoids, and other approved biological or therapeutic products as may be necessary for the protection of the public health;

(d) Initiate and carry out health programs that may be deemed necessary or desirable for the protection of the public health and the control of disease.

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25-1-709. Regional health departments -- services -- programs.
(1) The program and services of regional health departments shall include to the greatest extent possible, but not be limited to:

(a) Personal health services, including: Communicable disease control; tuberculosis control; venereal disease control; alcohol and drug dependence control; chronic disease control; injury control; nutritional services; social services; multiphasic screening program (mobile pre-diagnostic case (finding); and other services such as medical care; mental health; mental retardation and rehabilitation as may be assigned to the department; bedside home nursing care; maternal and child health services; handicapped and crippled children's program; prevention of congenital defects; evaluation services for delayed development; family planning; school health; cooperative aftercare services for mental health; migratory labor health services; vision care; vision and hearing conservation program; and well oldster clinic service;

(b) Environmental health services, including: Water quality control; sewage disposal; air pollution control; solid wastes disposal; drinking water quality surveillance; restaurant inspection; food sanitation and consumer protection; milk sanitation; rabies control; occupational health; radiological health; noise control; accident prevention; migratory and low income housing sanitation; vector control; swimming pool sanitation; and plumbing sanitation;

(c) Supporting health services, consisting of:

(I) Regional public health laboratories to provide service primarily for environmental health and including laboratory testing facilities for: Communicable disease; public and private water supplies; raw and finished milk and milk products; swimming pool sanitation; sewage plant and industrial effluent; stream monitoring; suspected food poisoning; preservatives and additives; food sanitation; and algae and mosquito larvae count and identification;

(II) Health education programs to be coordinated with other health agencies and professional organizations to promote community health education in the fields of: Prevention; case finding; vision care; environment; home health care; acute care; and chronic care;

(III) Compilation of health statistics on the region to provide information relating to birth and death registration, morbidity, and mortality incidence.

(d) Administrative services necessary to effectuate this part 7.

25-1-710. Department of health to establish standards. The Colorado department of health shall establish minimum standards for regional health administration which must be met as a prerequisite for state assistance, including standards for qualification of personnel.

25-1-711. Regional board of health -- duties -- powers.

(1) In addition to any other duties conferred and imposed upon a regional board of health by the provisions of this part 7, such board has the following duties:

(a) Responsibility for the provision of suitable offices and other necessary facilities for the proper administration and operation of the regional health department;

(b) To determine general policies to be followed by the regional health officer in administering and enforcing the public health laws, the orders, rules, and regulations of the board, and the orders, rules, regulations, and standards of the state board of health;

(c) To act in an advisory capacity to the public health officer on all matters pertaining to public health;

(d) To establish and to prescribe, by rule and regulation, the conditions under which fees for personal health services rendered by the regional health department may be accepted and administered, such fees not to exceed the actual cost of rendering such service. Personal home health care services may include, but not be limited to, home health care, physical and speech therapy, orthopedic and dental services for children, vision care, and such other home health care services as may be established by federal or state law, except no person shall be denied personal health service for failure to pay said fee.

(2) A regional board of health shall have the power:

(a) To issue such orders, and to adopt such rules and regulations not inconsistent with the public health laws of this state nor with the orders, rules, and regulations of the state board of health, as the board may deem necessary for the proper exercise of the powers and duties vested in or imposed upon a regional health department or regional board of health by this part 7;

(b) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the exercise and performance of the powers and duties vested in or imposed upon a regional board of health.

25-1-712.. Duties of public health officer.--

(1) In addition to the other duties conferred and imposed in this part 7upon a public health officer, such officer, in person through other designated officers or employees of the regional health department, has the following duties:

(a) To administer and enforce the public health laws of the state of Colorado; the orders, rules, regulations, and standards of the state board of health and the air and water pollution control commissions; and the orders, rules, and regulations of the regional board of health all in accordance with this part 7;

(b) To exercise authority conferred on regional health departments but not expressly delegated to regional boards of health by the provisions of this article;

(c) To hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the performance of his duties as set forth in this part 7;

(d) To act as the local registrar of vital statistics for the area over which his regional health department has jurisdiction.

25-1-713. Health department funds.

(1) The treasurer of a regional health department, upon organization of the department, shall establish and maintain a regional health department fund, to which shall be credited:

(a) Any moneys that may be appropriated from the county general fund ;

(b) Any moneys received from state, federal, or other grants or donations or fees for local health purposes.

(2) Any moneys credited to said funds shall be expended only for the purposes of this part 7, and claims or demands against said fund shall be allowed only if certified by the public health officer and by the president of the regional board of health or any other member of the board designated by the president for such purpose.

(3) A regional board of health, before September 1 of each year, shall estimate the total cost of maintaining the department for the ensuing fiscal year and the moneys that may be available from unexpended surpluses or from state or federal funds or other grants or donations. Said estimates shall be submitted in the form of a budget, on or before September 1 of each year, to a committee composed of the chairmen of the boards of county commissioners of all counties comprising the region. The cost for maintaining the department, over estimated moneys from surpluses, grants, or donations, shall be apportioned by the committee among the counties comprising the region, in proportion that the population of each county in the region bears to the total population of all counties in the region, with population figures to be based on the last federal census. The boards of county commissioners of the respective counties are hereby authorized to provide any moneys necessary to cover the proportionate shares of their counties, by an appropriation from the county general funds.

25-1-714. Legal actions and advisor. The district attorney of the judicial district in which a cause of action may arise shall bring any civil or criminal action requested by a public health officer to abate a condition which exists in violation of, or to restrain or enjoin any action which is in violation of, or to prosecute for the violation of or for the enforcement of, the public health laws and the standards, orders, rules, and regulations of the state board of health or regional board of health as set forth in this part 7. If the district attorney

fails to act, the public health officer may bring any such action and be represented by special counsel employed by him with the approval of the regional board of health. A regional board of health shall employ or retain and compensate an attorney to be the legal advisor to the regional health department and to defend all actions and proceedings brought against the department or the officers and employees thereof.

25-1-715. Judicial review of decisions.

(1) Any person aggrieved by a decision of a regional board of health or a public health officer acting under the provisions of this part 7 is entitled to judicial review by filing in the district court of any county over which such board or public health officer has jurisdiction an appropriate action requesting such review within ninety days after the public announcement of the decision. The court may make any interested person a party to the action. The review shall be conducted by the court without a jury and shall be confined to the record if a complete record is presented. In cases of alleged irregularities in the record or alleged improper procedure before the board, testimony may be taken in the court. The court may affirm the decision or reverse or modify it if the court finds that substantial rights of the appellant have been prejudiced because of being: Contrary to constitutional rights or privileges of the appellant; in excess of the statutory authority or jurisdiction of the board or public health officer; made or promulgated upon unlawful procedure; unsupported by substantial evidence in view of the entire record as submitted; or arbitrary or capricious.

(2) The final judgment or decision of the district court is subject to appellate review as provided by law and the Colorado appellate rules.

25-1-716. Unlawful acts and penalties.

(1) It is unlawful for any person, firm, association, or corporation:

(a) To willfully violate, disobey, or disregard the provisions of this part 7 or the terms of any lawful notice, order, standard, rule, or regulation issued pursuant thereto; or

(b) To fail to make or file reports required by law or rule of a regional board of health relating to the existence of disease or other facts and statistics relating to the public health; or

(c) To willfully and falsely make or alter any certificate or certified copy thereof issued pursuant to this part 7; or

(d) To willfully fail to remove from private property under his control at his own expense, within forty-eight hours after being ordered so to do by regional health department authorities, any nuisance, source of filth, or cause of sickness within the jurisdiction and control of said department whether such person, association, or corporation is the owner, tenant, or occupant of such private property; except that when any such condition is due to an act of God, it shall be removed at public expense; or

(e) To pay, give, present, or otherwise convey to any officer or employee of a regional health department any gift, remuneration, or other consideration, directly or indirectly, which such officer or employee is forbidden to receive by the provisions of this article.

(2) It is unlawful for any officer or employee of any cepartment or member of any regional board of health to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon him by or on behalf of such health department or by the provisions of this article.

(3) It is unlawful for any officer or employee of a regional health department to perform any work, labor, or services other than the duties assigned to him by or on behalf of the department during the hours such officer or employee is regularly employed by the regional health department, or th perform his duties as an officer or employee of a regional health department under any condition or arrangement that involves a violation of this part 7 or any other law of the state of Colorado.

(4) Any person, firm, association, or corporation, who violates any provision of this part 7 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. In addition to such fine and imprisonment, he shall be liable for any expense incurred by health authorities in removing any nuisance, source of filth, or cause of sickness resulting from said violation. Conviction under the penalty provisions of this part 7 does not relieve a person from a civil action for damages that may exist because of an injury resulting from said violation.

25-1-717. Mode of treatment inconsistent with religious creed of tenet. Nothing in this part 7 shall authorize a regional board of health to impose on any person any mode of treatment inconsistent with the creed or tenets of any religious denomination of which he is an adherent if sanitary and quarantine laws, rules, and regulations are complied with by any such person.

25-1-718. Dissolution of existing health departments to form regional health department. Any county or district health department may be dissolved and discontinued by resolution of the board of county commissioners of a county maintaining a county health department or by resolution of the boards of county commissioners of the counties maintaining a district health department for the purpose of forming a regional health department. Within ninety days after the passage of a resolution dissolving a department, the county or district board of health shall proceed to terminate the affairs of the department. All other property of the county or district health department shall be transferred to the regional health department.

25-1-719. Merger, consolidation, or assumption of the department. In the event a service authority is established in all or a portion of the territory of a regional health department, the board shall seek to merge with or become assumed by such service authority in the manner provided by law for that portion of the department territory, so long as adequate and equitable provisions are made upon merger, consolidation, or assumption for the discharge of all obligations of the district and for the protection of the rights of all holders of securities of the district.

ARTICLE 5

PRODUCTS CONTROL & SAFETY

PART 8

Swimming Areas

25-5-801. Definitions. As used in this part 8, unless the context otherwise requires:

(1) "Natural swimming area" means a designated portion of a natural or impounded body of water in which the designated portion is devoted to swimming, recreative bathing, or wading and for which an individual is charged a fee for the use of such area for such purposes. Appurtenances used in connection with the natural swimming area shall also be included.

(2) "Swimming area" means a designated body of water of such volume and depth that one or more persons can swim in it and which is used for the purpose of swimming, recreative bathing, or wading and includes natural swimming areas and swimming pools.

(3) "Swimming pool" means a body of water, other than a natural swimming ares, maintained exclusively for swimming, recreative bathing, or wading and includes appurtenances used in connection with the swimming pool.

25-5-802. Submission of plans and specifications. Prior to the construction, extension, enlarging, remodeling, or modification of a swimming area, the plans and specifications for the work to be done shall be submitted for review and recommendation to the state department of public health by the owner of the swimming area. The department of health may direct that such plans and specifications be submitted to the municipality or other political subdivision in which the swimming area is or may be located rather than to the department of health. This section does not prohibit any municipality from requiring that the plans also be submitted to the proper authority of the municipality.

25-5-803. Sanitation of swimming areas.

(1) A swimming area shall be kept clean and free of all accumulations of trash, garbage, filth, and debris. Concentrations of any other matter in the water shall not be injurious to health.

(2) All swimming areas shall provide separate toilet facilities for both males and females, and swimming pools shall also provide separate shower and locker room facilities; except that swimming pools used in connection with hotels, motels, apartment houses, and private clubs shall not be required to furnish separate shower, toilet and locker room facilities. All such facilities shall be kept clean and free from dirt, refuse, soiled toweling, or other noxious material.

(3) A swimming pool shall have an apparatus for the continuous removal from the water suspended, floating, and setteable substances.

Equipment for the disinfection of water shall be provided that shall be capable of either maintaining a minimum concentration of not less than twenty-five hundredths part per million of free chlorine residual or maintaining the minimum standards for drinking water in effect on January 1, 1969, as specified by the public health service of the United States department of health, education, and welfare. The water shall be kept clear enough to permit the bottom of the pool to be visible from the surface.

25-5-804. Safety standards for swimming areas.

(1) All natural swimming areas shall have a sanded beach for the slope of which shall not be steeper than one foot of fall to ten feet of horizontal distance and shall be posted with warning signs, buoys, or other markers located not more than one hundred feet apart and visible to a person of ordinary visual acuity at a distance of not less than one hundred feet to mark water over three feet of depth and to mark the exterior limits ot the designated swimming area. There shall also be provided not less than one life ring fifteen inches in diameter with seventy-five feet of three-sisteenths inch manila line attached which shall be hung in a conspicuous place on the beach where it shall be kept readily available for use. Each natural swimming area shall also have not less than one square-sterned boat with oars and oar locks which shall be used only for lifesaving purposes. All other floating craft shall be excluded from the swimming areas except for enforcement craft when necessary to provide adequate supervision. When night swimming is permitted in the natural swimming area, the beach shall be fully illuminated.

(2) Diving tower or springboard, when provided, shall be rigidly constructed and securley anchored.

(3) Swimming pools shall be equipped with not less than one light-weight reaching pole of not less than twelve feet in length, and not less than one life ring fifteen inches in diameter with seventy-five feet of three-sixteenths inch manila line attached, both of which shall be kept in a conspicuous place readily available to persons in the pool. When night swimming is permitted, the pool, adjacent area, and all appurtenances, shall be fully illuminated.

25-5-805. Connection with potable water. All potable water supply sources connected to the swimming pool or pool appurtenances shall be protected against contamination by means of an air gap or equivalent devece, and such device shall be placed between the source of the potable water supply source and the pool or pool appurtenance.

25-5-806. Inspection. All swimming areas shall be open to inspection at any time they are in use and at any other reasonable time by agents of the department of health.

25-5-807. Injunctive relief. The operation of a swimming area in violation of any provision of this part 8 may be restrained by the executive director of the department of health; by any city, county, city

and county, or district health officer, or by any of their authorized agents in an action brought in a court of comprtent jurisdiction pursuant to the Colorado rules of civil procedure.

25-5-808. Municipalities may regulate. Any city, town, or city and county may by ordinance regulate swimming areas. Any such ordinance may include standards which are the same or more restrictive than the standards set forth in this part 8 but shall not sepersede the state law except insofar as they are more restrictive than the state standards.

25-5-809. Applicability of part 8. This part 8 shall not apply to any swimming pool constructed with or appurtenant to a single-family dwelling, condominium or apartment house which pool is used solely by the persons living within such dewlling, condominium or apartment house and the guests of such persons.

25-5-810. Rules and regulations. The department of public health may adopt any rules and regulations necessary for the proper administration and enforcement of this part 8.

B-IV

TITLE 25

HEALTH

ARTICLE 8

WATER QUALITY CONTROL

PART 1

GENERAL PROVISIONS

25-8-101. Short title. This article shall be known and may be cited as the "Colorado Water Quality Control Act".

25-8-102. Legislative declaration. (1) In order to foster the health, welfare, and safety of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to prevent injury to beneficial uses made of state waters, to maximize the beneficial uses of water, and to develop waters to which Colorado and its citizens are entitled and, within this context, to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state. It is further declared that pollution of state waters may constitute a menace to public health and welfare, may create public nuisances, may be harmful to wildlife and aquatic life, and may impair beneficial uses of state waters and that the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states.

(2) It is further declared to be the public policy of this state to conserve state waters and to protect, maintain, and improve, where necessary and reasonable, the quality thereof for public water supplies, for protection and propagation of wildlife and aquatic life, for domestic, agricultural, industrial, and recreational uses, and for other beneficial uses, taking into consideration the requirements of such uses; to provide that no pollutant be released into any state waters without first receiving the treatment or other corrective action necessary to reasonably protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other states and the federal government in carrying out these objectives.

(3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(4) This article and the agencies authorized under this article shall

Effective date. This act shall take effect July 1, 1981.

be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

(5) It is further delcared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, with the exception of any enforcement action, consideration be given to the economic reasonableness of the action. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and of the economic, environmental, public health, and energy impacts to the public and affected persons.

25-8-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the water quality control commission created by section 25-8-201.

(2) "Control regulation" means any regulation promulgated by the commission pursuant to section 25-8-205.

(3) "Discharge of pollutants" means the introduction or addition of a pollutant into state waters.

(4) "Division" means the division of administration of the department of health.

(5) "Domestic wastewater treatment works" means a system or facility for treating, neutralizing, stabilizing, or disposing of domestic wastewater which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day. The term "domestic wastewater treatment works" also includes appurtenances to such system or facility, such as outfall sewers and pumping stations, and to equipment related to such appurtenances. The term "domestic wastewater treatment works" does not include industrial wastewater treatment plants or complexes whose primary function is the treatment of industrial wastes, notwithstanding the fact that human wastes generated incidentally to the industrial processes are treated therein.

(6) "Effluent limitation" means any restriction or prohibition established under this article or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards, and schedules of compliance.

(7) "Executive director" means the executive director of the department

of health.

(8) "Federal act" means the "Federal Water Pollution Control Act", commonly referred to as the "Clean Water Act".

(9) "Irrigation return flow" means tailwater, tile drainage, or surfaced groundwater flow from irrigated land.

(10) "Issue" or "issuance" means the mailing to all parties of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit,determination, or notice.

(11) "Municipality" means any regional commission, county, metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of them which are acting jointly in connection with a sewage treatment works.

(12) "Permit" means a permit issued pursuant to part 5 of this article.

(13) "Person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

(14) "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. "Point source" does not include irrigation return flow.

(15) "Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

(16) "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(17) "Promulgate" means and includes authority to adopt, and from time to time amend, repeal, modify, publish, and put into effect.

(18) "Schedule of compliance" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any control regulation or effluent limitation.

(19) "State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not

include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(20) "Water quality standard" means any standard promulgated pursuant to section 25-8-204.

25-8-104. <u>Interpretation and construction of water quality provisions</u>. No provision of this article shall be interpreted so as to supersede, abrogate, or impair rights to divert water and apply water to beneficial uses in accordance with the provisions of sections 5 and 6 of article XVI of the constitution of the state of Colorado, compacts entered into by the state of Colorado, or the provisions of articles 80 to 93 of title 37, C.R.S. 1973, or Colorado court determinations with respect to the determination and administration of water rights. Nothing in this article shall be construed, enforced, or applied so as to cause or result in material injury to water rights. The general assembly recognizes that this article may lead to dischargers choosing consumptive types of treatment techniques in order to meet water quality requirements. Under such circumstances, the discharger must comply with all of the applicable provisions of articles 80 to 93 of title 37 C.R.S. 1973, and shall be obliged to remedy any material injury to water rights to the extent required under the provisions of articles 80 to 93 of title 37, C.R.S. 1973. The question of whether such material injury to water rights exists and the remedy therefor shall be determined by the water court. This section shall not be interpreted so as to prevent the issuance of a permit pursuant to sections 25-8-501 to 25-8-503 which is necessary to protect public health. Nothing in this article shall be construed to allow the commission or the division to require minimum stream flows or minimum water levels in any lakes or impoundments.

25-8-105. <u>Regional wastewater management plans - amendments</u>. (1)(a) Regional wastewater management plans, which include plans known for purposes of the federal act as "208 plans", may be developed by designated planning agencies or by the state for nondesignated areas or for statewide purposes.

(b) Before submitting a proposed plan or amendment to the divison, the designated planning agency shall hold a hearing on the proposed plan or amendment.

(c) The division shall consider any proposed plan or amendment developed by the state.

(d) Notice of a hearing to be held pursuant to this subsection (1) shall be given by at least one publication in a newspaper of general distribution in the area of the proposed plan, and actual notice shall be given to anyone requesting such notice. Such notice shall advise of the opportunity for interested persons to appear and submit written or oral comments on the proposed plan or amendment. The agency holding the hearing shall receive and consider all comments submitted on the proposed plan or amendment.

(2) Each regional wastewater management plan and each amendment to such a plan must be either developed or reviewed by the division.

(3) (a) The commission, after notice and hearing, shall approve, conditionally approve, or reject proposed regional wastewater management plans and amendments thereto. The commission shall approve, conditionally approve, or reject a plan or an amendment developed by a management or planning agency within one hundred eighty days after submittal of the plan or amendment by the management or planning agency to the division. Only those portions of a regional wastewater management plan which are adopted as a regulation by the commission pursuant to section 24-4-103, C.R.S. 1973, shall be binding on regulatory decisions, including, but not limited to, site approvals, construction grants, or point or nonpoint source control decisions. Only those plans or portions thereof which are adopted by the commission as regulations shall be binding for purposes of any federal law, regulation, or action.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3), the commission may delegate to the division the authority to approve, conditionally approve, or reject nonrulemaking amendments to regional wastewater management plans. If the commission delegates such authority, the division shall give notice of its decision on an amendment to the commission and to anyone who has requested notice of amendments to the affected plan. Notice of such decision shall also be included on the next commission agenda. Upon a request by any affected person, the commission shall review the division's decision. The decision of the division shall be final within forty-five days after agenda notice of the decision has been given unless review is requested by an affected person.

(4) The governor may certify to the federal environmental protection agency a regional wastewater management plan or an amendment thereto which has been approved by the commission or an amendment thereto which has become final after approval by the division. The governor may designate planning agencies for the purposes of the federal act.

PART 2

WATER QUALITY CONTROL COMMISSION

25-8-201. Water quality control commission created. (1)(a) There is hereby created in the department of health a water quality control commission which shall exercise its powers and perform its duties and functions as if it were transferred to said department by a type 1 transfer. The commission shall consist of nine citizens of the state who shall be appointed by the governor, with the consent of the senate, for terms of three years each. Members of the commission shall be appointed so as to achieve geographical representation and to reflect the various interests in water in the state. At least two members shall reside in that portion of the state which is west of the continental divide.

(b) Only commission members appointed by the governor and serving on July 1, 1981, shall continue to serve the remainder of their terms. On and after July 1, 1981, appointments shall be made in accordance with the provisions of this subsection (1).

(c) Whenever a vacancy exists, the governor shall appoint a member for the remaining portion of the unexpired term created by the vacancy,

subject to confirmation by the senate.

(2)(a) The governor may remove any appointed member of the commission for malfeasance in office, failure to regularly attend meetings, or for any cause that renders such a member incapable or unfit to discharge the duties of his office.

(b) If any member of the commission is absent from two consecutive meetings, the chairmanof the commission shall determine whether the cause of such absences was reasonable. If he determines that the cause of the absences was unreasonable, he shall so notify the governor, who may remove such member and appoint a qualified person for the unexpired portion of the regular term, subject to confirmation by the senate.

(3) Each member of the commission not otherwise in full-time employment of the state shall receive a per diem which shall be the same amount paid to the general assembly for attendance at interim committees for each day actually and necessarily spent in the discharge of official duties, not to exceed twelve hundred dollars in any one year; and each member shall receive traveling and other necessary expenses actually incurred in the performance of his official duties as a member of the commission.

(4) The commission shall select from its own membership a chairman, a vice-chairman, and a secretary. The commission shall keep a record of its proceedings.

(5) The commission shall hold regular public meetings and may hold special meetings on the call of the chairman or vice-chairman at such other times as deemed necessary. Written notice of the time and place of each meeting shall be mailed to each member at least five days in advance.

(6) All members shall have a vote. Two-thirds of the commission shall constitute a quorum, and the concurrence of a majority of the quorum in any matter within its powers and duties shall be required for any determination made by the commission.

25-8-202. Duties of the commission. (1) The commission shall develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, in connection therewith, shall:

(a) Classify state waters in accordance with section 25-8-203;

(b) Promulgate water quality standards in accordance with section 25-8-204;

(c) Promulgate control regulations in accordance with section 25-8-205;

(d) Promulgate permit regulations in accordance with sections 25-8-501 to 25-8-504;

(e) Perform duties assigned to the commission in part 7 of this article with respect to the location, design, construction, financing, and operation of domestic wastewater treatment plants;

(f) Review from time to time, at intervals of not more than three years, classification of waters, water quality standards, and control regulations which it has promulgated;

(g) Promulgate regulations and adopt priority ranking for the administration of federal and other public source contruction loans or grants which the commission or the division administers, which loans or grants shall not be expended for any purpose other than that for which they were provided;

(h) Advise and consult and cooperate with other agencies of the state, the federal government, and other states, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies or regulations of the commission;

(i) Exercise all incidental powers necessary or proper for carrying out the purposes of this article including the powers to issue and enforce rules and orders, but, except as otherwise provided in this article, the commission shall not act as an appellate body to review determinations of the division;

(j) Perform such other duties as may lawfully be assigned to it by Colorado statutes.

(2) The commission shall have authority to implement the legislative declaration as prescribed in section 25-8-102.

(3) The commission shall hold a public hearing during the month of October of each year in order to hear public comment on water pollution problems within the state, alleged sources of water pollution within this state, and the availability of practical remedies therefor; and at such hearing the commission, administrator, and division personnel shall answer reasonable questions from the public concerning administration and enforcement of the various provisions of this article, as well as rules and regulations promulgated under the authority of this article.

(4) The commission shall employ an administrator and shall delegate to such administrator such duties and responsibilities as it may deem necessary, including acting as a hearing officer for the commission; but no authority shall be delegated to such administrator to promulgate standards or regulations, or to make determinations, or to issue or countermand orders of the commission. Such administrator shall have appropriate practical, educational, and administrative experience related to water quality control and shall be employed pursuant to section 13 of article XII of the state constitution. The individual employed as technical secretary pursuant to section 25-8-202 (3), as that section existed prior to July 1, 1981, shall be employed as the initial administrator under this subsection (4).

(5) On or before November 1 of each year, the commission shall report to the governor and the general assembly on the effectiveness of the provisions of this article in carrying out the legislative intent, as declared in section 25-8-102, and shall include in such report such recommendations as it may have with respect to any legislative changes that may be needed or desirable.

(6) The commission is hereby designated as the state water pollution control agency for this state for all purposes of the federal act and is hereby authorized to take all action necessary and appropriate to secure to this state, its municipalities, or intermunicipal or interstate agencies the benefits of said act.

25-8-203. Classification of state waters. (1) The commission may classify state waters.

(2) The types of classes shall be determined by regulations and may be based upon or intended to indicate or describe any relevant characteristic, such as:

(a) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

(b) Whether or not pollution arises from natural sources;

(c) Present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition, or the beneficial uses for which it is to become suitable as a goal;

(d) The character and uses of the land area bordering the water;

(e) The need to protect the quality of the water for beneficial uses such as domestic, agricultural, municipal, and industrial uses, the protection and propagation of wildlife and aquatic life, recreation, and drinking water and the need to minimize negative impacts on water rights;

(f) The type and character of the water, such as surface or subsurface, lake or stream, together with volume, flow, depth, stream gradient, temperature, surface area involved, and daily or seasonal variability of any of such characteristics. Waters in ditches and other manmade conveyance structures shall not be chassified, and water quality standards shall not be applied to them but may be utilized for purposes of discharge permits.

(3) The particular class into which any particular segment of state waters is placed shall be determined by regulation.

25-8-204. Water quality standards. (1) Water quality standards shall be promulgated by the commission by regulations which describe water characteristics or the extent of specifically identified pollutants for state waters.

(2) Water quality standards may be promulgated with respect to any measurable characteristic of water, including, but not limited to:

(a) Toxic substances;

(b) Suspended solids, colloids, and combinations of solids with other suspended substances;

(c) Bacteria, fecal coliform, fungi, viruses, and other biological constituents and characteristics;

(d) Dissolved oxygen, and the extent of oxygen demanding substances;

(e) Phosphates, nitrates, and other dissolved nutrients;

(f) pH and hydrogen compounds;

(g) Chlorine, heavy metals, and other chemical constituents;

(h) Salinity, acidity, and alkalinity;

(i) Trash, refuse, oil and grease, and other foreign material;

(j) Taste, odor, color, and turbidity;

(k) Temperature.

(3) Water quality standards may be promulgated for use in connection with any one or more of the classes of state waters established by the commission pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state water or to all state waters. Before any wastewater treatment facility shall be required by the division to treat beyond secondary treatment, as that term is defined by the commission by regulation, such wastewater treatment facility shall be entitled to a hearing, under section 24-4-105, C.R.S. 1973, of the "State Administrative Procedure Act", before the commission for a determination as to the economic reasonableness of such requirement, to include the considerations set forth in sections 25-8-102 and 25-8-104. The commission must determine that treatment to a level greater than secondary treatment is economically reasonable before such treatment will be required.

(4) In promulgating water quality standards, the commission shall consider:

(a) The need for standards which regulate specified pollutants;

(b) Such information as may be available to the commission as to the degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant;

(c) The continuous, intermittent, or seasonal nature of the pollutant to be controlled;

(d) The existing extent of pollution or the maximum extent of pollution to be tolerated as a goal;

(e) Whether the pollutant arises from natural sources;

(f) Beneficial uses of water; and

(g) Such information as may be available to the commission regarding the risk associated with the pollutants including its persistence, degradability, the usual or potential presence of the affected organism in any waters, the importance of the affected organisms and the nature and extent of the effect of the pollutant on such organisms.

(5) In establishing water quality standards using statistical methodologies or in requiring the use of statistical methodologies for permit or enforcement purposes, statistical methodologies used must be based on assumptions that are compatible with the water quality data.

25-8-205. Control regulations. (1) The commission may promulgate control regulations for the following purposes:

(a) To describe prohibitions, standards, concentrations, and effluent limitations on the extent of specifically identified pollutants, including, but not limited to, those mentioned in section 25-8-204, that any person may discharge into any specified class of state waters;

(b) To describe pretreatment requirements, prohibitions, standards, concentrations, and effluent limitations on wastes any person may discharge into any specified class of state water from any specified type of facility, process, activity, or waste pile including, but not limited to, all types specified in section 306 (b) (1) (A) of the federal act;

(c) To describe precautionary measures, both mandatory and prohibitory, that must be taken by any person owning, operating, conducting, or maintaining any facility, process, activity, or waste pile that does cause or could reasonably be expected to cause pollution of any state waters in violation of control regulations or that does cause the quality of any state waters to be in violation of any applicable water quality standard;

(d) To adopt toxic effluent standards and pretreatment standards for pollutants which interfere with, pass through, or are otherwise incompatible with sewage treatment works.

(2) In the formulation of each control regulation, the commission shall consider the following:

(a) The need for regulations that control discharges of specified pollutants that are the subject of water quality standards for the receiving state waters;

(b) The need for regulations that specify treatment requirements for various types of discharges.

(c) The degree to which any particular type of discharge is subject to treatment, the availability, practicality, and technical and economic feasibility of treatment techniques, and the extent to which the discharge to be controlled is significant;

(d) Control requirements promulgated by agencies of the federal government;

(e) The continuous, intermittent, or seasonal nature of the discharge to be controlled;

(f) Whether a regulation that is to be applicable to discharges into flowing water should be written in such a way that the degree of pollution tolerated or treatment required will be dependent upon the volume of flow of the receiving water or the extent to which the discharge is diluted therein, or the capacity of the receiving water to assimilate the discharge; and

(g) The need for specification of safety precautions that should be taken to protect water quality including, but not limited to, requirements for the keeping of logs and other records, requirements to protect subsurface waters in connection with mining and the drilling and operation of wells, and requirements as to settling ponds, holding tanks, and other treatment facilities for water that will or might enter state waters.

(3) Control regulations may be promulgated for use in connection with any one or more of the classes of state waters authorized pursuant to section 25-8-203 and may be made applicable with respect to any designated portion of state waters or to all state waters.

(4) The commission shall coordinate and cooperate with the state engineer, the Colorado water conservation board, the oil and gas conservation commission, the state board of health, and other state agencies having regulatory powers in order to avoid adopting control regulations that would be either redundant or unnecessary.

(5) The commission shall not adopt control regulations which require agricultural nonpoint source dischargers to utilize treatment techniques which require additional consumptive or evaporative use which would cause material injury to water rights.

(6) The division may issue a variance from a control regulation of general applicability, based upon a determination that the benefits derived from meeting the control regulation do not bear a reasonable relationship to the economic environmental, or energy impacts or other factors which are particular to the applicant in complying with the control regulation; except that such variance shall be consistent with the purposes of this article including the protection of existing beneficial uses. No variance shall be issued for longer than five years. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5)

25-8-206. Prior acts validated. (1) All acts, hearings, orders, rules, regulations, and standards adopted by the water pollution control commission as constituted and empowered by the laws of this state prior to July 6, 1973, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

(2) All acts, hearings, orders, rules, regulations, and standards adopted by the water quality control commission as constituted and empowered by the laws of this state prior to July 1, 1981, which were valid prior to said date, shall be deemed and held to be legal and valid in all respects, as though issued by the commission under the authority of this article, and no provision of this article shall be construed to repeal or in any way invalidate any actions, orders, rules, regulations, or water quality standards adopted by said commission prior to said date.

PART 3

ADMINISTRATION

25-8-301. Administration of water quality control programs. (1) The department of health shall administer and enforce the water quality control programs adopted by the commission.

(2) In furtherance of such responsibility of the department, the executive director shall maintain within the division a separate water quality control agency.

(3) The director of said water quality control agency shall be employed pursuant to section 13 of article XII of the state constitution. He shall be a registered professional engineer or have a graduate degree in engineering or other specialty dealing with the problems of pollution and shall also have appropriate practical and administrative experience related to such problems. Such person shall not be the administrator employed pursuant to section 25-8-202(4).

(4) The division shall act as staff to the commission in commission proceedings other than adjudicatory or appellate proceedings in which the division is a party.

25-8-302. Duties of the division. (1) The division shall:

(a) Carry out the enforcement provisions of this article, including the seeking of criminal prosecution of violations and such other judicial relief as may be appropriate;

(b) Administer the permit system as provided in sections 25-8-501 to 25-8-505;

(c) Monitor waste discharges and the state waters as provided in section 25-8-303;

(d) Submit an annual report to the commission as provided in section 25-8-305;

(e) Maintain a mailing list of persons requesting notice of actions by the division or by the commission and notify persons on the list of such actions, for which service the division shall assess a fee to cover the costs thereof;

(f) Review and certify, conditionally certify, or deny requests for certifications in compliance with the provisions of section 401 of the federal act and this article, known as "401 certificates". Appeals by an affected entity of a final decision shall be heard in accordance with section 24-4-105 of the "State Administrative Procedure Act".

(g) Perform such other duties as may lawfully be assigned to it.

25-8-303. Monitoring. (1) The division shall take such samplings as may be necessary to enable it to determine the quality of every reasonably accessible segment of state waters, wherever practical. In sampling such waters the division shall give consideration to characteristics such as those listed in section 25-8-204(2), but if pollution is suspected the sampling shall not be limited or restricted by reason of the fact that no water quality standard has been promulgated for the suspected type of pollution.

(2) As to every segment of state waters so sampled, the division shall endeavor to determine the nature and amount of each pollutant, whether a new or different water quality standard is needed, the source of each pollutant, the place where each such pollutant enters the water, and the names and addresses of each person responsible for or in control of each entry.

(3) As to each separate pollution source identified, the division shall:

(a) Determine what control regulations are applicable, if any;

(b) Determine whether the discharge is covered by a permit and whether or not any condition of the permit is being violated;

(c) Determine what further control measures with respect to such pollution source are practicable.

(4) The division shall inform the commission of any unusual problem which creates difficulties in abating pollution.

25-8-304. Monitoring, recording, and reporting. (1) The owner or operator of any facility, process, or activity from which a discharge of pollutants is made into state waters or into any municipal domestic wastewater treatment works shall, according to standard procedures and methods prescribed by the division:

(a) Establish and maintain records;

(b) Make reports;

(c) Install, calibrate, use, and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods;

(d) Sample discharges;

(e) Provide additional reasonably available information relating to discharges into domestic wastewater treatment works.

25-8-305. Annual report. On or before October 1 of each year, the division shall report to the commission on the effectiveness of the provisions of this article and shall include in such report such recommendations as it may have with respect to any regulatory or legislative changes that may be needed or desired. Such report shall include the then current information that has been obtained pursuant to section 25-8-303.

25-8-306. Authority to enter and inspect premises and records. (1) The division has the power, upon presentation of proper credentials, to enter and inspect at any reasonable time and in a reasonable manner any property, premise, or place for the purpose of investigating any actual, suspected, or potential source of water pollution, or ascertaining compliance or noncompliance with any control regulation or any order promulgated under this article. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.

(2) In the making of such inspections, investigations, and determinations, the division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the department of agriculture. The division may also request assistance from any other state or local agency or institution.

(3) If such entry or inspection is denied or not consented to, the division is empowered to and shall obtain, from the district or county court for the judicial district or county in which such property, premise, or place is located, a warrant to enter and inspect any such property, premise, or place prior to entry and inspection. The district and county courts of the state of Colorado are empowered to issue such warrants upon a proper showing of the need for such entry and inspection.

25-8-307. Emergencies. Whenever the division determines, after investigation, that any person is discharging or causing to be discharged or is about to discharge into any state waters, directly or indirectly, any pollutant which in the opinion of the division constitutes a clear, present, and immediate danger to the health or livelihood of members of the public, the division shall issue its written order to said person that he must immediately cease or prevent the discharge of such pollutant into such waters and thereupon such person shall immediately discontinue such discharge. Concurrently with the issuance of such order, the division may seek a restraining order or injunction pursuant to section 25-8-607.

25-8-308. Additional authority and duties of the division. (1) In addition to the authority specified elsewhere in this article, the division has the power to:

(a) Conduct or cause to be conducted studies, research, and demonstrations with respect to water pollution and the control, abatement, or prevention thereof, as requested by the commission;

(b) Furnish technical advice and services relating to water pollution problems and control techniques;

(c) Designate one or more persons or agencies in any area of the state as a water quality control authority, as agent of the division, to exercise and perform such powers and duties of the division as may be specified in such designation;

(d) Administer, in compliance with regulations and the priority ranking adopted by the commission, loans and grants from the federal government and from other public sources;

(e) Advise, consult, cooperate, and enter into agreements with other agencies of the state, the federal government, other states, and interstate agencies, and with groups, political subdivisions, and industries affected by the provisions of this article and the policies of the commission; but any such agreement involving, authorizing, or requiring compliance in this state with any standard or regulation shall not be effective unless or until the commission has held a hearing with respect to such standard or regulation and has adopted the same in compliance with this article;

(f) Certify, when requested, the existence of any facility, land, building, machinery, equipment, treatment works, or sewage or disposal systems as have been acquired, constructed, or installed in conformity with the purposes of this article;

(g) Take such action in accordance with rules and orders promulgated by the commission as may be necessary to prevent, abate, and control pollution.

(2) All fees and penalties collected by the division shall be transmitted to the state treasurer for deposit to the credit of the water quality control fund created by section 25-8-502 and shall be subject to appropriation by the general assembly.

PART 4

PROCEDURES

25-8-401. Authority and procedures for hearings. (1) The commission or the division may hold public hearings, which shall be held pursuant to and in conformity with article 4 of title 24, C.R.S. 1973, and with this article.

(2) The commission may adopt such rules and regulations governing procedures and hearings before the commission or division as may be necessary to assure that such procedures and hearings will be fair and impartial. Such rules and regulations shall be consistent with the pertinent provisions of article 4 of title 24, C.R.S. 1973.

(3) In all proceedings before the commission or the division with respect to any alleged violation of any control regulation, permit, or order, the burden of proof shall be upon the division.

(4) Except for classification and water quality standard setting proceedings, the commission or the department of health may designate a hearing officer pursuant to part 10 of article 30 of title 24, C.R.S.

1973, subject to appropriations made to the department of health. When appropriate, the hearing officer may be an employee of the department of health or a member of or the administrator of the commission.

(5) (a) Any request for a variance with respect to a permit condition shall be made within thirty days after issuance by the division of the final permit. Requests for variances from any other application of a control regulation shall be made within thirty days of legal notice by the division of the regulation or prior to operation of any new or expanded facility which would be affected by the control regulations. A variance may also be sought within thirty days of facts becoming available which had not been reasonably available to the applicant prior to that time or upon application to the commission for good cause shown.

(b) The division shall approve or disapprove any variance request and issue its decision within 90 days after receipt of the variance request. Notice of a variance request shall be sent to anyone who has requested such notice and shall be included on the next commission agenda. Within 45 days of issuance of a variance decision by the division, the commission on its own motion or on the motion of the division or any interested person may decide to review the variance decision. In such event a hearing pursuant to section 24-4-105, C.R.S. 1973, shall be held and the commission may affirm, modify, or deny the decision.

25-8-402. Procedures to be followed in classifying state waters, and setting standards and control regulations. (1) Prior to the classification of state waters and promulgating any water quality standard or any control regulation authorized in this article, the commission shall conduct a public hearing thereon as provided in section 24-4-103, C.R.S. 1973. Notice of any such hearing shall conform to the requirements of section 24-4-103, C.R.S. 1973, but such notice shall be given at least sixty days prior to the hearing and shall include each proposed standard or regulation.

(2) Any person desiring to propose a standard or regulation differing from the standard or regulation proposed by the commission shall file such other written proposal with the commission not less than twenty days prior to the hearing, and, when on file, such proposal shall be open for public inspection.

(3) Witnesses at the hearing shall be subject to cross-examination by or on behalf of the commission, by or on behalf of persons who have proposed standards or regulations pursuant to subsection (2) of this section, and by or on behalf of persons who have obtained party status to the proceeding.

(4) Standards or regulations promulgated pursuant to this section shall take effect as provided in section 24-4-103 (5), C.R.S. 1973.

25-8-403. Administrative reconsideration. During the time permitted for seeking judicial review of any final order or determination of the

commission or division, any party directly affected by such order or determination may apply to the commission or division, as appropriate, for a hearing or rehearing with respect to, or reconsideration of, such order or determination. The determination by the commission or division of whether to grant or deny the application for a hearing, rehearing, or reconsideration shall be made within ten days after receipt by the commission or division of such application. Such determination by the commission may be made by telephone or mail or at a meeting, but in any event shall be confirmed at the next meeting of the commission. If the application for a hearing, rehearing, or reconsideration is granted, the order or determination to which such application pertains shall not be considered final for purposes of judicial review, and the commission or the division may affirm, reverse, or modify, in whole or in part, the pertinent order or determination; thereafter such order or determination shall be final and not subject to stay or reconsideration under this section.

25-8-404. Judicial review. (1) Any final rule, order, or determination by the division or the commission, including but not limited to classification of state waters, approval of areawide waste treatment management plans, water quality standards, site approvals, permits, control regulations, enforcement orders, cease and desist orders, and clean-up orders, shall be subject to judicial review in accordance with the provisions of this article and article 4 of title 24, C.R.S. 1973. All regulations, orders, and determinations of the commission or division shall be adopted, promulgated, or issued in accordance with the provisions of said article 4 of title 24.

(2) Any proceeding for judicial review of any final order or determination of the commission or division shall be filed in the district court for the district in which the pollution source affected is located.

(3) Any proceeding for judicial review of any final rule, order, or determination of the commission or division shall be filed within thirty days after said rule, order, or determination has become final. Rule-making determinations shall become final in accordance with the "State Administrative Procedure Act". Quasi-judicial determinations shall become final upon issuance of such determinations to those parties to the proceedings. The period for filing the action for judicial review shall be stayed while any application for a hearing, rehearing, or reconsideration is pending pursuant to section 25-8-403, and the period during which any such application is pending shall extend the time for filing a proceeding for judicial review an equal length of time.

(4) (a) Except with respect to emergency orders issued pursuant to section 25-8-307, any person to whom a cease and desist order, clean-up order, or other order has been issued by the division or commission, or against whom an adverse determination has been made, may petition the district court for a stay of the effectiveness of such order or determination. Such petition shall be filed in the district court in which the pollution source affected is located.

(b) Such petitions may be filed prior to any such order or determination becoming final or during any period in which such order or

determination is under judicial review.

(c) Such stay shall be granted by the court if there is probable cause to believe that refusal to grant a stay will cause serious harm to the affected person or any other person, and:

(I) That the alleged violation or activity to which the order or determination pertains will not continue, or if it does continue, any harmful effects on state waters will be alleviated promptly after the cessation of the violation or activity; or

(II) That the refusal to grant a stay would be without sufficient corresponding public benefit.

(5) Any party may move the court to remand the case to the division or the commission in the interests of justice, for the purpose of adducing additional specified and material evidence, and findings thereon; but such party shall show reasonable grounds for the failure to adduce such evidence previously before the division or the commission.

(6) If the court does not stay the effectiveness of an order of the commission or division, the court shall enforce compliance with that order by issuing a temporary restraining order or injunction at the request of the commission or division.

25-8-405. Samples, secret processes. (1) If samples of water or water pollutants are taken for analysis and a violation of any permit or control regulation is suspected, a representative portion of the sample shall be furnished upon request to the person who is believed to be responsible for such suspected violation. A representative portion of such sample shall be furnished to any suspected violator whenever any remedial action is taken with respect thereto by the division. A duplicate of every analytical report pertaining to such sample shall also be furnished as soon as practicable to such person.

(2) Any information relating to any secret process, method of manufacture or production, or sales or marketing data, which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the commission or the division, but shall be kept confidential. Any person seeking to invoke the protection of this subsection (2) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of effluent data.

PART 5

PERMIT SYSTEM

25-8-501. Permits required for discharge of pollutants - administration. (1) No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit

under this article. Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this article, and each permit issued pursuant to the federal act shall be deemed to be a temporary permit issued under this article which shall expire upon expiration of the federal permit.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into state waters. Such administration shall be accordance with the provisions of this article and regulations promulgated by the commission.

(3) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of pollutants, which regulations shall include, but not be limited to, procedures for the issuance of a variance pursuant to section 25-8-503 (4), and shall also require that, in appropriate circumstances, the effluent limitations contained in a permit shall be adjusted to account for the pollutants contained in the discharger's intake water. Such regulations shall be consistent with the provisions of this article and with federal requirements, shall be in furtherance of the policy contained in section 25-8-102, and may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

(a) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;

(b) Location and quantity and quality characteristics of the permitted discharge;

(c) Effluent limitations and conditions for treatment prior to discharge to a publicly owned treatment works;

(d) Monitoring as well as record-keeping and reporting requirements consistent with standard procedures and methods established by the division;

(e) Schedules of compliance;

(f) Procedures to be followed by division personnel for entering and inspecting premises;

(g) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of a waste discharge;

(h) Restrictions on transfers of the permit;

(i) Procedures to be followed in the event of expansion or modification of the process, facility, or activity from which the discharge occurs or the quality, quantity, or frequency of the discharge;

(j) Duration of the permit, not to exceed five years, and renewal procedures;

(k) Authority of the division to require changes in plans and specifications for control facilities as a condition for the issuance of a permit;

(l) Identification of control regulations over which the permit takes precedence and identification of control regulations over which a permit may never take precedence;

(m) Notice requirements of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new or altered discharge;

(n) Effectiveness under this article of permit applications submitted to and permits issued by the federal government under the federal act.

(4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the division.

(5) Every permit issued for a domestic wastewater treatment works shall contain such terms and conditions as the division determines to be necessary or desirable to assure continuing compliance with applicable control regulations. Such terms and conditions may require that whenever deemed necessary by the division to assure such compliance the permittee shall:

(a) Require pretreatment of effluent from industrial, governmental, or commercial facilities, processes, and activities before such effluent is received into the gathering and collection system of the permittee;

(b) Prohibit any connection to any municipal permittee's interceptors and collection system that would result in receipt by such municipal permittee of any effluent other than sewage required by law to be received by such permittee;

(c) Include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by a municipal permittee;

(d) Initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty percent of design capacity;

(e) Commence construction of such domestic wastewater treatment works expansion whenever throughout and treatment reaches ninety-five percent of deisgn capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced; except that building permits may continue to be issued for any construction which would not have the effect of increasing the input of domestic wastewater to the sewage treatment works of the municipality involved.

(6) Inclusion of the requirements authorized by paragraph (d) of

of subsection (5) of this section shall be presumed unnecessary to assure compliance upon a showing that the area served by a domestic wastewater treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the division should it be felt that growth is occurring or will occur in the area.

25-8-502. Application - definitions - fees - water quality control fund - public participation. (1) (a) For the purposes of this section:

(I) "Discharge" means discharge of pollutants as defined in section 25-8-103 (3), and also includes land application.

(II) "Land application" is any discharge being applied to the land for treatment purposes.

(b) The commission shall establish and may revise, as necessary, a schedule of nonrefundable fees for the processing of applications for the issuance of permits under this section sufficient to cover the reasonable costs of processing and administering the permit, but in no event shall a fee exceed twenty-five thousand dollars for a new permit and five thousand dollars for a renewal permit for any and all permits required for an entire contiguous plant site. An application shall be considered a renewal if it is based on the same facility, process, and flow upon which the current permit is based, including any application for expansion or change which has been granted.

(c) All fees collected pursuant to paragraph (b) of this section and all fines collected for violations of this article shall be transmitted to the state treasurer who shall credit the same to the water quality control fund, which fund is hereby created. The moneys in such fund shall be appropriated annually to the department of health by the general assembly, which shall review expenditures of such moneys to assure that they are used to accomplish the purposes of this article.

(2) (a) A complete and accurate application for all discharges shall be filed with the division not less than one hundred eighty days prior to the date proposed for commencing the discharge.

(b) The application shall contain such relevant plans, specifications, water quality data, and other information related to the proposed discharge as the division may reasonably require. Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(c) An applicant shall be advised not more than forty-five days after the receipt of an application by the division if, and in what respects, the application is incomplete. Upon failure of the division to so advise the applicant, the application shall be deemed complete. If additional information is requested by the division within said forty-five day period,

the division shall have fifteen days from the date the additional information is submitted to determine whether the additional information which was submitted satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. Upon failure of the division to so advise the applicant, the application shall be deemed complete. A decision that an application is not complete shall be considered final agency action upon issuance of such decision to the applicant and shall be subject to judicial review. A petition for review of such decision shall be given priority scheduling by the court.

(3) (a) The division shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and state statutory and regulatory requirements.

(b) Public notice of a complete permit application and the division's preliminary analysis thereof shall be given as provided in subsection (4) of this section. Such notice shall advise of the opportunity for interested persons to submit written comments on the permit application and the division's preliminary analysis or to request, for good cause shown, a public meeting on the application and analysis. Such a request shall be made within thirty days of the initial public notice of the permit application and the division's preliminary analysis thereof. If a public meeting is requested and the division, in its discretion and for good cause shown, grants such request, the division shall hold such meeting not more than sixty days after the initial public notice. The division shall provide notice as provided in subsection (4) of this section of the public meeting not less than fifteen days prior to the date of such meeting.

(c) The period for public comment shall close fifty-five days from the date of notice of the permit application and the division's preliminary analysis thereof; except that, if a public meeting is held on the application and analysis, the period for public comment shall close sixty days from the date of notice of the application and analysis.

(4) Public notice of every complete permit application and the division's preliminary analysis thereof shall be circulated in a manner designed to inform interested and potentially interested persons of the application and analysis. Procedures for the circulation of such public notice or a notice regarding a public meeting concerning an application and analysis shall be established by the commission and shall include at least the following:

(a) Notice shall be given by at least one publication in a newspaper of general circulation which is distributed within the geographical areas of the proposed discharge.

(b) Notice shall be mailed to any person or group upon request.

(c) The division shall add the name of any person or group upon request to a mailing list to receive copies of notices for all discharge permit applications within the state or within a certain geographical area.

(d) The division shall also, during the period from the date of the initial public notice of the application and analysis to the close of the

public comment period, maintain in the office of the county clerk and recorder of the county in which the proposed discharge, or a part thereof, is to occur a copy of its preliminary analysis and a copy of the permit application with all accompanying data for public inspection.

(5) (a) (I) Except as provided in this subsection (5), if the division has not finally issued or denied a permit within one hundred eighty days after receipt of the permit application, unless this time limit is waived or extended by the applicant, a temporary permit shall be issued.

(II) In the case of each permit application, the deadlines established pursuant to subparagraph (I) of this paragraph (a) shall be extended by:

(A) The number of days which an applicant takes to submit information requested by the division pursuant to paragraph (c) of subsection (2) of this section plus the fifteen days provided for the division to evaluate such additional information; and

(B) Thirty days, if a public meeting is held pursuant to subsection (3) of this section.

(b) All temporary permits shall contain such conditions as are necessary to protect public health and shall not be less restrictive than required by state and federal effluent guidelines unless a schedule of compliance or a variance is set forth therein. A temporary permit shall be issued for a period not to exceed two years and shall expire as provided in the issuance or denial of the final permit. Issuance of a temporary permit shall be final agency action for the purposes of section 24-4-106, C.R.S. 1973.

(6) This section shall apply to all applications or renewals received after July 15, 1981. All applications or renewals received on or before July 15, 1981, shall be processed in accordance with sections 25-8-502 and 25-8-503 (5) of the "Colorado Water Quality Control Act" of 1973 and amendments thereto.

25-8-503. <u>Permits - when required and when prohibited - variances.</u> (1) The division shall issue a permit in accordance with regulations promulgated under this article when the division has determined that the provisions of this article and the federal act and regulations thereunder have been met with respect to both the application and proposed permit.

(2) No permit shall be issued which is inconsistent with any duly promulgated and controlling state, regional, or local land use plan or any portion of an approved regional wastewater management plan which has been adopted as a regulation pursuant to this article, unless all other requirements and conditions of this act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(3) No permit shall be issued which allows a violation of a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements

as determined by the division.

(4) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements or the division has granted a variance from the water quality standard. Variances from the water quality standard may be granted if the division determines that the benefits derived from meeting a standard do not bear a reasonable relationship to the economic, environmental, and energy impacts or other factors which are particular to the applicant in meeting the water quality standard; except that such variances shall be consistent with the purposes of this article, including the protection of existing beneficial uses. Variances may be granted for no longer than the duration of the permit. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5).

(5) Activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or the release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. Water quality standards may apply to discharges from such activities only if the commission has adopted appropriate control regulations pursuant to section 25-8-205. Nothing in this article shall supersede the provisions of articles 80 to 93 of title 37, C.R.S. 1973.

(6) Nothing in subsection (5) of this section shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to this article. All permits for such discharges shall apply at the point where wastewater effluent is released from the control of the discharger. All permits for discharges into ditches or other man-made conveyance structures shall contain such provisions as are necessary for the protection of agricultural, domestic, industrial, and municipal beneficial uses made of the waters of the ditch or other man-made conveyance structures, which use or uses were decreed and in existence prior to the inception of the discharge.

(7) All moneys credited to the water quality control fund under section 25-8-502 (1) (c) shall be available for processing and administering the permit system until July 1, 1982. After July 1, 1982, any moneys credited to the water quality fund shall be subject to appropriation by the general assembly.

25-8-504. Agricultural wastes. (1) Neither the commission nor the division shall require any permit for any flow or return flow of irrigation water into state waters except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, minimum required by the federal act or regulations.

(2) Neither the commission nor the division shall require any permit for animal or agricultural waste on farms and ranches except as may be

required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(3) No permit or fee shall ever be required pursuant to this part 5 for the diversion of water from natural surface streams.

25-8-505. Permit conditions concerning publicly owned wastewater treatment works. The division is authorized to impose, as conditions in permits for the discharge of pollutants from publicly owned wastewater treatment works, appropriate measures to establish and insure compliance by industrial users with any system of user charges or industrial cost recovery.

PART 6

VIOLATIONS, REMEDIES, AND PENALTIES

25-8-601. Division to be notified of suspected violations and accidental discharges - penalty. (1) Any person or any agency of the state or federal government may apply to the division to investigate and take action upon any suspected or alleged violation of any provision of this article or of any order, permit, or regulation issued or promulgated under authority of this article.

(2) Any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state contrary to the provisions of this article, as soon as he has knowledge thereof, shall notify the division of such discharge. Any person who fails to notify the division as soon as practicable is guilty of a misdeameanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Notification received pursuant to this subsection (2) or information obtained by the exploitation of such notification shall not be used against any such person in a criminal case except prosecution for perjury, for false swearing, or for failure to comply with a clean-up order issued pursuant to section 25-8-606.

(3) Any penalty collected under this section shall be credited to the water quality control fund created by section 25-8-502.

25-8-602. Notice of alleged violations. (1) Whenever the division has reason to believe that a violation of an order, permit, or control regulation issued or promulgated under authority of this article has occurred, the division shall cause written notice to be served personally or by certified mail, return receipt requested, upon the alleged violator or his agent for service of process. The notice shall state the provision alleged to be violated and the facts alleged to constitute a violation, and it may include the nature of any corrective action proposed to be required.

(2) Each cease and desist and clean-up order issued pursuant to sections 25-8-605 and 25-8-606 shall be accompanied by or have incorporated in it the notice provided for in subsection (1) of this section unless such notice has been given prior to issuance of such cease and desist or clean-up order.

25-8-603. Hearing procedures for alleged violations. (1) In any notice given under section 25-8-602, the division shall require the alleged violator to answer each alleged violation and may require the alleged violator to appear before it for a public hearing to provide such answer. Such hearing shall be held no sooner than fifteen days after service of the notice; except that the division may set an earlier date for hearing if it is requested by the alleged violator.

(2) If the division does not require an alleged violator to appear for a public hearing, the alleged violator may request the division to conduct such a hearing. Such request shall be in writing and shall be filed with the division no later than thirty days after issuance of a notice under section 25-8-602. If such a request if filed, a hearing shall be held within a reasonable time.

(3) If a hearing is held pursuant to the provisions of this section, it shall be public and, if the division deems it practicable, shall be held in any county in which the violation is alleged to have occurred. The division shall permit all parties to respond to the notice served under section 25-8-602, to present evidence and argument on all issues, and to conduct cross-examination required for full disclosure of the facts.

(4) Hearings held pursuant to this section shall be conducted in accordance with section 24-4-105, C.R.S. 1973.

25-8-604. Suspension, modification, and revocation of permit. Upon a finding and determination, after hearing, that a violation of a permit provision has occurred, the division may suspend, modify, or revoke the pertinent permit or take such other action with respect to the violation as may be authorized pursuant to regulations promulgated by the commission.

25-8-605. Cease and desist orders. If the division determines, with or without hearing, that a violation of any provision of this article or of any order, permit, or control regulation issued or promulgated under authority of this article exists, the division may issue a cease and desist order. Such order shall set forth the provision alleged to be violated, the facts alleged to constitute the violation, and the time by which the acts or practices complained of must be terminated.

25-8-606. Clean-up orders. The division may issue orders to any person to clean up any material which he, his employee, or his agent has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters which may pollute them. The division may also request the district attorney to proceed and take appropriate action under section 16-13-305 and sections 16-13-307 to 16-13-315, or section 18-4-511, C.R.S. 1973.

25-8-607. Restraining orders and injunctions. (1) If any person fails to comply with a cease and desist order or clean-up order that is not subject to a stay pending administrative or judicial review, the division may request the district attorney for the judicial district in which the alleged violation exists or the attorney general to bring, and if so requested it shall be the duty of such district attorney or the attorney general to bring, a suit for a temporary restraining order, preliminary injunction, or permanent injunction to prevent any further or continued violation of such order. In any such suit the final findings of the division, based upon evidence in the record, shall be prima facie evidence of the facts found in such record.

(2) Suits under this section shall be brought in the district or county court where the discharge occurs. Emergencies shall be given precedence over all other matters pending in such court. The institution of such injunction proceeding by the division shall confer upon such court exclusive jurisdiction to determine finally the subject matter of the proceeding; except that the exclusive jurisdiction of the court shall apply only to such injunctive proceeding and shall not preclude assessment of civil penalties or any other enforcement action or sanction authorized by this article.

25-8-608. Civil penalties. (1) Any person who violates any provision of this article, or of any permit issued under this article, or of any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Any civil penalty collected under this section shall be credited to the water quality control fund created by section 25-8-502.

(2) Upon application of the division, penalties shall be determined by the executive director or his designee and may be collected by the division by action instituted in a court of competent jurisdiction for collection of such penalty. The final decision of the executive director or his designee may be appealed to the commission. A stay of any order of the division pending judicial review shall not relieve any person from any liability under subsection (1) of this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may consider the appropriateness of the amount of the penalty, if such issue is raised by the party against whom the penalty was assessed.

25-8-609. Criminal pollution of state waters - penalties. (1) Any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution of state waters if such discharge is made:

(a) In violation of any permit issued under this article; or

(b) In violation of any cease and desist order or clean-up order issued by the division which is final and not stayed by court order; or

(c) Without a permit, if a permit is required by the provisions of this

article for such discharge, unless there is then pending an application for such permit; or

(d) In violation of any applicable control regulation, unless a permit has been issued therefor, unless there is then pending an application for such permit, or unless a variance has been granted pursuant to section 25-8-205 (6) or there is then pending an application for such a variance.

(2) Prosecution under paragraphs (a) and (d) of subsection (1) of this section shall be commenced only upon complaint filed by the division.

(3) Any person who commits criminal pollution of state waters shall be fined, for each day the violation occurs, as follows:

(a) If the violation is committed with criminal negligence or recklessly, as defined in section 18-1-501, C.R.S. 1973, the maximum fine shall be twelve thousand five hundred dollars.

(b) If the violation is committed knowingly or intentionally, as defined in section 18-1-501, C.R.S. 1973, the maximum fine shall be twenty-five thousand dollars.

(c) If two separate offenses under this article occur in two separate occurrences during a period of two years, the maximum fine for the second offense shall be double the amounts specified in paragraph (a) or (b) of this subsection (3), whichever is applicable.

(d) Any criminal penalty collected under this section shall be credited to the water quality control fund created by section 25-8-502.

25-8-610. Falsification and tampering. (1) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdeameanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

(2) Any penalty collected under this section shall be credited to the water quality control fund created by section 25-8-502.

25-8-611. Proceedings by other parties. (1) The factual or legal basis for proceedings or other actions that results from a violation of any control regulation inure solely to, and shall be for the benefit of the people of, the state generally, and it is not intended by this article, in any way, to create new private rights or to enlarge existing private rights. A determination that water pollution exists or that any standard has been disregarded or violated, whether or not a proceeding or action may be brought by the state, shall not create any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state.

(2) A permit issued pursuant to this article may be introduced in any court of law as evidence that the permittee's activity is not a public or private nuisance. Introduction into evidence of such permit and evidence of compliance with the permit conditions shall constitute a prima facie case that the activity to which the permit pertains is not a public or private nuisance.

25-8-612. Remedies cumulative. (1) It is the purpose of this article to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.

(2) No action pursuant to section 25-8-609 shall bar enforcement of any provision of this article or of any rule or order issued pursuant to this article by any authorized means.

(3) Nothing in this article shall abridge or alter rights of action or remedies existing on or after July 1, 1981, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, town, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

PART 7

DOMESTIC WASTEWATER TREATMENT WORKS

25-8-701. Definitions. As used in this part 7, unless the context otherwise requires:

(1) "Construction" means entering into a contract for the erection or physical placement of materials, equipment, piping, earthwork, or buildings which are to be part of a domestic wastewater treatment works.

(2) "Eligible project" means a project for the planning, design, or construction of domestic wastewater treatment works or of facilities for the discharge of wastewater or backwash water from public water treatment plants which is, in the judgment of the division, necessary for the accomplishment of the state water quality control program, which conforms with applicable rules and regulations of the commission, and which is eligible for federal assistance under provisions of the federal act.

(3) "Federal assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for planning, design, or construction of domestic wastewater treatment works, or funds which are used for such planning, design, or construction, under provisions of the federal act.

25-8-702. Approval for commencement of construction. (1) No person shall commence the construction of any domestic wastewater treatment works or the enlargement of the capicity of an existing domestic wastewater treatment works, unless:

(a) The site location and the design for the construction or expansion have been approved by the division;

(b) A permit for the discharge from such facility has been issued pursuant to section 25-8-501 (5).

(2) In evaluating the suitability of a proposed site location for a domestic wastewater treatment works, the division shall:

(a) Consider the local long-range comprehensive plan for the area as it affects water quality and any approved regional water quality management plan for the area;

(b) Determine that the plant on the proposed site will be managed to minimize the potential adverse impacts on water quality; and

(c) Encourage the consolidation of wastewater treatment facilities whenever feasible.

(3) Ninety days prior to commencement of construction of an interceptor line, the entity responsible for that line shall notify the planning agency and the division of such construction. This notification shall be accompanied with a certification by the agency receiving the wastewater for treatment that it has or will have the capacity to treat the projected wastewater from that interceptor line in accordance with the treatment agency's site approval and discharge permit. Within thirty days of receipt of notification, the planning agency, or the division, if a planning agency does not exist, shall certify that the proposed interceptor line has the capicity to carry the projected flow. In the event the entity responsible for an interceptor line does not have the said certification from the treatment agency and the planning agency, the entity shall be required to apply for a site location approval prior to commencement of construction.

(4) The decision of the division concerning approval of the site location or design may be appealed to the commission. The commission shall hold a hearing on the site location or design in accordance with the provisions of section 24-4-105, C.R.S. 1973, and the decision of the commission shall be final administrative action for the purposes of section 24-4-106, C.R.S. 1973.

25-8-703. <u>State contracts for construction of domestic wastewater treatment works</u>. (1) To meet the responsibility of the state with respect to the protection of public health and to assist municipalities, the division, in the name of the state and to the extent of state funds appropriated therefor, may enter into contracts with municipalities with populations of not more than five thousand persons concerning the planning, design, or construction of domestic wastewater treatment works.

(2) The division shall be the state agency for the administration of funds appropriated for such project grants and shall contract for grant projects only to the extent state general funds have been appropriated. The division may use not more than five percent of the funds appropriated for such project grants for the administration and management thereof.

(3) Domestic wastewater treatment grants for municipalities with populations of not more than five thousand persons shall be authorized

based upon water quality needs and public health related problems. The commission shall promulgate project categorization system for use in determining the relative priority of proposed domestic wastewater projects. The division shall review applications for state funds and may approve only those applications which are consistent with the project categorization system.

(4) During the review process the division shall seek from the division of local government in the department of local affairs a fiscal analysis of the applying municipality to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the division may authorize a state grant percentage contribution to the project in accordance with the recommendation of the division of local government and with the project categorization adopted by the commission.

(5) Any contract entered into pursuant to this section shall include an estimate of the reasonable cost of the project as determined by the division and shall also include, but not be limited to, provisions which set forth that the municipality shall:

(a) Proceed expeditiously and complete the project in accordance with design documents reviewed by the division;

(b) Provide a plan of operation to the division for approval and shall commence operation of the domestic wastewater treatment works on completion of the project;

(c) Not discontinue operation of the domestic wastewater treatment works without prior approval of the division;

(d) Operate and maintain the domestic wastewater treatment works in accordance with the plan of operation;

(e) Provide for the payment of its share of the project.

(6) In connection with each contract concerning an eligible project, the division shall keep accurate records on the project, including, but not limited to, records of the amount of payment by the state and the amount of federal assistance received by the municipality. Such records may establish the basis for application for federal reimbursement of such payments made by the state, and the division is authorized to make such application in appropriate cases.

SECTION 2. 13-6-104, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

13-6-104. Original civil jurisdiction. (7) The county court shall have concurrent original jurisdiction with the district court to hear actions brought pursuant to section 25-8-607, C.R.S. 1973.

SECTION 3. 24-1-135, Colorado Revised Statutes 1973, as amended, is amended to read:

24-1-135. Effect of congressional redistricting. Effective January 1, 1973, the terms of office of persons appointed pursuant to sections 11-2-102, 12-22-103, 12-35-104, 12-54-104, 23-60-104, 24-32-308, 24-32-706, 24-65-103, 25-1-103, 26-10-101, 33-42-105, 34-60-104, and 35-65-105, C.R.S. 1973, shall terminate prior thereto, the appointing authority designated by law shall appoint members to such boards,commission, and committees for terms to commence on January 1, 1973, and to expire on the date the terms of the predecessors in office of such members would have expired, and any person whose term of office is terminated by this section may be reappointed effective January 1, 1973, and, for the purposes of such reappointment, shall not be deemed to succeed himself. Appointments thereafter shall be made as prescribed by law.

SECTION 4. 34-60-106, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF NEW SUBSECTION to read:

34-60-106. Additional powers of the commission. (9) Notwithstanding the provisions of section 34-60-120 or any other provision of law, the commission, as to class II injection wells defined in the regulations associated with production of oil, gas, oil shale, or any other energy source, shall also have the power to perform all acts for the purpose of protecting underground sources of drinking water in accordance with state programs authorized by 42 U.S.C. section 300f. et. seq. and regulations thereunder in effect or as may be amended.

SECTION 5. 39-1-102 (12.1) (a) (II), Colorado Revised Statutes 1973, as amended, is amended to read:

39-1-102. Definitions. (12.1) (a) (II) For the primary purpose of eliminating, reducing, or preventing the release of pollutants, as defined in section 25-8-103 (15), C.R.S. 1973, into state waters to the extent that such property is certified as pollution control property in accordance with the provisions of section 39-4-110 or 39-5-131. The term includes any treatment works, control devices, disposal systems, machinery, equipment, buildings, structures, land, or other real or personal property, or any parts or accessories thereof, installed, constructed, or used for the primary purpose of reducing, controlling, or disposing of pollutants which if released into state waters could cause water pollution. It does not include any residential sewage disposal system or domestic sewer lines.

B-V

ARTICLE 10

Individual Sewage Disposal Systems Act

25-10-101. Short title.--This article shall be known and may be cited as the "Individual Sewage Disposal Systems Act".

25-10-102. Legislative declaration.--
In order to preserve the environment and protect the public health; to eliminate and control causes of disease, infection, and aerosol contamination; and to reduce and control the pollution of the air, land, and water, it is declared to be in the public interest to establish minimum standards, rules, and regulations for individual sewage disposal systems in the state of Colorado and to provide the authority for the administration and enforcement of such minimum standards, rules, and regulations.

25-10-103. Definitions.--
As used in this article, unless the context otherwise requires:
(1) "Absorption system" means a leaching field and adjacent soils or other system for the treatment of sewage in an individual sewage disposal system by means of absorption into the ground.

(2) "Applicant" means any person who submits an application for a permit for an individual sewage disposal system.

(3) "Department" means the department of health of the state of Colorado, created by section 25-1-102.

(4) "Dispersal system" means a system for the disposal of effluent, after final treatment in an individual sewage disposal system, by a method which does not depend upon or utilize the treatment capability of the soil.

(5) "Division" means the division of administration of the department.

(6) "Effluent" means the liquid waste discharge from an individual sewage disposal system.

(7) "Health officer" means the chief administrative and executive officer of a local health department, or the appointed health officer of the local board of health.

(8) "Individual sewage disposal system" and the term "system" where the context so indicates mean a system or facility for treating, neutralizing, stabilizing, or disposing of sewage which is not a part of or connected to a sewage treatment works.

(9) "Local board of health" means any local, county, district, or regional board of health.

(10) "Local health department" means any city, county, city and county, district, or regional health department and may include a local board of health.

(11) "Percolation test" means a subsurface soil test at the depth of a proposed absorption system or similar component of an individual sewage disposal system to determine the water absorption capability of the soil, the results of which are normally expressed as the rate at which one inch of water is absorbed.

(12) "Permit" means a permit for the construction or alteration, installation, and use or for the repair of an individual sewage disposal system.

(13) "Person" means individual, partnership, firm, corporation, association, or other legal entity and also the state, any political subdivision thereof, or other governmental entity.

(14) "Registered professional engineer" means an engineer licensed in accordance with section 12-25-111, C.R.S. 1973.

(15) "Registered professional sanitarian" means a sanitarian registered in accordance with section 12-62-108, C.R.S. 1973.

(16) "Sewage" means a combination of liquid wastes which may include chemicals, house wastes, human excreta, animal or vegetable matter in suspension or solution, and other solids in suspension or solution, and which is discharged from a dwelling, building, or other establishment.

(17) "Sewage treatment works" means a system or facility for treating, neutralizing, stabilizing, or disposing of sewage, which system or facility has a designed capacity to receive more than two thousand gallons of sewage per day. The term "sewage treatment works" includes appurtenances such as interceptors, collection lines, outfall and outlet sewers, pumping stations, and related equipment.

(18) "State board" means the state board of health created by section 25-1-103.

(19) "State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state, except waters in sewerage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all waters withdrawn for use, until all uses and treatment have been completed.

(20) "Systems cleaner" means a person engaged in and who holds himself out as a specialist in the cleaning and pumping of sewage disposal systems and removal of the residue deposited in the operation thereof.

(21) "Systems contractor" means a person engaged in and who holds himself out as a specialist in the installation, renovation, and repair of sewage disposal systems.

25-10-104. Regulations of individual sewage disposal systems.--

(1) The division shall develop and the state board shall adopt guidelines for rules and regulations not later than August 1, 1973, providing minimum standards for the location, construction, performance, installation, alteration, and use of individual sewage disposal systems within the state of Colorado. Such guidelines shall comply with the provisions set forth in section 25-10-105, and shall be the basis for the adoption of detailed rules and regulations by local boards of health pursuant to subsection (2) of this section.

(2) Every local board of health in the state shall develop and adopt rules and regulations for individual sewage disposal systems within their respective areas of jurisdiction not later than October 1, 1973. Such rules and regulations shall comply with the guidelines adopted by the state board pursuant to subsection (1) of this section and with the minimum requirements set forth in sections 25-10-105 and 25-10-106. Before finally adopting such rules and regulations, or any amendment thereto, the local board of health shall hold a public hearing on the proposed rules and regulations, or amendments thereto. Notice of the time and place of such hearing shall be given at least once, at least twenty days in advance thereof, in a newspaper of general circulation within its area of jurisdiction. The local board of health may make changes or revisions in the proposed rules and regulations, or amendments thereto, after the public hearing and prior to final adoption, and no further public hearing shall be required regarding such changes or revisions. All rules and regulations, and amendments thereto, shall be transmitted to the department not later than five days after final adoption and shall become effective forty-five days after final adoption unless the department has sooner notified the local board of health that the rules and regulations, or amendments thereto, are not in compliance with sections 25-10-105 and 25-10-106.

(3) If a local board of health has not adopted rules and regulations in compliance with this section and submitted them to the state board by October 8, 1973, the state board shall then promulgate rules and regulations for such areas of the state for which no complying rules and regulations have been adopted, except for such areas as are serviced exclusively by a sewage treatment works. Rules and regulations promulgated by the state board shall comply with the guidelines and minimum requirements set forth in sections 25-10-105 and 25-10-106 and shall be the same for all the areas of the state for which the state board promulgates such rules and regulations except as may be appropriate to provide for differing geologic conditions.

(4) Rules and regulations may be adopted by a local board of health after action by the state board under subsection (3) of this section, if such rules and regulations are adopted in compliance with the procedural requirements of subsection (2) of this section and are no less stringent than those promulgated by the state board. Rules and regulations of the local board so adopted shall then become effective only after they are transmitted to the division and are found to be in compliance with the provisions of this subsection (4) and of sections 25-10-105 and 25-10-106.

(5) Rules and regulations pertaining to individual sewage treatment systems in effect on July 1, 1973, shall remain in effect until superseded by rules and regulations adopted pursuant to this article.

(6) Fees authorized in this article shall be set at such amounts as are deemed necessary to cover the operation expenses of the several agencies.

25-10-105. Minimum standards for individual sewage disposal systems.-- (1) Rules and regulations adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (3) shall govern all aspects of the performance, location, construction, alteration, installation, and use of individual sewage disposal systems and shall include, as a minimum, provisions regarding the following matters:

(a) Performance of soil percolation tests in at least three test holes in the area in which the absorption field of a proposed system is to be located. A test hole must be drilled in each twelve hundred square foot area of the leach field, and one test hole must be drilled to a maximum of eight feet deep or to bedrock, and must be drilled to give a fair indication of the soil condition. The tests shall be performed by a registered professional engineer or a competent technician of the local health department, unless the tests were previously performed by a registered professional engineer and the results thereof submitted with the application for the permit. If an application is for a system which does not utilize a soil absorption system, but which employs a dispersal system, the local board of health may waive the requirement of percolation tests upon request by the applicant supported by an adequate subsoil and bedrock report and by a showing that the tests are not essential to the proper design of the system and that the absence of test data involves no danger to the public health.

(b) Methods for calculating the maximum daily sewage flow, which shall not exceed the capacity for which the system is designed;

(c) Design criteria, including, where applicable, minimum capacities based on daily sewage flow, and construction standards for septic tanks, other types of holding or pretreatment tanks, building sewers and sewer lines, greasetraps, distribution boxes, and serial distribution systems;

(d) Minimum distances from the various components of a system to pertinent terrain features, including: Streams, lakes, watercourses, springs, wells, subsoil drains, cisterns, water lines, suction lines, gulches, dwellings, other occupied buildings, and property lines;

(e) For systems treating and disposing of effluent through an absorption system: Methods for calculating minimum absorption area for various types of absorption systems and design criteria and construction standards for such types of absorption systems as the department and the local board of health authorize, which may include absorption trenches, seepage beds, seepage pits, sand filter trenches, and subsurface sand filters. Unless designed by a registered professional engineer and approved by the local board of health, no such system may be permitted in areas in which the soil percolation rate is slower than one inch in sixty minutes or faster than one inch in five minutes; in which the maximum seasonal level of the groundwater table is less than four feet below the bottom of the proposed absorption system; in which bedrock exists less than four feet

below the bottom of the proposed absorption system; or which has a slope in excess of thirty percent.

(f) For systems disposing of effluent into state waters: In cooperation and coordination with the water quality control commission, procedures for obtaining site location approval and discharge permits; general design criteria; adoption of effluent standards; requirement of design by a registered professional engineer; and mandatory review by the local board of health of each application for such a system.

(g) For systems disposing of effluent by discharge upon the surface of the ground: Specific performance criteria to insure that such surface discharge does not drain from the property on which the system is located, except by permit from the local board of health, and does not otherwise create a hazard to public health or constitute a nuisance or undue risk of pollution; requirement of design by a registered professional engineer; and mandatory review by the local board of health of each application for such a system;

(h) Design criteria and construction standards for vaults; for privies and slit trenches, either of which may be prohibited at the option of the local board of health; for incineration toilets, and chemical toilets; and for minisystems limited to disposal of waste water from sinks, lavatories, tubs, and showers;

(i) Performance criteria and construction standards for evapotranspiration systems which dispose of effluent into the air by evaporation from a soil surface or transpiration of plants:

(j) Performance criteria and construction standards for systems which dispose of effluent by means of dispersal systems;

(k) Performance criteria and construction standards for systems which service commercial, business, institutional, or industrial property or multifamily dwellings; requirement of design by a registered professional engineer; and mandatory review by the local board of health of each application for such a system.

(2) The guidelines and regulatory provisions adopted by the state board and by the local boards pursuant to subsection (1) of this section shall conform to or exceed the minimum standards and criteria set forth in the "manual of septic tank practice", United States public health service publication no. 526, revised 1967, where applicable.

25-10-106. Basic rules for local administration.--
(1) Rules and regulations adopted by local boards of health under section 25-10-104 (2) or (4) or promulgated by the department under section 25-10-104 (3) shall govern all aspects of the application for and issuance of permits, the inspection, testing, and supervision of installed systems, the issuance of cease and desist orders, the maintenance and cleaning of systems, and the disposal of waste material, and shall, as a minimum, include provisions regarding the following matters:

(a) Procedures by which application may be made for the issuance of a permit for an individual sewage disposal system. A fee not to exceed seventy-five dollars may be charged by local health departments for accepting and processing such applications. The application for a permit shall be in writing and shall include such information, data, plans, specifications, statements, and commitments as may be required by the local board of health in order to carry out the purposes of this article.

(b) Review of the application and inspection of the proposed site by the local health department;

(c) Specification of mandatory tests to be performed by the local health department, including percolation tests unless excused or previously performed by a registered professional engineer;

(d) Specification of additional tests to be performed and reports to be made by the applicant and the circumstances under which such tests or reports may be required by the local health department;

(e) Determination on behalf of the local health department by a registered sanitarian or a registered professional engineer after review of the application, site inspection, test results, and other required information, whether the proposed system is in compliance with the requirements of, and the rules and regulations adopted under, this article; and the issuance of a permit by the health officer or his designated representative if the proposed system is determined to be in compliance with the requirements of this article and the rules and regulations adopted under this article;

(f) Review by the local board of health, upon request of an applicant, of applications denied by the health officer;

(g) The circumstances under which applications for certain types of systems, in addition to those specified in section 25-10-105 (1) (f), (1) (g), and (1) (j) and in section 25-10-107 (2), shall be subject to mandatory review by the local board of health to determine whether a permit shall issue;

(h) Final inspection of a system to be made by the local health department after construction, installation, alteration, or repair work under a permit has been completed, but before the system is placed in use, to determine that the work has been performed in accordance with the permit and that the system is in compliance with this article and the rules and regulations adopted under this article;

(i) Inspection of operating systems at reasonable times, and upon reasonable notice to the occupant of the property, to determine if the system is functioning in compliance with this article and the rules and regulations adopted under this article. Officials of the local health department shall be permitted to enter upon private property for purposes of conducting such inspections.

(j) Issuance of a repair permit and an emergency use permit to the owner or occupant of property on which a system is not functioning properly. Application for a repair permit shall be made by such owner or occupant to

the local health department within two business days after receiving notice from the local health department that the system is not functioning in compliance with this article or the rules and regulations adopted under this article or otherwise constitutes a nuisance or hazard to public health. The permit shall provide for a reasonable period of time within which repairs shall be made, at the end of which period the system shall be inspected by the local health department to insure that it is functioning properly. Concurrently with the issuance of a repair permit, the local health department may issue an emergency use permit authorizing continued use of a malfunctioning system on an emergency basis for a period not to exceed the period stated in the repair permit. Such an emergency use permit may be extended, for good cause shown, in the event repairs may not be completed in the period stated in the repair permit, through no fault of the owner or occupant.

(k) Issuance of an order to cease and desist from the use of any system which is found by the health officer not to be functioning in compliance with this article or the rules and regulations adopted under this article or otherwise to constitute a nuisance or a hazard to public health and which has not received timely repairs in accordance with the provisions of paragraph (j) of this subsection (1). Such an order may be issued only after a hearing which shall be conducted by the health officer not less than forty-eight hours after written notice thereof is given to the owner or occupant of the property on which the system is located and at which the owner and occupant may be present, with counsel, and be heard. The order shall require that the owner or occupant bring the system into compliance or eliminate the nuisance or hazard within a reasonable period of time, not to exceed thirty days, or thereafter cease and desist from the use of the system. A cease and desist order issued by the health officer shall be reviewable in the district court for the county wherein the system is located, and upon a petition filed not later than ten days after the order is issued.

(l) Reasonable periodic collection and testing by the local health department of effluent samples from individual sewage disposal systems for which monitoring of effluent is necessary in order to insure compliance with the provisions of this article or the rules and regulations adopted under this article. Such sampling may be required not more than two times a year, except when required by the health officer in conjunction with action taken pursuant to paragraph (k) of this subsection (1). A fee not to exceed twenty-five dollars, plus ten cents for each mile traveled from the principal office of the local health department to the site of the system and return, may be charged by the local health department for each sample collected and tested, and payment of such charges may be stated in the permit for the system as a condition for its continued use. Any owner or occupant of property on which an individual sewage disposal system is located may request the local health department to collect and test an effluent sample from the system. The local health department may, at its option, perform such collection and testing services, and it shall be entitled to charge a fee not to exceed twenty-five dollars, plus ten cents for each mile traveled from the principal office of the local health department to the site of the system and return, for each such sample so collected and tested.

(m) Maintenance and cleaning schedules and practices adequate to insure proper functioning of various types of individual sewage disposal systems. The local board of health may additionally require proof of proper maintenance and cleaning, in compliance with the schedule and practices adopted under this subsection (1), to be submitted periodically to the local health department by the owner of the system.

(n) Disposal of waste materials, removed from systems in the process of maintenance or cleaning, at a site and in a manner which does not create a hazard to the public health, a nuisance, or an undue risk of pollution.

25-10-107. Performance evaluation and approval of systems employing new technology.--

(1) Upon application by a systems contractor, a registered professional engineer, or a manufacturer of individual sewage disposal systems, the division may hold a public hearing to determine whether a particular design or type of system, based upon improvements or developments in the technology of sewage disposal and not otherwise provided for in paragraphs (e) to (j) of subsection (1) of section 25-10-105, has established a record of performance reliability which would justify approval of applications for such systems by the health officer without mandatory review by the local board of health. If the division determines, based upon reasonable performance standards and criteria, that such reliability has been established, the division shall so notify each local board of health, and applications for permits for such systems may thereafter be acted upon by the health officer or his designated representative in the same manner as applications for systems described in section 25-10-105 (1) (e). The division shall not arbitrarily deny any person the right to a hearing on an application for a determination of reliability under the provisions of this section.

(2) Except for designs or types of systems which have been approved by the division pursuant to subsection (1) of this section, the local board of health may approve an application for a type system not otherwise provided for in paragraphs (e) to (j) of subsection (1) of section 25-10-105, only if the system has been designed by a registered professional engineer, and only if the application provides for the installation of a backup system, of a type described in said paragraphs or previously approved by the division under subsection (1) of this section, in the event of failure of the primary system. A local board of health shall not arbitrarily deny any person the right to consideration of an application for such a system and shall apply reasonable performance standards in determining whether to approve such an application.

25-10-108. Licensing of systems contractors and systems cleaners.--

(1) The local board of health may adopt rules and regulations which provide for the licensing of systems contractors. A fee not to exceed twenty-five dollars may be charged by the local health department for the initial license of a systems contractor; a fee not to exceed ten dollars may be charged by the local health department for a renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than

one year. The local board of health may revoke the license of a systems contractor for violation of the applicable provisions of this article or the rules and regulations adopted under this article or for other good cause shown, after a hearing conducted upon reasonable notice to the systems contractor and at which the systems contractor may be present, with counsel, and be heard.

(2) The local board of health may adopt rules and regulations which provide for the licensing of systems cleaners. A fee not to exceed twenty-five dollars may be charged by the local health department for the initial license of a systems cleaner; a fee not to exceed ten dollars may be charged for the renewal of the license. Initial licensing and renewals thereof shall be for a period of not less than one year. The local board of health may revoke the license of a systems cleaner for violation of the applicable provisions of this article or the regulations adopted under this article or for other good cause shown after a hearing conducted upon reasonable notice to the systems cleaner and at which the systems cleaner may be present, with counsel, and be heard.

25-10-109. Enforcement by local health department and local board of health.--

The primary responsibility for the enforcement of the provisions of this article and the regulations adopted under this article shall lie with local health departments and local boards of health. In the event that a local health department or local board of health substantially fails to administer and enforce the provisions of this article and the rules and regulations adopted under this article, the department may assume such of the functions of the local health department or board of health as may be necessary to protect the public health.

25-10-110. Prohibition of individual sewage disposal systems in unsuitable areas.--

The local board of health may conduct a public hearing, after written notice to all affected property owners as shown in the records of the county assessor and publication of notice in a newspaper of general circulation, at least ten days prior to the hearing, to consider the prohibition of permits for individual sewage disposal systems in defined areas which contain or are subdivided for a density of more than two dwelling units per acre. The local board of health may order such prohibition upon a finding that the construction and use of additional individual sewage disposal systems in the defined area will constitute a hazard to the public health. In such a hearing, the local board of health may request affected property owners to submit engineering and geological reports concerning the defined area and to provide a study of the economic feasibility of constructing a sewage treatment works.

25-10-111. General prohibitions.--

(1) No city, county, or city and county shall issue to any person a permit to construct or remodel a building or structure which is not serviced by a sewage treatment works, until a permit for an individual sewage disposal system has been issued by the local health department.

(2) No city, county, or city and county occupancy permit shall be issued to any person for the use of a building which is not serviced by a sewage treatment works until a final inspection of the individual sewage disposal system has been made by the local health department, as provided for in section 25-10-106 (1) (h), and the installation has received the approval of the local health department.

(3) No individual sewage disposal system presently in use which does not comply with the provisions of section 25-10-105 (1) (e) regarding minimum separation between the maximum seasonal level of the groundwater table and the bottom of an absorption system shall be permitted to remain in use without compliance with this article and the rules and regulations adopted under this article, later than October 1, 1975.

(4) Construction of cesspools, defined as covered underground receptacles which receive untreated sewage from a building and permit the untreated sewage to seep into surrounding soil, is prohibited.

(5) Not more than one dwelling, commercial, business, institutional, or industrial unit shall be connected to the same individual sewage disposal system unless such multiple connection was specified in the application submitted and in the permit issued for the system.

(6) No person shall construct or maintain any dwelling or other occupied structure which is not equipped with adequate facilities for the sanitary disposal of sewage without endangering the public health.

25-10-112. Penalties.--
(1) Any person who commits any of the following acts or violates any of the provisions of this article commits a class 1 petty offense, as defined in section 18-1-107, C.R.S. 1973:

(a) Constructs, alters, installs, or permits the use of any individual sewage disposal system without first having applied for and received a permit as provided for in section 25-10-105 (1) (f) or section 25-10-106;

(b) Constructs, alters, or installs an individual sewage disposal system in a manner which involves a knowing and material variation from the terms or specifications contained in the application or permit;

(c) Violates the terms of a cease and desist order which has become final under the terms of section 25-10-106 (1) (k);

(d) Conducts a business as a systems cleaner without having obtained the license provided for in section 25-10-108 (2) in areas in which the local board of health has adopted licensing regulations pursuant to said section;

(f) Willfully fails to submit proof of proper maintenance and cleaning of a system as required by rules and regulations adopted pursuant to section 25-10-106.

B-VI

TITLE 25

HEALTH

ARTICLE 13

Recreation Land Preservation

25-13-101. Short title. This article shall be known and may be cited as the "Recreation Land Preservation Act of 1971."

25-13-102. Legislative declaration. The purpose of this article is to establish minimum controls to prohibit the pollution of the air, water, and land, to prevent the degradation of the natural environment of recreational and mountain areas in this state in order to preserve and maintain the ecology and environment in its natural condition, to facilitate the enjoyment of the state and its ecology, nature, and scenery by the inhabitants and visitors of the state, and to protect their health, safety, and welfare.

25-13-103. Definitions. As used in this article, unless otherwise requires:

(1) "Board" means the state board of health.

(2) "Campsite" means any specific area within organized campgrounds or other recreation areas which is used for overnight stays by an individual, a single camping family, group, or other similar entity.

(3) "Department" means the department of health.

(4) "Operator" means the person responsible for managing the organized campground or recreation ares.

(5) "Organized campgrounds" means all federal, state, municipal, and county owned and designated roadside parks and campgrounds and privately owned campgrounds which are made available, either with or without a fee, to the public.

(6) "Recreation areas" means all public lands and surface waters of the state, other than organized campgrounds, used for picnicking, camping, and other recreational activities.

(7) "Person" means any private or public institution, corporation, individual, partnership, firm, association, or any other entity.

(8) "Public accommodation facilities" means all motels, hotels, dude rancnes, youth camps, and other similar facilities rented out to the public in areas used predominantly for recreation.

(9) "Refuse" means all combustible or noncombustible solid waste, garbage, rubbish, debris, and litter.

(10) "Sewage" means any liquid or solid waste material which contains human excreta.

(11) "Surface of ground" means any portion of the ground from the surface to a depth of six inches.

(12) "Waters of the state" means all streams; lakes; rivers; ponds; wells; impounding reservoirs; watercourses; springs; drainage systems; irrigation systems; all sources of water such as snow, ice, and glaciers; and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, located wholly or partly within or bordering upon the state and within the jurisdiction of this state.

25-13-104. Administration.

(1) Except as provided in section 25-13-111, the department shall administer the provisions of this article.

(2) The board shall promulgate reasonable rules and regulations to carry out the purposes of this article.

(3) The department shall furnish consulting services to county commissioners, municipalities, other governmental agencies, and private landowners regarding toilet facilities and procedures for refuse collection and disposal.

25-13-105. Unlawful acts.

(1) Except as otherwise provided in this article, it shall be unlawful for any person:

(a) Within the recreation areas of the state to discharge untreated sewage upon the surface of the ground, or in any waters of the state;

(b) To deposit or bury refuse on the public lands or waters within the state, except within areas or receptacles designated by the operator for this purpose;

(c) To deposit refuse on private or public land in such a way that said refuse may be blown, carried, or otherwise transported from its point of deposit;

(d) To willfully mar, mutilate, deface, disfigure, or injure beyond normal use any rocks, trees, shrubbery, wild flowers, or other features of the natural environment in recreation areas of the state;

(e) To willfully cut down, uproot, break, or otherwise destroy any living trees, shrubbery, wild flowers, or natural flora in recreation areas of the state;

(f) To build fires unless in compliance with rules and regulations of the board, to abandon or to leave fires unattended, or to store flammable liquids in a container which is not of a type approved by the department in an organized campground or other recreation area subject to this article;

(g) In organized campgrounds or recreation areas to use any cleansing agents, whether organic or inorganic in nature, in waters of the state for any purpose, including but not limited to bathing, clothes washing, and similar activities, or to dispose of any water containing such agents on the surface of the ground within fifty feet of any waters of the state. Such water shall be disposed of in facilities provided by the operator or in the manner specified by the operator.

25-13-106. Sewage disposal.

(1) In organized campgrounds all sewage shall be disposed of in facilities provided by the campground operator. The operator shall maintain such facilities in the manner prescribed by rules and regulations of the board.

(2) Sewage in recreation areas may be disposed of by burial at a depth greater than six inches at a distance of more than one hundred feet from any surface waters. Adequate precautions shall be taken to prevent the intrusion of such sewage and waste water upon the environment in a manner which is unhealthful, injurious to the environment, or otherwise degrading to the environment.

(3) Public accommodation sewage and waste water disposal facilities shall conform to such reasonable rules and regulations as may be promulgated by the department.

25-13-107. Refuse disposal.

(1) All persons shall dispose of refuse in containers which shall be provided for that purpose by operators of organized campgrounds. Organized campground operators shall keep the grounds free of uncontained refuse and shall provide a sufficient number of secure waterproof containers, preferably metal, with flyproof tops for the disposal of refuse. The containers shall be emptied as often as necessary to maintain the organized campground free of uncontained refuse. The presence of uncontained refuse in excess of the capacity of the containers provided shall be prima facie proof that the numbers of containers or frequency of container emptying is inadequate, and that the operator is in violation of this subsection (1).

(2) Whenever containers for refuse are filled or are not available in campgrounds or recreation areas, all persons shall dispose of refuse in compliance with rules and regulations adopted by the board or operator or remove the refuse from the area for disposal in a manner not in violation of this article.

(3) Refuse in public accommodation facilities shall be disposed in the manner specified in such reasonable rules and regulations as may be promulgated by the department.

(4) Food wastes normally edible to human beings may be deposited on the surface of the ground if the quantity of such wastes does not result in an unhealthful or unpleasant aesthetic appearance by virtue of an unreasonable time required for decay of the waste or consumption of the waste by fauna of the area.

25-13-108. Water supplies. All water supplied to the public in an organized campground shall conform to the requirements of standards adopted by the board, rules and regulations adopted by the board, or any higher local standards.

25-13-109. Group gatherings. Any group of twenty-five or more persons assembled for a meeting, festival, social gathering, or other similar purposes in an organized campground or recreation area for a period which reasonably could have been anticipated to exceed ten hours shall make provision for sewage, waste water, and refuse disposal in accordance with rules and regulations of the board. The organizers of and performers at any gathering in violation of this section shall be punished as provided in section 25-13-114.

25-13-110. Camping duration. No person may camp in a campsite within recreation areas for a period exceeding two weeks. Any campsite may be closed by the department or other lawful authority for an indefinite period to permit recovery of the campsite to its natural state following excessive use and resulting environmental deterioration.

25-13-111. Enforcement. This article shall be enforced by the department; division; all city, county, and district departments of health and local boards of health; and any peace officer in the state.

25-13-112. Citizen's complaint. Any person may initiate an action under the provisions of this article by signing a complaint in accordance with the applicable rules of judicial procedure that he has observed a violation of this article.

25-13-113. Construction. No provisions of this article shall be construed to repeal or in any way invalidate more stringent actions, orders, rules, regulations, ordinances, resolutions, or quality standards established by any governmental entity or agency.

25-13-114. Penalty for violation. Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five hundred dollars.

B-VII

TITLE 25

GOVERNMENT - LOCAL

ARTICLE 9

Water and Wastewater Treatment Plant Operators*

25-9-101. Legislative declaration. To assure adequate operation of water and wastewater treatment facilities, and to preserve the public peace, health, and safety, the provisions of this article and regulations authorized pursuant thereto are enacted to provide for the examination, classification, and certification of water and wastewater treatment plant operators and to establish minimum standards therefor based upon their knowledge and experience, to provide procedures for certification, to encourage vocational education for such operators, to provide a penalty for the wrongful use of the title "certified operator," to require each water and wastewater treatment plant to be under the supervision of a certified operator, to provide for the classification of all water and wastewater treatment plants in the state, and to provide a penalty for the operation of a water or wastewater treatment plant without supervision of a certified operator.

25-9-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Board" means the plant operators certification board.

(2) "Certificate" means the certificate of competency issued by the board stating that the operator named thereon has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means the person who has direct responsibility for the operation of any treatment facility covered under this article and is certified in accordance with the provisions of this article.

(4) "Department" means the Colorado department of health.

(5) "Wastewater treatment plant" means the facility or group of units used for the treatment of wastewater from sewer systems and for the reduction and handling of solids and gasses removed from such wastes.

(6) "Water supply system" means the system of pipes, structures, and facilities through which a water supply is obtained, treated, and sold or distributed for human consumption or household use.

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*Chapter 66, Article 38 was added in its entirety by the 1973 Session Laws.

(7) "Water treatment plant" means the facility or facilities within the water supply system which can alter the physical, chemical, or bacteriological quality of the water.

25-9-103. Plant operators certification board -- composition.
(1) There is hereby created the plant operators certification board which shall constitute a section of the division of administration of the department and shall consist of nine members, five of whom shall be as follows:

(a) A certified Class A water treatment plant operator;

(b) A certified Class A wastewater treatment plant operator;

(c) A representative from the Colorado municipal league;

(d) A representative recommended by the Colorado board of health;

(e) A representative recommended by the Colorado water pollution control commission.

(2) All members of the board shall be appointed by the governor.

(3) Appointments to the initial board shall be as follows: Three of the members shall be appointed for a three-year term, three for a two-year term, and three for a one-year term. Thereafter all board members shall serve for a term of three years. No member shall serve continuously on the board for more than nine years.

25-9-104. Duties of the board.
(1) The board shall elect a chairman and secretary each year, establish rules and regulations setting forth the requirements governing application, admission to the examinations, and recording and issuing of certificates for the class of operator for which the applicant is found to be qualified. The board shall furnish the examination material and collect fees as set forth in section 25-9-108. The board shall set the times, dates, and places for holding examinations, one of which shall be given at least annually, grade examination papers, and evaluate work experience of applicants. The board shall maintain an office provided by the department for contact with operators and employers to receive applications and fees, conduct such examinations as may be directed by the board, record the results thereof, notify applicants of results, issue certificates, and prepare and distribute an annual report.

(2) The board shall promote and assist in regular training schools and programs designed to aid applicants and other interest persons to acquire the necessary knowledge to meet the certification requirements of this article.

(3) The board shall establish not less than four classes of certified water treatment plant operators and not less than four classes of wastewater treatment plant operators, which classes shall differentiate the

various levels of complexity to be encountered in water and wastewater treatment plant operation.

(4) The board shall, after due consideration, establish for each water and wastewater treatment plant a minimum class of certified operators required for its direct supervision. Compliance for all such treatment plants shall be mandatory by January 1, 1976.

(5) The board shall establish a procedure whereby any decision of the board can be subject to appeal.

(6) The board shall exercise such other powers and duties as are deemed necessary within the scope of this article.

(7) Members of the board shall serve without compensation, but shall be reimbursed for their necessary expenses.

(8) The board shall exercise its powers and perform its duties and functions as if it were transferred to the department by a type 1 transfer under the "Administrative Organization Act of 1968," being article 1 of title 24, C.R.S. 1973.

25-9-105. Water treatment plant operator.

(1) Persons who by examination and experience are found to be qualified for certification as water treatment plant operators shall be certified as having the minimum qualifications required for each of the respective classes, as follows:

(a) Class D. An applicant must indicate by written examination his knowledge of basic water treatment principles, chlorination procedures, bacteriological testing techniques and standards, department water quality standards, pumping and storage principles, and good housekeeping and safety practices.

(b) Class C. In addition to the knowledge required for a Class D applicant, the Class C applicant must indicate by written examination his knowledge of control procedures, including but not limited to the purpose, use, and procedures used for the basic chemical, physical, and biological tests. The applicant must also have two years' experience working in a water treatment facility.

(c) Class B. In addition to the knowledge required for a Class C applicant, the Class B applicant must indicate by written examination his knowledge of the operation and maintenance of filter units, the principles of coagulation and sedimentation, the maintenance and safety of auxiliary equipment, and the principles of taste and odor control. The applicant must also have three years' experience working in a water treatment facility.

(d) Class A. In addition to the knowledge required for a Class B applicant, the Class A applicant must indicate by written examination his knowledge of the interpretation of results of chemical, physical, and biological control analyses; maintenance and operational procedures;

housekeeping; customer relations; corrosion control; cross-connection control; and supervisory control techniques. The applicant must also have four years' experience working in a water treatment facility.

25-9-106. Wastewater treatment plant operator.
(1) Persons who by examination and experience are found to be qualified for certification as wastewater treatment plant operators shall be certified as having the minimum qualifications required for each of the respective classes, as follows:

(a) Class D. A Class D applicant must indicate by written examination his knowledge of basic principles concerning pumping, grit, grease, sludge, sedimentation, hydraulics, chlorination, pumps, motors, state water pollution control commission stream standards, and good housekeeping and safety practices.

(b) Class C. In addition to the knowledge required for a Class D applicant, the Class C applicant must indicate by written examination his knowledge of wastewater treatment principles, settling characteristics of solids and grit, separate sludge digestion, sludge processing, sampling, and basic chemical, physical, and biological tests. The applicant must also have two years' experience working in a wastewater treatment facility.

(c) Class B. In addition to the knowledge required for a Class C applicant, the Class B applicant must indicate by written examination his knowledge of the maintenance and operation of biological units, sedimentation units, and auxiliary equipment, and his experience in performing basic chemical, physical, and biological tests. The applicant must also have three years' experience working in a wastewater treatment facility.

(d) Class A. In addition to the knowledge required for a Class B applicant, the Class A applicant must indicate by written examination his knowledge in the interpretation of the results of chemical, physical, and biological control analyses; maintenance and operational procedures; and record-keeping, customer relations, corrosion control, cross-connection control, and supervisory control techniques. The applicant must also have four years' experience working in a wastewater treatment facility.

25-9-106.5. Education and experience - substitution allowed. Education may be substituted for experience requirements for certification as a Class C, Class B, or Class A water treatment plant operator or as a Class C, Class B, or Class A wastewater treatment plant operator; except that at least fifty percent of any experience requirement shall be met by actual on-site operating experience in a water treatment facility or a wastewater treatment facility, as the case may be.

25-9-107. Certification procedure.
(1) Any individual possessing the required experience may apply to the board on such forms as required and furnished by the board. The application shall be accompanied by such fee as required by section 29-1-108.

The board shall admit for examination those applicants who meet the minimum qualifications as established by regulations of the board for certification.

(2) When an individual desires certification in a field other than that in which he has experience, his experience shall be evaluated by the board. The certificate issued is to be based upon the knowledge demonstrated by the applicant through examination and his verified record of work experience in water and wastewater treatment plant operation.

(3) Certificates shall be awarded by the board for a period of five years only to those applicants successfully meeting all of the requirements.

(4) Certificates shall be renewed upon payment of the required renewal fee by the applicant or at any transfer in class accomplished by the applicant's successful completion of a board examination.

(5) The board, upon application therefor, may issue a certificate, without examination, in a comparable classification to any person who holds a certificate in any state, territory, or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of this article and are of a standard not lower than that specified by regulations adopted under this article.

(6) Certificates of proper classification shall be issued without examination, upon appropriate application, to applicants who have been the operators of any facilities covered under this article on or before July 1, 1973. A certificate so issued shall be valid only for that particular treatment plant or system and for the classification determined by the board on the basis of experience and education of the operator, and shall remain in effect unless revoked by the board pursuant to the provisions of article 4 of title 24, C.R.S. 1973.

(7) Certification in an appropriate classification shall be issued to operators who on or before July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program within the state of Colorado during the time immediately preceding July 1, 1973.

25-9-108. Fees. Each application for certification shall be accompanied by a fee in the amount of fifteen dollars which is not refundable and which will include the expenses for the first examination taken by the applicant. Examination fees in the amount of ten dollars shall be paid for each additional examination taken in any class. Reexamination fees in the amount of ten dollars will be paid for second and succeeding examinations in any class. Renewal fees in the amount of five dollars shall be paid prior to the issuance of a renewal certificate by the board. All moneys received by the board shall be deposited within the department of the treasury pursuant to the provisions of section 3-6-3, C.R.S. 1963.

25-9-109. Use of title. Only a person who has been qualified by the board as a certified water treatment plant operator or certified wastewater treatment plant operator and who possesses a valid certificate attesting to this certification in this state shall have the right and

privilege of using the title "certified water treatment plant operator, Class " or "certified wastewater treatment plant operator, Class ."

25-9-110. Violations -- penalty.

(1) It is unlawful for any person to represent himself as a certified water treatment plant operator of any class, or a certified wastewater treatment plant operator of any class without first being so certified by the board and without being the holder of a current valid certificate issued by the board. Any person violating the provisions of this portion of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

(2) It is unlawful for any owner of a water treatment plant or a wastewater treatment plant in the state of Colorado to allow the plant to be operated without the supervision of a certified operator of the classification required by the board for the specific plant. Any owner violating the provisions of this subsection 8 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars for each violation. Each day of violation constitutes a separate offense.

B-VIII

TITLE 30

GOVERNMENT - COUNTY

ARTICLE 28

County Planning and Building Codes

30-28-101. Definitions. As used in this part 1, unless the context otherwise requires:

(1) "Disposition" means a contract of sale resulting in the transfer of equitable title to an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or an assignment of an interest in subdivided land' or any other conveyance of an interest in subdivided land which is net made pursuant to one of the foregoing.

(2) "Evidence" means any map, table, chart, contract, or other document or testimony, prepared or certified by a qualified person to attest to a specific claim or condition, which evidence shall be relevant and competent and shall support the position maintained by the subdivider.

(3) "Municipal planning commission" means any planning commission or other body charged with the functions of such commission of any city, city and county, or incorporated town, whether created pursuant to the authority of state statute or of home rule charter.

(4) "Planning commission" means either a planning commission or, in a county where there is no planning commission, the board of county commissioners.

(5) "Plat" means a map and supporting materials of certain described land prepared in accordance with subdivision regulations as an instrument for recording of real estate interests with the county clerk and recorder.

(6) "Preliminary plan" means the map of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with the requirements of adopted regulations, to permit the evaluation of the proposal prior to detailed engineering and design.

(7) "Region" means the area encompassed by a regional planning commission, being the combined land areas subject to the jurisdiction of the participating governmental units.

(8) "Sketch plan" means a map of a proposed subdivision, drawn and submitted in accordance with the requirements of adopted regulations, to evaluate feasibility and design characteristics at an early state in the planning.

(9) "Subdivider" or "developer" means any person, firm, partner ship, joint venture, association, or corporation participating as owner, promoter, developer, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.

(10) (a) "Subdivision" or "subdivided land" means any parcel of land in the state which is divided into two or more parcels, separate interests, or interests in common, unless exempted under paragraph (b), (c), or (d) of

this subsection (10).

(b) The terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land which creates parcels of land each of which comprises thirty-five or more acres of land and none of which is intended for use by multiple owners.

(c) Unless the method of disposition is adopted for the purpose of evading this part 1, the terms "subdivision" and "subdivided land", as defined in paragraph (a) of this subsection (10), shall not apply to any division of land.

(I) Which creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five or more acres per interest;

(II) Which is created by order of any court in this state or by operation of law, or which could be created by any court in this state pursuant to the law of eminent domain;

(III) Which is created by a lien, mortgage, deed of trust, or any other security instrument;

(IV) Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;

(V) Which creates cemetery lots;

(VI) Which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property;

(VII) Which is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common, and any such interest shall be deemed for purposes of this subsection (10) as only one interest; or

(VIII) Which is created by the combination of contiguous parcels of land into one larger parcel. If the resulting parcel is less than thirty-five acres in land area, only one interest in said land be allowed. If the resulting parcel is greater than thirty-five acres in land area, such land area, divided by the number of interests in the resulting parcel, must result in thirty-five or more acres per interest. Easments and rights-of-way shall not be considered interests for purposes of this subparagraph (VIII).

(d) The board of county commissioners may, pursuant to rules and regulations or resolution, exempt from this definition of the terms "subdivision" and "subdivided land" any division of land if the board of county commissioners determines that such division is not within the purposes of this part 1.

(11) "Subdivision improvements agreement" means one or more security arrangements which may be accepted by a county to secure the construction of such public improvements as are required by county subdivision regulations within the subdivision and shall include collateral, such as, but not limited tom performance or property bonds, private or public escrow agreements, loan committments, assignments of receivables, liens on property, deposit of certified funds, or other similar surety agreements.

(12) "Unincorporated means situated outside of cities and towns, so that, when used in connection with "territory", "areas", or the like, it covers, includes, and relates to territory or areas which are not within the boundaries of any city or town.

30-28-102. Unincorporated territory. The boards of county commissioners of the respective counties within the state are authorized and empowered to provide for the physical development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.

30-28-103. County planning commission.

(1) The board of county commissioners of any county within the state is hereby authorized and empowered to appoint a commission of five members, to be known as the county planning commission; except that in counties of the state having a population of fifteen thousand or less, desiring to establish a commission, the board of county commissioners may constitute the commission, or the board of county commissioners may appoint a separate body to serve as the county planning commission.

(2) In addition to the five appointed members, the board of county commissioners shall appoint one of the members of the board as ex officio nonvoting member of such commission. Each of such five members of the commission shall be a resident of the county and the owner of real property situated therein. The term os appointed members of the commission shall be five years and until their respective successors have been appointed, but the terms of office shall be staggered by making the initial five appointments for one, two, three, four, and five years respectively.

(3) The members of the commission shall receive such compensation as may be fixed by the board of county commissioners, and the board of county commissioners shall provide for reimbursement of the members of the commission for actual expenses incurred. The board of county commissioners shall provide for the filling of vacancies in the membership of the commission and for the removal of a member for nonperformance of duty or misconduct. The board of county commissioners may appoint associate members of such commission, each of whom shall be a resident of the county and the owner of real property situated therein, and in the event any regular member be temporarily unable to act owing to absence from the county, illness, interest in any matter before the commission or any other cause, his place may be taken during such temporary disability by an associate member designated for the purpose.

30-28-104. Chairman--rules--staff--information--grants and gifts.

(1) The county planning commission shall elect a chairman from its members, whose term shall be for one year, and the commission may create and fill such other offices as it may determine. The commission shall

adopt such rules and regulations governing its procedure as it may consider necessary or advisable, and shall keep a record of its proceedings, which record shall be open to inspection by the public at all reasonable times. The commission shall have the power and authority to employ experts and a staff, and to pay such expenses as may be deemed necessary for carrying out the powers conferred and the duties prescribed, but not in excess of such sums as may be appropriated by the board of county commissioners of the county or be placed at the disposal of the commission through gift or otherwise. The county planning commission is directed to make use of the expert advice and information which may be furnished by appropriate federal, state, county and municipal officials, departments and agencies, and in particular by the director of planning of the state of Colorado. All state officials, departments and agencies having information, maps and data pertinent to county planning or zoning are authorized and directed to make the same available for the use of the county planning commission as well as to furnish such other technical assistance and advice as they may have available for such purpose.

(2) The county planning commission is specifically empowered to receive and expend all grants, gifts and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States and all other legal entities with respect thereto. The county planning commission may provide, within the limitations of its budget, matching commission may provide, within the limitations of its budget, matching funds wherever grants, gifts, bequests and contractual assistance are available on such basis.

30-28-105. Regional planning commission.

(1) The governing body, or in charter cities, the officials having charge of public improvements, of any municipality or group of municipalities, together with the boards of county commissioners of any counties in which such municipality or group of municipalities is located or of any adjoining counties, or the governing bodies, or in charter cities, the officials having charge of public improvements of any municipality or group of municipalities, acting independently of the boards of county commissioners in which such municipality or group of municipalities is located, or the boards of county commissioners of any two or more counties, may co-operate in the creation of a regional planning commission for any region defined as may be agreed upon by said co-operating governing bodies or officials or boards limited to a region within the jurisdiction of said co-operating governing bodies.

(2) The number and qualifications of members of any such regional planning commission, and their terms, and method of appointment or removal, shall be such as may be determined and agreed upon by said co-operating governing bodies or officials and boards; provided, that each participating county or municipality shall be entitled to at least one voting representative. The regional planning commission shall elect its chairman, whose term shall be one year, with eligibility for re-election. The commission may create and fill such other offices as it may determine.

(3) Any board of county commissioners or other county officials or the chief executive officer of any municipality, from time to time, upon the request of the commission and for the purpose of special surveys, may assign or detail to the commission any members of staffs of county or municipal administrative departments, or may direct any such department to make for the commission special surveys or studies requested by the commission.

(4) The proportion of the expenses of the regional planning commission to be borne respectively by any governing body co-operating in the establishment and maintenance of the commission, shall be such as may be determined and agreed upon by the co-operating bodies or officials or boards, and they are hereby authorized to appropriate or cause to be appropriated their respective shares of such expense.

(5) Within the amounts duly appropriated, or otherwise received, the regional planning commission shall have the power to appoint such clerical and stenographic employees and such technically qualified staff as are necessary to do the work of the commission. The regional planning commission shall have the further power and authority to contract for such other services, facilities and personnel as it may require within its means, including the services of professional planners and other consultants.

(6) The regional planning commission is specifically empowered to receive and expend all grants, gifts and bequests, specifically including state and federal funds and other funds available for the purposes for which the commission exists, and to contract with the state of Colorado, the United States and all other legal entities with respect thereto. The regional planning commission may provide within the limitations of its budget matching funds wherever grants, gifts, bequests and contractual assistance are available on such basis.

(7) A regional planning commission shall be a body politic and corporate, with power to sue and be sued. It shall be liable on its undertakings, contractual or otherwise. The individual members thereof and the co-operating, governing bodies or officials and boards shall not be liable on the undertakings of the commission, contractual or otherwise, regardless of the procedure by which such undertakings, or any of them, may be entered into.

(8) The regional planning commission shall have the power to adopt articles, to regulate and govern its affairs, whether as an incorporated association or otherwise, in the performance of the regional planning functions as defined by statute, such articles shall contain rules pertaining to the transaction of the commission's business. The regional planning commission shall keep records of its resolutions, transactions, contractual undertakings, findings and determinations, which records shall be public records. The regional planning commission shall have and exercise all powers necessary or incidental to exercise fully the powers and authority herein conferred.

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(9) A regional planning commission may, to the extent provided for in a resolution adopted by a board of county commissioners, perform the functions of a county planning commission as provided for in this part 1.

(10) Nothing contained in this part 1 shall preclude participation by any county or municipality in more than one regional planning commission.

30-28-106. Adoption of master plan - contents.

(1) It shall be the function and duty of a county planning commission to make and adopt a master plan for the physical development of the unincorporated territory of the county.

(2) (a) It shall be the function and duty of a regional planning commission to make and adopt a regional plan for the physical development of the territory within the boundaries of the region, provided that no such plan shall be effective within the boundaries of any incorporated municipality within the region unless such plan shall be adopted by the governing body of such municipality for the development of its territorial limits and under the terms of paragraph (b) of this subsection (2).

(b) Any plan adopted by a regional planning commission shall not be deemed an official advisory plan of any municipality or county unless adopted by the planning commission of such municipality or county.

(3) (a) The master plan of a county or region, with accompanying maps, plats, charts, and descriptive and explanatory matter, shall show the county or regional planning commission's recommendations for the development of the territory covered by the paln and may include: The general location, character, and extent of streets or roads, viaducts, bridges, parkways, playgrounds, forests, reservations, parks, airports, and other public ways, grounds, places, and spaces; the general location and extent of public utilities and terminals, whether publicity or privately owned, for water, light, power, sanitation, transportation, communication, heat, and other purposes; the acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, or change of use of the foregoing public ways, grounds, places, spaces, buildings, properties, utilities, or terminals; the general character, location, and extent of community centers, townsites, housing developments, whether public or private, and urban conservation or redevelopment areas; the general location and extent of forests, agricultural areas, flood control areas, and open development areas for purposes of conservation, food and water supply, sanitary and drainage facilities, flood control, or the protection of urban development; and a land classification and utilization program.

(b) Any master paln of a county or region which includes mass transportation shall be coordinated with that of any adjacent county, region, or other political subdivision, as the case may be, to eliminate conflicts or inconsistencies and to assure compatability of such plans and their implementation pursuant to this section and sections 30-11-101, 30-25-202, and 30-26-301.

(c) The master plan of a county or region shall also include a master plan for the extraction of commercial mineral deposits pursuant to section 34-1-304, C.R.S. 1973.

30-28-107. Surveys and studies. In the preparation of a county or regional master plan, a county or regional planning commission shall

make careful and comprehensive surveys and studies of the existing conditions and probable future growth of the territory within its jurisdiction. The county or regional master plan shall be made with the general purpose of guiding and accomplishing a co-ordinated, adjusted, and harmonious development of the county or region which, in accordance with present and future needs and resources, will best promote th health, safety, morals, order, convenience, prosperity, or the general welfare of the inhabitants, as well as efficiency and economy in the process of development, including such distribution of population and of the uses of land for urbanization, trade, industry, habitation, recreation, agriculture, forestry, and other purposes, as will tend to create conditions favorable to health, safety, transportation, prosperity, civic activities, and recreational, educational and cultural opportunities; will tend to reduce the wastes of physical, financial, or human resources which result from either excessive congestion or excessive scattering of population; and will tend toward an efficient and economic utilization, conservation and production of the supply of food and water, and of drainage, sanitary, and other facilities and resources.

30-28-108. Adoption of plan by resolution. A county or regional planning commission may adopt the county or regional master plan as a whole by a single resolution, or, as the work of making the whole master plan progresses, may adopt parts thereof, any such part to correspond generally with one or more of the functional subdivisions of the subject matter which may be included in the plan. The commission may amend, extend, or add to the plan, or carry any part of it into greater detail from time to time. The adoption of the plan or any part, amendment, extension, or addition shall be by resolution carried by the affirmative votes of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter intended by the commission to form the whole or part of the plan. The action taken shall be recorded on the map and descriptive matter by the identifying signature of the secretary of the commission.

30-28-109. Certification of plan. The county planningcommission shall certify a copy of its master plan or any adopted part or amendment thereof or addition thereto, to the board of county commissioners of the county. The regional planning commission shall certify such copies to the boards of county commissioners of the counties lying wholly or partly within the region. The county or regional planning commission shall certify such copies to the planning commission of all municipalities within the county or region. Any municipal planning commission which receives any such certification may adopt so much of the plan, part, amendment, or addition as falls within the territory of the municipality as a part or amendment of or addition to the master plan of the municipality, and when so adopted, it shall have the same force and effect as though made and prepared, as well as adopted, by such municipal planning commission.

30-28-110. Regional planning commission approval, required when - recording.

(1) (a) Whenever any county planning commission, or if there be none, then any regional planning commission, shall have adopted a master plan of the county or any part thereof, no road, park, or other public way, ground or space, no public building or structure or no public utility, whether publicly or privately owned, shall be constructed or authorized in the unincorporated territory of the county until and unless the proposed location and extent thereof shall have been submitted to and approved by such county or regional planning commission.

(b) In case of disapproval, the commission shall communicate its reasons to the board of county commissioners of the county in which the public way, ground, space, building, structure, or utility is proposed to be located. Such board shall have the power to overrule such disapproval by a vote of not less than a majority of its entire membership. Upon such overruling, said board or other official in charge of proposed construction or authorization may proceed therewith.

(c) If the public way, grounds, space, building, structure, or utility be one the authorization or financing of which does not, under the law governing the same, fail within the province of the board of county commissioners or other county officials or board, then the submission to the commission shall be by the body or official having such jurisdiction, and the commission's disapproval may be overruled by said body by a vote of not less than a majority of its entire membership or by said official.

(d) The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land for, or sale or lease of any road, park, or other public way, ground, place, property, or structure shall be subject to similar submission and approval, and the failure to approve may be similarly overruled.

(e) The failure of the commission to act within thirty days after the date of official submission to it shall be deemed approval, unless a longer period be granted by the submitting board, body, or official.

(2) (a) In any geographic area of common planning jurisdiction, which area consists of part or all of several counties for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect another local governmental unit, or which affect the region as a whole, or which is a subject of primary responsibility of the regional planning commission.

(b) In any geographic area of common planning jurisdiction which involves part or all of only one county for which a regional plan has been duly adopted, the district, county, or municipal planning commission shall refer to the regional planning commission for review any proposed new or changed land use plan, zoning amendments, subdivision proposals, housing codes, sign codes, urban renewal projects, proposed public facilities, or other planning functions which clearly affect

another local governmental unit, or which affect the region as a whole, or which is a subject of primary responsibility of the regional planning commission.

(c) The regional planning commission shall within thirty days after the receipt of such referral, report to the district, county, or municipal planning commission on the effect of the referred matter on the regional plan. This time may be extended by mutual agreement. If during the review time, a satisfactory adjustment in the referred matter cannot be worked out, the regional planning commission may report to the district, county, or municipal planning commission that this referred matter is inconsistent with the regional plan. In that case if the district, county or municipality has theretofore adopted the regional plan for the development of its area, the concurrent vote of two-thirds of the total membership of the district, county, or municipal planning commission shall be required to issue a different independent report on such matters. In all instances, the regional planning commission may also forward its report on the referred matter to the governing body of the governmental unit having authority to decide the matter.

(d) The failure of the regional planning commission to reply within thirty days after the receipt of the referral, or within the agreed extension of time, shall be deemed approval of the matter referred.

(e) A failure on the part of any district, county or municipal planning commission to refer to the regional planning commission any plan or authorization provided for in paragraphs (a) and (b) of this subsection (2) shall be deemed a determination by such district, county, or municipal planning commission that the matter is local in nature.

(f) The regional planning commission, on its own initiative, may initiate a review of any matter involving its regional planning functions, whether such matter has been referred to it or not, if the subject of the review affects two or more local jurisdictions, and may make a report of the result of such review to the governing bodies of the ju-isdictions involved.

(g) The provisions of this subsection (2) shall not apply to any proposed business or industrial zoning change of less than twenty acres nor to any proposed residential zoning change or subdivision of less than forty acres.

(3) (a) All plans of streets or highways for public use, and all plans, plats, plots, and replots of land laid out in subdivision or building lots, and the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be submitted to the board of county commissioners for review and subsequent approval, conditional approval, or disapproval. It shall not be lawful to record any such plan or plat in any public office unless the same shall bear thereon, by endorsement or otherwise, the approval of the board of county commissioners and after review by the appropriate planning commission.

(b) The approval of said plan or plat by such commission shall not be deemed an acceptance of the proposed dedication by the public. Such acceptance, if any, shall be given by action of the governing body of the municipality or by the board of county commissioners. The owners and purchasers of such lots shall be presumed to have notice of public plans, maps, and reports of such commission affecting such property within its jurisdiction.

(4) (a) Any subdivider, or agent of a subdivider, who transfers or sells or agrees to sell or offers to sell any subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners and recorded or filed in the office of the county clerk and recorder shall be guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars for each parcel or interest in subdivided land which is sold or offered for sale. All fines collected under this paragraph (a) shall be credited to the general fund of the county.

(b) The board of county commissioners of the county in which the subdivided land is located shall have the power to bring an action to enjoin any subdivider from selling, agreeing to sell, or offering to sell subdivided land before a final plat for such subdivided land has been approved by the board of county commissioners.

(c) The board of county commissioners shall distribute or cause to be distributed, the sets of plans or plats submitted to the agencies as referred to in section 30-28-136.

(5) (a) Notice of the filing of preliminary plans of any type required by this section to be submitted to a district, regional, or county planning commission or to the board of county commissioners, if the situs of these plans lies wholly or partially within two miles of the corporate limits of a municipality but not within the corporate limits of another municipality, shall be referred to the town or city clerk of such municipality by the county planning commission, or if there be none, then by the board of county commissioners. Within fourteen days of the receipt of such plans, the municipality, by action of its city council or town board, or if one exists, by action of its planning commission, may make its recommendations to the board of county commissioners, who shall forward the same to the district, regional, or county planning commission, if any. Failure of the town board, city council, or agents designated by them, to make any recommendation within fourteen days of the receipt of such plans shall constitute waiver of its right to make such recommendation.

(b) If such recommendation is made by the municipality it shall be taken into consideration by the board of county commissioners and district, regional, or county planning commission, if any, before action is taken upon the plans. The board of county commissioners and district, regional, or county planning commission, if any, shall take no action on such plans until the recommendation of the municipality is received or until fifteen days after receipt of the preliminary plans, whichever is sooner.

30-28-111. Zoning plan.

(1) The county planning commission of any county may, and upon order by the board of county commissioners in any county having a county planning commission shall make a zoning plan or plans for zoning all or any part of the unincorporated territory within such county, including both the full text of the zoning resolution and the maps, and representing the recommendations of the commission for the regulation by districts or zones of the location, height, bulk, and size of buildings and other structures, percentage of lot which may be occupied, the size of lots, courts, and other open spaces, the density and distribution of population, the location and use of buildings, and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, recreation, or other purposes, and, to the end that adequate safety may be secured, the county planning commission may include in said zoning plan or plans provisions establishing, regulating, and limiting such uses on or along any storm or floodwater runoff channel or basin as such storm or floodwater runoff channel or basin has been designated and approved by the Colorado water conservation board in order to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters.

(2) The county planning commission or the board of adjustment of any county, in the exercise of powers pursuant to this article, may condition any portion of a zoning resolution, any amendment thereto, or any exception to the terms thereof upon the preservation, improvement, or construction of any storm or floodwater runoff channel designated and approved by the Colorado water conservation board.

30-28-112. Certification of plan--hearings. The county planning commission shall certify a copy of the plans for zoning all or any part of the unincorporated territory within the county, or any adopted part or amendment thereof, or addition thereto, to the board of county commissioners of the county. After receiving the certification of said zoning plans from the commission and before the adoption of any zoning resolutions, the board of county commissioners shall hold a public hearing thereon, the time and place of which at least thirty days' notice shall be given by one publication in a newspaper of general circulation in the county. Such notice shall state the place at which the text and maps so certified by the county planning commission may be examined. No substantial change in or departure from the text or map so certified by the county planning commission shall be made unless such change or departure be first submitted to the certifying county planning commission for its approval, disapproval or suggestions, and if disapproved, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. The county planning commission shall have thirty days after such submission within which to send its report to the county commissioners.

30-28-113. Regulation of size and use -- districts.

(1) Except as otherwise provided in section 34-1-305, C.R.S. 1973, when the county planning commission of any county makes, adopts, and certifies to the board of county commissioners plans for zoning the

unincorporated territory within any county, or any part thereof, including both the full text of a zoning resolution and the maps, after public hearing thereon, the board of county commissioners, by resolution, may regulate, in any portions of such county which lie outside of cities and towns, the location, height, bulk, and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts, and other open spaces, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, or other purposes and for flood control. In order to accomplish such regulation, the board of county commissioners may divide the territory of the county which lies outside of cities and towns into districts or zones of such number, shape, or area as it may determine, and within such districts, or any of them, may regulate the erection, construction, reconstruction, alteration, and uses of buildings and structures and the uses of land, and may require and provide for the issuance of building permits as a condition precedent to the right to erect, construct, reconstruct, or alter any building or structure within any district covered by such zoning resolution.

(2) The county planning commission may make and certify a single plan for the entire unincorporated portion of the county, or separate and successive plans for those parts which it deems to be urbanized or suitable for urban development and those parts which, by reason of distance from existing urban communities or for other causes, it deems suitable for nonurban development. Any resolution adopted by the board of county commissioners may cover and include the unincorporated territory covered and included in any such single plan or in any of such separate and successive plans. No resolution covering more or less than the territory covered by any such certified plan shall be adopted or put into effect until and unless it be first submitted to the county planning commission which had certified the plan to the board of county commissioners and be approved by said commission or, if disapproved, receive the favorable vote of not less than a majority of the entire membership of such board. All such regulations shall be uniform for each class or kind of building or structure throughout any district, but the regulations in any one district may differ from those in other districts.

30-28-114. Enforcement--inspector--permits. The board of county commissioners may provide for the enforcement of the zoning regulations by means of the withholding of building permits, and, for such purpose, may establish and fill a position of county building inspector and may fix the compensation attached to said position, or may authorize an administrative official of the county to assume the functions of such position in addition to his customary functions. Such board may also fix a reasonable schedule of fees for the issuance of such permits. After the establishment of such position and the filing of the same, it shall be unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within the unincorporated territory covered by such zoning regulations without obtaining a building permit from such county building inspector. Such building inspector shall not issue any permit unless the plans for the proposed erection, construction, reconstruction, alteration, or use fully conform to all zoning regulations then in effect.

30-28-115. Public welfare to be promoted. Such regulations shall be designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity, or welfare of the present and future inhabitants of the state, including the lessening of congestion in the streets or roads or reducing the waste of excessive amounts of roads, securing safety from fire, flood waters, and other dangers, providing adequate light and air, classification of land uses and distribution of land development and utilization, protection of the tax base, securing economy in governmental expenditures, fostering the state's agricultural and other industries, and the protection of both urban and nonurban development.

30-28-116. Regulations may be amended. From time to time the board of county commissioners may amend the number, shape, boundaries or area of any district, or any regulation of or within such district, or any other provisions of the zoning resolution. Any such amendment shall not be made or become effective unless the same shall have been proposed by or be first submitted for the approval, disapproval or suggestions of the county planning commission. If disapproved by such commission within thirty days after such submission, such amendment, to become effective, shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment the board of county commissioners shall hold a public hearing thereon, and at least thirty days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county.

30-28-117. Board of adjustment.

(1) The board of county commissioners of any county which enacts zoning regulations under the authority of this article, shall provide for a board of adjustment of three to five members and for the manner of the appointment of such members. Not more than half of the members of such board may at any time be members of the planning commission. The board of county commissioners shall fix per diem compensation and terms for the members of such board of adjustment, which terms shall be of such length and so arranged that the term of at least one member will expire each year. Any member of the board of adjustment may be removed for cause by the board of county commissioners upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term in the same manner as in the case of original appointments. The board of county commissioners may appoint associate members of such board, and in the event that any regular member be temporarily unable to act owing to absence from the county, illness, interest in a case before the board or any other cause, his place may be taken during such temporary disability by an associate member designated for the purpose.

(2) The board of county commissioners shall provide and specify in its zoning or other resolutions general rules to govern the organization, procedure, and jurisdiction of said board of adjustment, which rules shall not be inconsistent with the provisions of this part 1.

The board of adjustment may adopt supplemental rules of procedure not inconsistent with this article or such general rules.

(3) Any zoning resolution of the board of county commissioners may provide that the board of adjustment, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the zoning resolution, may make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent. The commissioners may also authorize the board of adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions, as they may arise in the administration of the zoning regulations.

(4) Meetings of the board of adjustment shall be held at the call of the chairman and at such other times as the board in its rules of procedure may specify. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses by application to the district court. The court upon proper showing may issue subpoenas and enforce obedience by contempt proceedings. All meetings of the board of adjustment shall be open to the public. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

30-28-118. Appeals to board of adjustment.

(1) Appeals to the board of adjustment may be taken by any person aggrieved by his inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of the zoning resolution. Appeals to the board of adjustment may be taken by any officer, department, board or bureau of the county affected by the grant or refusal of a building permit or by other decision or an administrative officer or agency based on or made in the course of the administration or enforcement of the provisions of the zoning resolution. The time within which such appeal must be made, and the form or other procedure relating thereto, shall be as specified in the general rules provided by the board of county commissioners to govern the procedure of such board of adjustment or in the supplemental rules of procedure adopted by such board.

(2) Upon appeals the board of adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative official or agency based on or made in the enforcement of the zoning resolution.

(b) To hear and decide, in accordance with the provisions of any such resolution, requests for special exceptions or for interpretation of the map or for decisions upon other special questions upon which such board is authorized by any such resolution to pass.

(c) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of any regulation enacted under this article would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of such property, to authorize, upon an appeal relating to said property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning resolutions.

(3) The concurring vote of four members of the board in the case of a five member board, and of three members in the case of a three member board, shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or agency or to decide in favor of the appellant.

30-28-119. District planning commissions.

(1) Whether or not a county planning commission has been created, the board of county commissioners of any county on petition, from time to time may appoint district planning commissions for the purpose of preparing plans for zoning certain portions of the unincorporated territory within such county. Such petition shall be signed by fifty owners of real property situated within the boundaries of the district described in the petition and shall request the appointment of a planning commission for such district. At the next regular meeting following the receipt of such petition, the board of county commissioners shall determine the sufficiency of such petition and if found to be sufficient shall order a public hearing to be held on the question of the establishment of such district at the county seat within the county not more than sixty days after the date of filing such petition.

(2) A notice of the time, place and purpose of such hearing, and containing a description of the boundaries of the proposed district, shall be given by publication in a newspaper of general circulation within the county by one publication at least thirty days prior to the date of such hearing. Any owner of property included within the boundaries of the proposed district shall be entitled to protest the establishment thereof by filing with the board of county commissioners at least five days prior to the time set for the hearing a written statement setting forth in brief the grounds of the protest. At the time and place specified in said notice the board of county commissioners shall sit for the purpose of determining whether or not such proposed district should be established and at such time and place it shall consider and pass upon any protests filed. Within five days after termination of such hearing, the board of county commissioners, if satisfied that the

public interest requires such action, shall overrule such protests as may be filed and shall enter an order establishing the planning district, describing the boundaries thereof, giving the district an appropriate and distinctive name and appointing the district planning commission. Such commission shall consist of three members each of whom shall be a resident of the district and the owner of real property situated therein.

(3) (a) The members of such commission shall serve for a term of three years and until their successors are duly appointed and qualify. They shall serve without compensation. The board of county commissioners shall provide for the filling of vacancies in the memberships of the commission and for the removal of a member for nonperformance of duty or misconduct.

(b) The district planning commission so appointed and organized shall have all the powers and be subject to all the duties hereinbefore by this article conferred and imposed upon county planning commissions in so far as such powers and duties relate to zoning and in respect to the territory included within the boundaries of such district. It shall be the duty of such commission to make for certification to the board of county commissioners of the county plans for zoning the territory included within the boundaries of the district. The commission shall certify a copy of the zoning plans, including the full text of the zoning resolution and the maps, to the board of county commissioners of the county. If a county planning commission has been created in the county wherein the said district is situated, such plans must first be approved by such commission.

(c) After receiving the certification of said zoning plans from the commission and before the adoption of any zoning resolutions, the county commissioners shall hold a public hearing in the manner prescribed in section 30-28-112. Thereafter the board of county commissioners may by resolution or resolutions exercise as to the territory included within the boundaries of such district, all the powers conferred upon it by sections 30-28-113 to 30-28-115, and may amend said resolutions from time to time, but any such amendment shall not be made or become effective unless the same shall have been proposed by or first submitted for the approval, disapproval or suggestions of the district planning commission and shall likewise have approval by the county planning commission, if one has been created. If any such amendment be disapproved by either the county or the district planning commission within thirty days after such submission, to become effective it shall receive the favorable vote of not less than a majority of the entire membership of the board of county commissioners. Before finally adopting any such amendment the board of county commissioners shall hold a public hearing thereon, at least thirty days' notice of the time and place of which shall be given by at least one publication in a newspaper of general circulation in the county.

(4) Unless or until a board of adjustment has been appointed for the county as a whole pursuant to a county zoning plan submitted by the county planning commission such resolutions shall provide that the district planning commission shall perform the functions of the board of

adjustment as specified in sections 30-28-117 and 30-28-118 with respect to the zoning regulations for such district. When a county board of adjustment has been appointed it shall function with respect to the zoning regulations for such district. Wherever the regulations for a district made pursuant to this section require a greater width or size of yards, courts or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater setback from a road or street, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other regulations made under the authority of this part 1 effective within the same territory, the provisions of the regulations for such district made pursuant to this section shall govern. Wherever the provisions of other regulations made under the authority of this part 1 and effective within the territory of a district established pursuant to this section impose higher standards than are imposed by the regulations for such district made pursuant to this section, the provisions of such other regulations shall govern.

(5) The boundaries of a planning district may be enlarged from time to time through the addition of contiguous territory by order of the board of county commissioners pursuant to petition signed by the owners of at least fifty-one per cent of the area of the real property to be added to the district after published notice, opportunity for protest and hearing as provided in the case of original establishment of a district.

(6) Planning districts can be dissolved by action of the board of county commissioners if the affected county adopts a zoning resolution which covers the district in question. Action for dissolution may be initiated by a petition calling for dissolution of the district from fifty owners of real property situated within the boundaries of the district or by the board of county commissioners. The board shall hold a public hearing at the county seat within the county on the question of the dissolution of the district. A notice of the time, place, and purpose of such hearing, and containing a description of the boundaries of the district, shall be given by publication in a newspaper of general circulation within the county by one publication at least thirty days prior to the date of such hearing. The officers of the district, if any, shall be notified by certified mail at least thirty days prior to the date of the hearing of the purpose, location, and time of the hearing. Prior to the hearing the county planning commission shall review the proposed dissolution at a public meeting and shall transmit its findings to the board of county commissioners. Any owner of property included within the boundaries of the proposed district shall be entitled to protest the dissolution thereof by filing with the board of county commissioners at least five days prior to the time set for the hearing, a written statement setting forth in brief the grounds of the protest. At the time and place specified in said notice, the board of county commissioners shall sit for the purpose of determining whether or not such district should be dissolved, and at such time and place it shall consider and pass upon any protests filed. Within seven days after termination of such hearing, the board of county commissioners, if satisfied that the public interest would be served by such action, shall enter an order dissolving the planning district; or,

if satisfied that the public interest would be served by retaining such district, the board shall enter an order dismissing such petition.

30-28-120. Existing structures--county property.

(1) The lawful use of a building or structure, or the lawful use of any land, as existing and lawful at the time of the adoption of a zoning resolution, or in the case of an amendment of a resolution, then at the time of such amendment, may be continued although such use does not conform with the provisions of such resolution or amendment, and such use may be extended throughout the same building, provided no structural alteration of such building is proposed or made for the purpose of such extension. The board of county commissioners may provide in any zoning resolution for the restoration, reconstruction, extension or substitution of nonconforming uses upon such terms and conditions as may be set forth in the zoning resolution. The board of county commissioners in any zoning resolution may provide for the termination of nonconforming uses, either by specifying the period in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance.

(2) If any county acquire title to any property by reason of tax delinquency and such properties be not redeemed as provided by law, the future use of such property shall be in conformity with the then provisions of the zoning resolution of the county, or with any amendment of such resolution, equally applicable to other like properties within the district in which the property acquired by the county is located.

30-28-121. Temporary regulations. The board of county commissioners of any county, after appointment of a county or district planning commission and pending the completion by such commission of a zoning plan, where in the opinion of the board conditions require such action, may promulgate by resolution without a public hearing, regulations of a temporary nature, to be effective for a limited period only and in any event not to exceed six months, prohibiting or regulating in any part or all of the unincorporated territory of the county or district the erection, construction, reconstruction or alteration of any building or structure used or to be used for any business, industrial or commercial purpose.

30-28-122. Submission to division of planning. Before finally adopting and certifying any plan, either master or zoning, the planning commission, regional, county, or district, making such plan, shall submit such plan to the division of planning of the department of local affairs for advice and recommendations. The director of planning, within thirty days after such submission, shall present his advice and criticism in respect to such plan. Such advice and criticism shall be advisory only and the commission submitting such plan shall not be bound thereby. If such advice and criticism have not been presented within such period of

thirty days, the approval of such plan by the director of planning shall be presumed.

30-28-123. Higher standards govern. Whenever the regulations made under authority of this part 1 require a greater width or size of yards. courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute, the provisions of the regulations made under authority of this article shall govern. Wherever the provisions of any other statute require a greater width or size of yards, courts, or other open spaces, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this part 1, the provisions of such statute shall govern.

30-28-124. Penalty. It shall be unlawful to erect, construct, reconstruct, alter, maintain or use any building or structure or to use any land in violation of any regulation in, or of any provisions of, any zoning resolution, or any amendment thereof, enacted or adopted by any board of county commissioners under the authority of this part 1. Any person, firm or corporation violating any such regulation, provision or amendment, or any provision of this part 1, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned not more than ten days, or both. Each day during which such illegal erection, construction, reconstruction, alteration, maintenance or use continues shall be deemed a separate offense. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained or used, or any land is or is proposed to be used, in violation of this part 1 or of any regulation or provision of any resolution, or amendment thereof, enacted or adopted by any board of county commissioners under the authority granted by this part 1, such board, the district attorney of the county or any owner of real estate within the district in which such building, structure or land is situated, in addition to other remedies provided by law, may institute injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

30-28-125. Filing with county clerk and recorder. Upon the adoption of any zoning ordinance or regulation, or maps, the board of county commissioners shall file a certified copy of each in the office of the county clerk and recorder, which copies shall be accessible to the public. The county clerk and recorder shall index such ordinances and regulations as nearly as possible in the same manner as he indexes instruments pertaining to the title of land.

30-28-126. Appropriation authorized. The board of county commissioners is empowered to appropriate out of the general county fund such moneys, otherwise unappropriated, as it may deem fit to finance the work of the county and district planning commissions and of the boards of adjustment, and to enforce the zoning regulations and restrictions which are adopted, and to accept grants of money and service for these purposes, and other purposes, in accordance with this part 1, from either private or public sources, state or federal.

30-28-127. Public utilities exceptions. None of the provisions of this part 1 shall apply to any existing building, structure, plant or other equipment owned or used by any public utility. After the adoption of a plan, all extensions, betterments or additions to buildings, structures, plant or other equipment of any public utility shall only be made in conformity with such plan, unless, after public hearing first had, the public utilities commission of the state of Colorado orders that such extensions, betterments or additions to buildings, structures, plant or other equipment are reasonable and that such extensions, betterments or additions may be made even though they conflict with the adopted plan.

30-28-128. Term of membership. In order to insure adequate time for the preparation of those plans which are specified as the primary responsibility of a regional planning commission, the term of membership of any governing body in a regional planning commission shall be not less than three years.

30-28-129. Inclusion of land in regional planning commission. Any county or municipality adjacent to an area under the jurisdiction of a regional planning commission may be included in such regional planning commission by agreement between its board of county commissioners, or governing body, or in charter cities the officials having charge of public improvements, and the governing bodies which are members of the regional planning commission. Any such county or municipality upon being included into the regional planning commission shall be subject to all provisions of this part 1 relating to regional planning commissions.

30-28-130. Notice of intent to withdraw. Written notice of intent to withdraw shall be given to the regional planning commission at least ninety days prior to the date of intended withdrawal and no withdrawal shall be

effective until such notice has been given. In the event of withdrawal of a county or municipality, no refund shall be made of any moneys paid to the regional planning commission.

30-28-131. Planning commission responsibilities in a common geographic area. The regional planning commission shall have primary responsibility for those broad plans described in section 30-28-106 (3) and surveys and studies described in section 30-28-107, which clearly affect the physical development of two or more governmental units. The district, county, or municipal planning commission shall have primary responsibility for all other plans, surveys, and studies, and implementation thereof in zoning, subdivision, housing, recreation, transportation, public works, health and safety, and other similar subjects.

30-28-132. Concurrent planning jurisdiction--authorized agreements and contracts.

(1) In any instance where a regional planning commission is unable to perform on time and in sufficient detail a plan or survey or study which is its primary responsibility, and where such plan or survey or study has been requested and is urgent for the development of a district, county or municipality, then upon formal notice to the regional planning commission, the local commission may proceed to make such plan or survey or study for its own area. In such instances, the regional planning commission may adopt such plan or survey or study as part of its regional plan and may take primary responsibility for the expansion of the study or plan into other jurisdictions.

(2) A regional planning commission may agree or contract with any government or quasi-governmental body within the region to make any plan or survey or study for such governmental or quasi-governmental body, irrespective of whether such plan or survey or study is the primary responsibility or such regional planning commission.

(3) A regional planning commission may agree or contract with any constituent government to have it make any plan or survey or study which is the primary responsibility of the regional planning commission.

30-28-133. Subdivision regulations.

(1) Every county in the state which does not have a county planning commission on July 1, 1971, shall create a county planning commission in accordance with the provisions of section 30-28-103.

Every county planning commission in the state shall develop, propose and recommend subdivision regulations, and the board of county commissioners shall adopt and enforce subdivision regulations for all land within the unincorporated areas of the county in accordance with this section not later than September 1, 1972. Before finally adopting any subdivision regulations, the board of county commissioners shall hold a public hearing thereon, and at least thirty days' notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the county. Before adopting any such subdivision regulations, the board of county commissioners may revise, alter, or amend any such subdivision regulations developed, proposed, or recommended by the county planning commission. In the event the board of county commissioners of any county in the state has not adopted subdivision regulations by September 2, 1972, then and in such event, the land use commission may promulgate such subdivision regulations for such areas of the county for which no subdivision regulations exist. Such subdivision regulations shall be in full force and effect, and enforced by the board of county commissioners. If at any time thereafter the board of county commissioners adopts its own subdivision regulations for land within the unincorporated areas of the county, such regulations shall be less stringent than the regulations promulgated by the Colorado land use commission under this subsection (1). All subdivision regulations, and all amendments thereto, adopted by a board of county commissioners shall be transmitted to the Colorado land use commission.

(2) Prior to the adoption of the regulations referred to in this section, a public hearing shall be held thereupon in the county or counties in which said territory or any part thereof is situated. A copy of such regulations shall be certified by the commission and thereupon filed with the county clerk and recorder of the county in which said territory is situated.

(3) Subdivision regulations adopted by a board of county commissioners pursuant to this section shall require subdividers to submit to the board of county commissioners data, surveys, analyses, studies, plans and designs, in the form prescribed by the board of county commissioners, of the following items:

(a) Property survey and ownership;

(b) Relevant site characteristics and analyses applicable to the proposed subdivision including the following, which shall be submitted to the subdivider with the sketch plan:

(I) Reports concerning streams, lakes, topography, and vegetation;

(II) Reports concerning geologic characteristics of the area significantly affecting the land use and determining the impact of such characteristics on the proposed subdivision;

(III) In areas of potential radiation hazard to the proposed future land use, these potential radiation hazards shall be evaluated;

(IV) Maps and tables concerning suitability of types of soil in the proposed subdivision, in accordance with the National Cooperative Soil Survey.

(c) A plat and other documentation showing the layout or plan of development, including, where applicable, the following information:

(I) Total development area;

(II) Total number of proposed dwelling units;

(III) Total number of square feet of proposed nonresidential floor space;

(IV) Total number of proposed off-street parking spaces, excluding those associated with single family residential development;

(V) Estimated total number of gallons per day of water system requirements where a distribution system is proposed;

(VI) Estimated total number of gallons per day of sewage to be treated where a central sewage treatment facility is proposed, or sewage disposal means and suitability where no central sewage treatment facility is proposed;

(VII) Estimated construction cost and proposed method of financing of the streets and related facilities, water distribution system, sewage collection system, storm drainage facilities, and such other utilities as may be required of the developer by the county;

(VIII) Maps and plans for facilities to prevent storm waters in excess of historic runoff, caused by the proposed subdivision, from entering, damaging, or being carried by conduits, water supply ditches and appurtenant structures, and other storn drainage facilities.

(d) Adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed. Such evidence may include, but shall not be limited to:

(I) Evidence of ownership or right of acquisition of or use of existing and proposed water rights;

(II) Historic use and estimated yield of claimed water rights;

(III) Amenability of existing rights to a change in use;

(IV) Evidence that public or private water owners can and will supply water to the proposed subdivision stating the amount of water available for use within the subdivision and the feasibility of extending service to that area;

(V) Evidence concerning the potability of the proposed water supply for the subdivision.

(4) Subdivision regulations adopted by the board of county commissioners pursuant to this section shall also include, as a minimum, provisions governing the following matters:

(a) Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:

(I) Reservation of such sites and land areas, for acquisition by the county;

(II) Dedication of such sites and land areas to the county, or the public; or in lieu thereof, payment of a sum of money not exceeding the full market value of such sites and land areas. Any such sums, when required, shall be held by the board of county commissioners for the acquisition of said sites and land areas;

(III)Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision.

(b) Standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways, which may require, in the opinion of the board of county commissioners, detention facilities which may be dedicated to the county or the public, as are deemed necessary to control, as nearly as possible, storm waters generated exclusively within a subdivision from a one hundred year storm which are in excess of the historic runoff volume of storm water from the same land area in its undeveloped and unimproved condition;

(c) Standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(d) Standards and technical procedures applicable to water systems.

(5) No subdivision shall be approved under section 30-28-110 (3) and (4) until such data, surveys, analyses, studies, plans, and designs as may be required by this section and by the county planning commission or the board of county commissioners have been submitted, reviewed, and found to meet all sound planning and engineering requirements of the county contained in its subdivision regulations.

(6) No board of county commissioners shall approve any preliminary plan or final plat for any subdivision located within the county unless the subdivider has provided the following materials as part of the preliminary plan or final plat subdivision submission:

(a) Evidence to establish that definite provision has been made for a water supply that is sufficient in terms of quantity, dependability, and quality to provide an appropriate supply of water for the type of subdivision proposed;

(b) Evidence to establish that, if a public sewage disposal system is proposed, provision has been made for such system and, if other methods or methods of sewage disposal are proposed, evidence that such systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary plan or final plat;

(c) Evidence to show that all areas of the proposed subdivision which may involve soil or topographical conditions presenting hazards or requiring special precautions have been identified by the subdivider and that the proposed uses of these areas are compatible with such conditions.

(7) The board of county commissioners shall send a copy of the preliminary plan or final plat submission to the Colorado land use commission upon receipt of said submission.

(8) Upon adoption and transmittal of subdivision regulations by the board of county commissioners in accordance with this section, and upon a finding by the Colorado land use commission that such subdivision regulations are in compliance with this section, the provisions of subsection (7) of this section shall no longer apply, and the Colorado land use commission shall so notify the board of county commissioners.

30-28-134. Telecommunications research facilities of the United States--inclusions in planning and zoning.--Any zoning plan, modification thereof, or variance therefrom, adopted or granted under this part 1 on or after April 23, 1969. shall comply with the requirements of part 6 of Article 11 of this title.

30-28-135. Safety glazing materials. The board of county commissioners of each county in the state shall adopt standards governing the use of safety glazing materials for hazardous locations in the unincorporated areas of the county, which standards shall be no less stringent than the provisions of article 2 of this title 9, C.R.S. 1973. No building permit shall be issued for the construction, reconstruction, or alteration of any structure in the unincorporated area of such county unless such construction, reconstruction, or alteration conforms to the standards adopted pursuant to this section. The county building inspector shall inspect all places not inspected by the division of labor under the provisions of article 2 of title 9, C.R.S. 1973, to determine whether such places are in compliance with the standards for the use of safety glazing materials.

30-28-136. Referral and review requirements.

(1) Upon receipt of a complete preliminary plan submission, the board of county commissioners or its authorized representative shall distribute copies of prints of the plan as follows:

(a) To the appropriate school districts;

(b) To each county or municipality within a two-mile radius of any portion of the proposed subdivision;

(c) To any utility, local improvement and service district, or ditch company, when applicable;

(d) To the Colorado state forest service, when applicable;

(e) To the appropriate planning commission;

(f) To the local soil conservation district board or boards within the county for explicit review and recommendations regarding soil suitability, flood water problems, and watershed protection. Such referral sahll be made even though all or part of a proposed subdivision is not located within the boundaries of a conservation district;

(g) When applicable, to the county, district, regional, or state department of health, for its review of the on-lot sewage disposal reports, for review of the adequacy of existing or proposed sewage treatment works to handle the estimated effluent, and for a report on the water quality of the proposed water supply to serve the subdivision. The department of health to which the plan is referred may require the subdivider to submit additional engineering or geological reports or data and to conduct a study of the economic feasibility of a sewage treatment works prior to making its recommendations. No plan shall receive the approval of the board of county commissioners unless the department of health to which the plan is referred has made a favorable recommendation regarding the proposed method of sewage disposal.

(h) When applicable, to the state engineer for an opinion regarding material injury to decreed water rights, historic use of and estimated water yield to supply the proposed development, and conditions associated with said water supply evidence. The state engineer shall consider the cumulative effect of on-lot wells on water rights and existing wells;

(i) To the Colorado geological survey for an evaluation of those geologic factors which would have a significant impact on the proposed use of the land.

(2) The agencies named in this section shall make recommendations within twenty-four days after the mailing by the county or its authorized representative of such plans unless a necessary extension of not more than

thirty days has been consented to by the subdivider and the board of county commissioners of the county in which the subdivision area is located. The failure of any agency to respond within twenty-four days or within the period of an extension shall for the purpose of the hearing on the plan be deemed an approval of such plan, except that where such plan involves twenty or more dwelling units, a school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and, effective September 1, 1973, the adequacy of school structures.

(3) The provisions of this part 1 shall not modify the duties or enlarge the authority of the state engineer or the division engineers, nor divest the water courts of jurisdiction over actions concerning water right determinations and administration; neither shall any opinion of the state engineer submitted under subsection (1) (h) of this section, nor any finding by a board of county commissioners concerning subdivision water supply matters createany presumption concerning injury or noninjury to water rights, and neither the state engineer's opinion nor the county commissioners' finding may be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration.

(4) Each month the board of county commissioners or their appointed representative shall transmit to the Colorado land use commission copies of the notice of filing and a summary of information of each subdivision preliminary plan and plat submitted to them together with a report of each exemption granted by the board of county commissioners pursuant to section 30-28-101 (10) (d), on such form as may be prescribed by the Colorado land use commission.

30-28-137. Guarantee of public improvements.

(1) No final plat shall be recorded until the subdivider has submitted and the board of county commissioners has approved, one or a combination of, the following:

(a) A subdivision improvements agreement agreeing to construct any required public improvements shown in the final plat documents together with collateral which is sufficient, in the judgment of said board, to make reasonable provision for the completion of said improvements in accordance with design and time specifications, or

(b) Other agreements or contracts setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the final plat documents which, in the judgment of said board, will make reasonable provision for completion of said improvements in accordance with design and time specifications.

(2) As improvements are completed, the subdivider may apply to the board of county commissioners for a release of part or all of the collateral deposited with said board. Upon inspection and approval, the board shall release said collateral. If the board determines that any of such improve-

ments are not constructed in substantial compliance with specifications, it shall furnish the subdivider a list of specific deficiencies and shall be entitled to withhold collateral sufficient to ensure such substantial compliance. If the board of county commissioners determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, the board of county commissioners may withdraw and employ from the deposit of collateral such funds as may be necessary to construct the improvement or improvements in accordance with specifications.

TITLE 31

GOVERNMENT - MUNICIPAL

ARTICLE 12
Powers & Functions of Cities & Towns
Part 1
GENERAL POWERS

31-12-101. Powers of governing bodies. The governing bodies in cities and towns shall have the following powers:

(7) Indebedtness. (a) By the authority of the city council of any city or the board of trustees of any town, to contract an indebedtness on behalf of the city or town and upon the credit thereof by borrowing money or issuing the bonds of the city or town for any public purpose of the city or town, including, but not limited to, the following purposes: Supplying water, gas, and electricity, the purchase of land, amd tje purchase, construction, extension, and improvement of public streets, buildings, facilities, and equipment, and for the purpose of supplying a temporary deficiency in the revenue for defraying the current expenses of the city or town.

(b) The total amount of indebtedness for all purposes shall not at any time exceed three percent of the actual value, as determined by the assessor of the taxable property in the city or town, except such debt as may be incurred in supplying water, and no loan for any purpose s all be made except by ordinance, which shall be irrepealable until the indebtedness therein provided for is fully paid or discharged, specifying the purposes to which the funds be raised shall be applied, and providing for the levying of a tas which, toqether with such other revenue, assets, or funds as may be pledged, is sufficeint to pay the annyal interest and extinguish the principal of said debt within the time limeted for the debt to run, which, excepting such debt as may be incurred in supplying water, shall not be more than thirty years, and providing that said tax when collected shall only be applied for the purposes specified in said ordinance, until the indebedtedness is paid and discharged; but no debt shall be created, except the supplying of water, unless the question of incurring the same shall be submitted, at a regular or special election of the city or town, to the registered qualified electors thereof, as definde by the "Colorado Municipal Election Code of 1965:, and a majority of the registered qulaified electors voting upon the question shall vote in favor of creating such debt.

(c) No statutory provisions of any other law limiting or fixing tax rates shall limit the provisions of this subsection (7).

(d) Bonds issued under this subsection (7) may mature serially during a period of not more than thirty years from the date thereof, in which event the amounts of such annual maturities shall be fixed by the city council or board of trustees; except that bonds issued to supply water may mature over a longer period. If the city council or board of trustees so determines, said bonds may be redeemable prior to maturity with or without payment of a premium, not exceeding three percent of the principal thereof. In any event said bonds shall be

subject to call commencing not later than fifteen years from the date thereof. The right to redeem all or part of said bonds prior to their maturity and the order of any such redemption shall be reserved in the ordinance authorizing the issuance of bonds and shall be set forth on the face of said bonds.

(e) The ordinande or resolution submitting the question of contracting an indebtedness shall contain a statement of the maximum net effective interest rate at which said indebtedness may be incurred. For purposes of this title, article 56 of title 12, and part 2 of article 4 of title 41, C.R.S. 1973.

(I) "Net effective interest rate" or a proposed issue of bonds means the net interest cost of said issue divided by the sum of the products derived by multiplying the prinicipal amount of said issue maturing on each maturity date by the number of years from the date of said proposed bonds to their respective maturities.

(II) "Net interest cost" of a proposed issue of bonds means the total amount of interest to accrue on said bonds from their date of issuance to their respective maturities plus the amount of any discount below par or less the amount of any premium above par at which said bonds are being or have been sold. In all cases the net effective interest rate and net interest cost shall be computed without regard to any option of redemption prior to the designated maturity dates on the bonds.

(f) (I) The city council of any city or the board of trustees of any town, having received approval at an election to issue bonds and having determined that the limitations of the original election question are too restrictive to permit the advantageous sale of the bonds so authorized, may submit at another regular or special election: The question of issuing the bonds, or any portion thereof, to mature over a longer period of time than the maximum period of maturity approved at the original election; or both such questions.

(II) An election held pursuant to this paragraph (f) shall be held in substantially the same manner as an election to authorize bonds initially, except as may be required for the submission of the limited question permitted under this paragraph (f).

(III) At an election held pursuant to this paragraph (f), if the changes submitted are not approved, such result shall not impair the authority of the city council or the board of trustees at a later time to issue the bonds originally approved within the limitations established at the first election.

(20) (b) To regulate the openings therein for the laying-out of gas or water mains and pipes, and the building and repairing of sewers, tunnels, and drains, and the erecting or gaslights. Any company organized under the general laws of this state or any association of persons organized for the purpose of manufacturing illuminating gas to supply cities or towns or the inhabitants thereof with the same has

the right by consent of the city council or town trustees, but not without such consent, subject to existing rights, to erect gas factories and lay down pipes in the streets or alleys of any city or town in the state, subject to such regualtions as any such city ot town by ordinance may impose;

(22) Sewers and water mains. To construct and deep in repair culverts, drains, sewers, water mains, and cesspools and to regulate their use and to assess, either in whole or in part, the cost of the construction of sewers, water mains, and drains upon the lots or lands adjacent to and opposite the improvements in proportion to the frontage of such lots or lands abutting upon the street or alley wherein such sewer, water main, or drain is to be laid. The cost of such sewer, water main, or drain at street intersections or crossings shall be wholly paid for by such city or town. The benefit to the public generally, if any, shall be determined by ordinance and shall be assessed against such city or town, and the balance shall be assessed against the lots or lands and the owners thereof according to the frontage.

(23) Watercourses. To deepen, widen, dock, cover, wall, alter, or change the channel of watercourses.

(24) Water pollution control. To provide for the cleansing and purification of water, watercourses, and canals and the draining or filling of ponds on provate property when necessary to prevent or abate nuisances; and, for the purpose of aiding in the prevention and abatement of water pollution, all cities and incorporated towns are authorized:

(a) To apply for and to accept grants or loans or any other aid from the Unites States or any agency or instrumentality thereof under any federal law in force;

(b) To construct, reconstruct, lease, improve, better, and extend sewerage facilities and sewage treatment works wholly within or wholly without the municipality or partially within and partially without the municipality;

(c) To issue its general obligation bonds or other general obligations for the aforesaid purpose pursuant to and within the limitations prescribed by subsection (7) of this section and to issue its revenue bonds or obligations for such purpose pursuant to law;

(d) To provide that such bonds or obligations or any part thereof may be sold to the state of Colorado, or the United States, or any agency or instrumentality of either at private sale and without advertisement;

(e) To cooperate with other local public bodies and with state agencies and institutions by contract for the joint construction and financing of sewerage facilities and sewage treatment works and the maintenance and operation thereof;

(f) To enter into joint operating agreements with industrial enterprises and accept gifts or contributions from such industrial enterprises for the construction, reconstruction, improvement, betterment, and extension of sewerage facilities and sewage treatment works. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any city or incorporated town is authorized to enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the city or incorporated town of sewerage facilities to abate or reduce the pollution of waters caused by discharges of industrial wastes by the industrial establishment and the payment periodically by the industrial establishment to the city or incorporated town of amounts at least sufficient, in the determination of such governing body, to compensate the city or incorporated town for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such industrial establishment. The foregoing powers may only be exercised after approval of the state board of health.

(34) Water, gas, and electric works. (a) To acquire waterworks, gasworks, and gas distribution systems for the distribution of gas of any kind or electric light and power works and distribution systems, and all appurtenances necessary to any said works or systems, or to authorize the erection, ownership, operation and maintenance of such works and systems by others. No such works or systems shall be acquired or erected by a city or town until the question of acquiring or erecting the same is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by subsection (7) of this section and in accordance with the requirements of law, including such requirements of law relating to the acquisition and financing of public utilities by cities and towns; except that the question of qcquiring a waterworks need not be so submitted and approved at an election if the city or town acquires the waterworks of a water district dissolved under parts 3 and 6 of this article 1 of title 32, C.R.S. 1973, or acquires the waterworks of another body corporate and politic by some other method of governmental reorganization.

(b) All such works or systems authorized by any city or town to be erected by others or the franchise of which is extended or renewed shall be authorized, extended, or renewed upon the express condition that such municipality has the right and power to purchase or condemn any such works or systems at the fair market value thereof at the time of purchasing or condemning such works or systems, excluding all value or the franchise or right-of-way through the streets and also excluding any value by virtue of any contract for hydrant or private rental or otherwise entered into with the municipality in excess of the fair market value of the works or systems; but, if, after an election conducted in the manner prescribed in subsection (7) of this section, the city or town is authorized to acquire any of said works or systems after granting a franchise therefor to any person, firm, corporation, or cooperative association, the city or town shall purchase or condemn such works or systems within the corporate limits then utilized in serving the inhabitants of such municipality at the fair market value

thereof; but nothing in this paragraph (b) shall require such city or town to purchase or condemn all or any part of such works or systems which is obsolete or which has outworn its usefulness.

(c) If the city or town elects to purchase such works or systems and if the parties in interest cannot agree on the purchase price, they shall enter into a written agreement to arbitrate the matter and to abide by the award of the arbitrators, in which event each party shall choose an arbitrator to determine the fair market value thereof. If two arbitrators cannot agree on the fair market value, they shall choose a third disinterested arbitrator, and the award of any two arbitrators shall be final and binding upon the parties.

(d) Nothing in this subsection (34) shall authorize the condemnation or purchase of any such works or systems within twenty years after the granting of any franchise therefor, except at periods of ten or fifteen years thereafter, without the consent of the owner of the franchise.

(35) Waterworks outside limits. To construct or authorize the construction of such waterworks without their limits, and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works, and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same, and over the stream or source from which the water is taken for five miles above the point from which it is taken, and to enact all ordinances and regulations necessary to carry the power conferred in this subsection (35) into effect.

(38) Water facilities and taxes. To construct public wells, cisterns, and reservoirs in the streets and other public and private places within the city or town or beyond the limits thereof for the purpose of supplying the same with water; to provide proper pumps and conducting pipes or ditches; to regulate the distribution of water for irrigating and other purposes; and to levy an equitable and just tax upon all consumers of water for the purpose of defraying the expense of such improvements.

(39) Supply water to outside consumers. To supply water from their water systems to consumers outside the corporate limits of the cities and towns and to collect therefor such charges upon such conditions and limitations as said towns and cities may impose by ordinance.

(Building and Zoning Regualtions)

(40) Water facilities. To regulate the construction, repairs, and use of vaults, cisterns, areas, hydrants, pumps, sewers, and gutters.

(49) Removal of unwholesome places. To compel the owner of any grocery, cellar, soap or tallow candlery, tannery, stable, pigsty, privy, sewer, or other unwholesome or nauseous house or place to cleanse, abate, or remove the same and to regulate the location thereof.

(75) Streets and sewers. To extend, by condemnation or otherwise, any street, alley, or highway over or across, or to construct any sewer under or through, any railroad track, right-of-way, or land of any railroad company within the corporate limits, but, where no compensation is made to such railroad company, the city shall restore such railroad track, right-of-way, or land to its former state or restore it in a sufficient manner not to have impaired its usefulness.

(78) Taking of water - private property. (a) To take water in sufficient quantity, for the purpose mentioned is subsection (38) of this section, from any stream, creek, gulch, or spring in the state. If the taking of such water in such quantity shall materially interfere with or impair the vested right of any person or corporation, heretofore acquired, residing upon such creek, gulch, or stream or doing any milling or manufacturing business thereon, they shall first obtain consent of such person or corporation or acquire the fight of domain by condemnation, as prescribed by the state constitution and laws upon that subject, and make full compensation or satisfaction for all the damages thereby occasioned to such person or corporation.

(b) When it is deemed necessary by any municipal corporation to enter upon ot take private property for any of the uses mentioned in paragraph (a) of this subsection (78), the same shall be examined and appraised, and the damages thereon assessed, and the proceedings in connection therewith shall be in all respects the same as is provided by general law for the taking of private property for public or private use.

B-X

ARTICLE 25

PUBLIC IMPROVEMENTS

PART 5

SPECIAL IMPROVEMENT DISTRICTS IN CITIES AND TOWNS (1923 ACT)

31-25-501. Definitions. As used in this part 5, unless the context otherwise requires:

(1) "City clerk" or "town clerk" means the person who performs the clerical duties for the city council or the board of trustees.

(2) "City council" or "board of trustees" means the governing or legislative body of any city or town, by whatever name known.

(3) "District" means the geographical division of the municipality within which any local improvement may be made, or when so declared by the council or trustees may include the entire municipal area. One or more noncontiguous parts or sections of a municipality may be included in one district.

(4) "Owner", in reference to petitions, means only persons in whom the record fee title is vested, although subject to lien or encumbrance.

(5) "Property" means all land, whether platted or unplatted, regardless of improvements thereon and regardless of lot or land lines. It shall also include the franchise of any railroad whose tracks lie, either lengthwise or crosswise, within any street improved under this part 5. Lots may be designated in accordance with any recorded map or plat thereof, unplatted lands by any definite description thereof, and franchises by the name of the corporation owning the same.

(6) "Street" means any street, alley, avenue, boulevard, or public thoroughfare.

31-25-502. Power to make local improvements. It is lawful for any city, whether organized under general laws or operating under a special charter, and any incorporated town to construct any of the local improvements mentioned in this part 5 and to assess the cost thereof, wholly or in part, upon the property especially benefited by such improvements. The improvements shall be authorized by ordinance duly adopted and shall be constructed under the direction of the city or town engineer or other officer having similar duties, or under the direction of the city council or board of trustees, in accordance with plans and specifications adopted by the city council or board of trustees of such city or town. The city council in cities and the board of trustees in towns are referred to and designated in this part 5 as the ordering authority unless the context otherwise requires.

31-25-503. What improvements may be made - conditions.

(1) The improvements authorized in this part 5 may consist of grading, paving, curbing, guttering, parking, or otherwise improving the whole or any part of any street, alley, or streets and alleys in such city or incorporated town, or any one or more of said improvements, including the reconstruction, replacement, renewal, or extension of the same. In case of grading only, or grading and curbing only, the improvements may include the necessary crosswalks. Thereafter, under the conditions prescribed in this section, such further grading may be done as may be necessary in paving, repaving, or otherwise improving the same area. Such improvements may also consist of any local improvement and renewals or extensions thereof which benefit the land abutting on such improvements, such as sidewalks, water mains, or the necessary construction and appliances for the installation of a system of artificial lighting. Such improvements may also consist of the construction of sewers, sewage disposal works, and renewals or extensions thereof, and such other public works as may be considered necessary and authorized by the city council or board of trustees; but:

(a) No improvement, except sidewalks, water mains, sewers, and sewage disposal works and their appurtenances, shall be ordered under this part 5, unless a petition for the same is first presented, subscribed by the owners of a majority of the frontage directly abutting on that portion of the street to be improved, and except as specified in this section, nothing in this part 5 shall restrict the right of such majority from securing any particular kind or variety of improvements petitioned for. In any case where a proposed improvement district includes two or more noncontinguous parts or sections, the owners of a majority of the property in each noncontiguous section shall petition as specified in this part 5.

(b) If the owners of a majority of the frontage directly abutting on that portion of the street to be improved petition for any particular kind of improvement, and for any particular materials to be used in the same, then the improvement must be ordered in accordance with the petition, and the materials so designated shall be used, except as otherwise provided in this section.

(c) If the material petitioned for by the majority of the property owners is one that does not encourage competition, then it shall be the right of the petitioners to state in the petition the maximum price per square yeard, or linear foot, or per unit, at which the improvement is desired, and no contract shall be let for any such improvement at a price exceeding the maximum price fixed in said petition, excluding the cost of engineering, collection, inspection, incidentals, and interest.

(2) The ordering authority shall encourage competition, by advertising for and receiving bids for such construction, and, insofar as possible within the limits of the petition, shall describe all materials by standard or quality in the specifications.

(3) Before contracting for or ordering any work to be constructed, a preliminary order shall be made by the ordering authority, adopting full details and specifications in conformity with the petition for the same, definitely describing the materials to be used, or stating that one of several specified materials shall be chosen, determining the number of in-

stallments and the time in which the cost of the improvement shall be payable, the rate of interest to be paid on unpaid and deferred installments, the property to be assessed for the same, as provided in this part 5, and requiring an estimate of the cost to be made by the city or town engineer or any similar officer or employee, together with a map of the district in which the improvement is to be made, and a schedule showing the approximate amounts to be assessed upon the several lots or parcels of property within the district. No contracts shall be let for any amounts exceeding the estimate so made, except that the cost of collection, inspection, incidentals, and interest may be added thereto.

(4) The city or town clerk shall give notice, by advertisement once a week for three consecutive weeks, in a newspaper of general circulation in such city or town, to the owners of the property to be assessed, stating:

(a) The kind of improvements proposed;
(b) The number of installments;
(c) The time in which the cost shall be payable;
(d) The rate of interest to be paid on unpaid and deferred installments;
(e) The extent of the district to be improved;
(f) The probable cost per front foot, or in case of sewers per square foot of district area, as shown by the estimates of the engineer;
(g) The time, not less than twenty days after the first publication, when an ordinance authorizing the improvements will be considered;
(h) That said map and estimate and schedule showing the approximate amounts to be assessed, and all resolutions and proceedings, are on file and can be seen and examined by any interested person at the office of the city or town clerk, or other designated place, at any time within said period of twenty days; and
(i) That all complaints and objections made in writing concerning the proposed improvement by the owners of any real estate to be assessed will be heard and determined by the ordering authority before final action thereon.

(5) The finding by ordinance or resolution of the city council or board of trustees that said improvements were duly ordered after notice duly given, and after hearing duly held, and that such petition was presented, and that the petition was subscribed by the required number of owners, shall be conclusive of the facts so stated, in every court or other tribunal.

(6) Any resolution or order in the premises may be modified, confirmed, or rescinded at any time prior to the passage of the ordinance authorizing the improvements.

(7) The specifications for paving may include sidewalks, curbs, gutters, and grading, and sufficient culverts, sewers, or drains necessary to carry off the surface waters acress or along the line of the street improved, and such other incidentals to paving as, in the judgment of the ordering authority, may be required. The specifications may also provide that bidders shall agree to enter into contract to do the work and maintain the same in good repair for a period of five years; and the contract may be entered into in accordance therewith.

(8) If, before any such improvements are made, any piece of real estate or any railway company to be assessed already has an improvement conforming

to the general plan, or satisfactory to the ordering authority, an allowance therefor may be made to the owner, and such allowance may be deducted from the owner's assessment and from the contract price.

31-25-504. Improvements may be constructed under other laws. Nothing this part 5 shall be construed so as to prejudice or affect the right to construct local improvements by virtue of any other law of this state. No other act or law shall prejudice the right to construct local improvements under this part 5. If constructed in pursuance of this part 5, the same shall be made to appear in the original petition and in the ordinance authorizing the improvements.

31-25-505. Property of irregular form - assessment. Whenever any lot or parcel of land is V-shaped or of any irregular form, such allowance may be made by ordinance in any assessment as may be equitable and just, or any allowance may be refused, and in case of any unusual area or proportion of intersections, the city or incorporated town may pay not exceeding one-half of the cost of any such intersection, and in such case the remainder only shall be assessed against the property improved.

31-25-506. Cost assessed in proportion to area. The cost of district storm sewers may be assessed upon all the land in said storm sewer districts, respectively, in proportion as the area of each piece of land in the district, or in the part improved, is to the area of all the land in the district, exclusive of public highways.

31-25-507. Assessment roll. The city or town clerk shall prepare a local assessment roll in book form, showing in suitable columns each piece of land assessed, the total amount of assessment, the amount of each installment of principal and interest if, in pursuance of this part 5, the same is payable in installments, and the date when each installment will become due, with suitable columns for use, in case of payment of the whole amount or of any installment or penalty, and deliver the same, duly certified, under the corporate seal, to the city or town treasurer for collection.

31-25-508. Streets - railway companies subject to tax.

(1) Whenever any grading, paving, or other kind of street improvement district is created under this part 5, the ordering authority may include in the area to be paved, graded, or otherwise improved, the entire width of street from curb to curb, or any part thereof, including the portion of said street occupied by, or required by franchise obligation to be paid by, or chargeable or assessable to, any railway company whose railroad runs through or across any street in said district, and shall charge to, assess, and collect the proper proportion of the cost of the improvement from such railway company in the same manner as is provided for in case of other property, and shall issue bonds for the same, which bonds shall be issued and made payable in like manner as bonds issued for the improvement to be

assessed against the real estate specially benefited.

(2) In the meaning of this section, in the absence of a franchise obligation to grade or pave or otherwise improve, a railway company shall be held to occupy and is liable for the grading, paving, or other improvement of that part of the street lying between the rails of each track and two feet outside of each rail; and every railway company, whether street railway or otherwise shall be assessed for the cost of such improvement of any part of any street or alley occupied by or required by franchise obligation to be so improved, and the assessment levied for the cost of said improvements chargeable to a railway company shall be a perpetual tax lien against the entire franchise and property of the company, both within and without said district, but within the limits of the city or incorporated town where such improvement is made, superior to all other liens except general tax liens.

(3) All the terms, conditions, and provisions contained in this part 5 relative to the collection of the amounts chargeable against property specially benefited shall be applicable in the enforcement and collection of such assessment against such railway company, and the property of such railway company, in case of default in payment of such assessment, shall be sold as in cases of default in payment of general taxes levied thereon; but railway trackage shall not be considered or computed as assessable frontage in determining the sufficiency of petitions.

31-25-509. When assessments payable - installments. All special assessments for local improvements shall be due and payable within thirty days after the final publication of the assessing ordinance without demand; but all such assessments may be paid, at the election of the owner, in installments with interest as provided in section 31-25-517.

31-25-510. When collections paid city. All collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city or town treasurer on or before the tenth day of the next succeeding calendar month, with separate statements for all such collections for each improvement.

31-25-511. Assessment a lien - corrections. All assessments made in pursuance of this part 5, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same, shall constitute, from the date of the final publication of the assessing ordinance, a perpetual lien in the several amounts assessed against each lot or tract of land, shall have priority over all other liens excepting general tax liens. As to any subdivisions of any land assessed in pursuance of this part 5, the assessment shall in each case be a lien upon all the subdivisions in proportion to their respective areas. No delays, mistakes, errors, or irregularities in any act or proceeding authorized by this part 5 shall prejudice or invalidate any final assessment; but the same may be remedied by subsequent amending acts or proceedings, as the case may require. When so remedied, the same shall take effect as of the date of the original act or proceeding. If in any court of competent jurisdiction any final assessment made in pursuance of this part 5 is set aside, the ordering authority

upon notice as required in the making of an original assessment, may make a new assessment in accordance with the provisions of this part 5.

31-25-512. Cost assessed in proportion to area. The costs of any district sanitary sewer, including inlets, manholes, connecting mains, and appurtenances, with interest, may be assessed by ordinance upon all the real estate in the district, in proportion as the area of each piece of real estate bears to the area of all real estate in the district, exclusive of public highways.

31-25-513. Cost assessed in accordance with benefits. In case of the improvement of any street or alley, the cost of such improvement, or such part thereof as may be assessed against the property specially benefited, including the intersections of streets and alleys but excepting the share to be assessed against railway companies, may be assessed on land to a substantially equal depth from the street or alley improved, and its intersections, without regard to lot or land lines, on a frontage, zone, or other equitable basis, in accordance with benefits, as the same may be determined by the ordering authority.

31-25-514. Statement of expenses - apportionment. Upon completion of any local improvement, or upon completion from time to time of any part thereof, and upon acceptance thereof by the ordering authority, or whenever the total cost of any improvement or of any such part thereof can be definitely ascertained, the ordering authority shall cause to be prepared a statement showing the whole cost of the improvement, the portion thereof, if any, to be paid by the city or town, including an amount not exceeding six percent, additional, for cost of inspection, collection, and other incidentals, and also including interest on the bonds issued to the time the first installment of the assessment is made payable in said statement, apportioning said cost, after deducting the amount, if any, to be paid by the town or city, upon each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the city clerk or town clerk, as the case may be. If the ordering authority should deem the basis of assessment to be inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to the property assessed by reason of the improvements made.

31-25-515. Notice of apportionment.

(1) Thereupon the clerk shall notify, by advertisement once a week for three consecutive weeks in some newspaper of general circulation in said city or town, the owners of the property to be assessed that said improvements have been, or are about to be, completed and accepted, therein specifying:

(a) The whole cost of the improvement;

(b) The portion, if any, to be paid by such city or town;

(c) The share apportioned to each lot or tract of land;

(d) That any complaints or objections which may be made in writing by

owners to the city council or board of trustees, and filed in the office of the clerk within twenty days from the first publication of such notice, will be heard and determined by the city council or board of trustees before the passage of any ordinance assessing the cost of said improvements; and

(e) The date when and place where such complaints or objections will be heard.

31-25-516. Hearing on objections. At the time specified in said notice, or at some adjourned time, the ordering authority shall hear and determine all such complaints and objections, and may thereupon make such modifications and changes as may seem equitable and just, or may confirm the first apportionment. The ordering authority shall thereupon by ordinance assess the cost of said improvements, and the passage of such ordinance shall be prima facie evidence of the fact that the property assessed is benefited in the amount of the assessments, and that such assessments have been lawfully levied.

31-25-517. How installments paid - interest. In case of such election to pay in installments, the assessments shall be payable in two or more equal annual installments of principal, the first of which installments shall be payable as prescribed by the ordering authority, in not more than five years, and the last in not more than twenty years, with interest in all cases on the unpaid principal payable semiannually. The number of installments, the period of payment, and the rate of interest shall be determined by the ordering authority and set forth in the assessing ordinance.

31-25-518. Effect of payment in installments. Failure to pay the whole assessment within said period of thirty days shall be conclusively considered to be an election on the part of all persons interested, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively considered to have consented to said improvements. Such election shall be conclusively considered to be a waiver of any right to question the power or jurisdiction of the city or town to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessments, or the validity of the lien thereof.

31-25-519. Penalty for default - payment of balance. Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the day of sale; but at any time prior to the day of sale, the owner may pay the amount of all unpaid installments, with interest at one percent per month or fraction of a month, and all penalties accrued, and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may at any

time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

31-25-520. Discount - assessment roll returned. Payment may be to the city or town treasurer at any time within thirty days after the final publication of the assessing ordinance and an allowance of five percent shall be made on all payments made puring such period, but not thereafter. At the expiration of said thirty-day period, the city or town treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon, with the date of each payment. Said roll shall be certified by the city or town clerk under the seal of the city or town, and delivered by him to the county treasurer of the same county, with his warrant for the collection of the same. The county treasurer shall receipt for the same, and all such rolls shall be numbered for convenient reference.

31-25-521. Sale of property for nonpayment. The county treasurer shall receive payment of all assessments appearing upon the assessment roll, with interest. In case of default in the payment of any installment of principal or interest when due, the county treasurer shall advertise and sell all property concerning which such default is suffered, for the payment of the whole of the unpaid assessments thereon. Said advertisements and sales shall be made at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as provided by general law for sales of real estate in default of payment of general taxes.

31-25-522. Municipality may purchase property on default.

(1) At any sale by the county treasurer of any property for the purpose of paying any special assessment for local improvements made under the provisions of this part 5, in such city or town, the city or town treasurer, having written authority from the ordering authority, may purchase any such property without paying for the same in cash; and shall receive certificates of purchase therefor in the name of the city or town. The certificates shall be received and credited at their face value, with all interest and penalties accrued, on account of the assessments in pursuance of which the sale was made. The certificates may thereafter be sold by the city or town treasurer at their face value, with all interest and penalties accrued, and by him assigned to the purchaser in the name of the city or town, and the proceeds credited to the fund created by ordinance for the payment of such assessments respectively. In the event that all bonded indebtedness incurred in payment for said local improvements has been discharged in full, said certificates may be sold by the board of trustees for the best price obtainable at public sale, at auction, or by sealed bids in the same manner and under the same conditions as is provided in subsection (3) of this section, relating to the sale of property owned by a municipality, and the proceeds credited to the general fund of said city or town or to the special surplus and deficiency fund, provided for by section 32-1-402, as the circumstances may require. Such assignments shall be without recourse, and the sale and assignments shall operate as a lien in favor of the purchaser and assignee as is provided by law in the case of

sale of real estate in default of payment of general taxes.

(2) Any municipality as such purchaser has the right to apply for tax deeds on such certificates of purchase, at any time after three years from the date of issuance of said certificates, and such deeds shall be issued as provided by law for issuance of tax deeds for the nonpayment of general taxes.

(3) Cumulatively with all other remedies, any municipality being the owner of property by virtue of a tax deed, or being the owner of property otherwise acquired, in satisfaction or discharge of the liens represented by such certificates of sale, may sell such property for the best price obtainable at public sale, at auction, or by sealed bids. Such sales shall be after public notice by the municipal treasurer or clerk to all persons having or claiming any interest in the property to be sold or in the proceeds of such sale, by publication thereof three times, a week apart, in a weekly or daily newspaper of general circulation within the county in which the property is located. Such notice shall describe the property and state the time, place, and manner of receiving bids; the time fixed for the sale shall not be less than ten days after the last publication. The municipality may reject any and all bids. Any interested party, at any time within ten days after the receipt of bids for the sale of property, may file with the municipality a written protest as to the sufficiency of the amount of any bid made or the validity of the proceedings for the sale. If the protest is denied, such person, within ten days thereafter, shall commence an action in a court of competent jurisdiction to enjoin or restrain the municipality from completing the sale. If no such action is commenced, all protests or objections to the sale shall be deemed to have been waived and the municipality shall then convey the property to the successful bidder by quitclaim deed.

(4) In addition to all other remedies, any municipality which is a holder of certificates of purchase may bring a civil action for foreclosure thereof, joining as defendants all persons holding record title, and persons having or claiming any interest in the property or in the proceeds of foreclosure sale, and all governmental taxing units having taxes or other claims against said property, and all unknown persons having or claiming any interest in said property. Any number of certificates may be foreclosed in the same proceeding. In such proceeding the municipality, as plaintiff, shall be entitled to all relief provided by law in actions for an adjudication of rights with respect to real property.

(5) The proceeds of any such sale of property shall be credited to the appropriate special assessment fund. The municipality shall deduct therefrom the necessary expenses in securing deeds and taking proceedings for the sale or foreclosure.

(6) When any municipality has sold or conveyed at a fair market value certificates of purchase or property which it has acquired in satisfaction or discharge of special assessment liens, such sales and conveyances are hereby validated and confirmed as against all parties having or claiming any interest in such property or the proceeds of such sale.

(7) It is hereby declared that the purpose of this section is to restore delinquent property to the tax rolls and to realize the greatest possible

amount from such property for the benefit of all persons and taxing bodies having liens thereon.

31-25-523. Owner of interest may pay share. The owner of any divided or undivided interest in the property assessed may pay his share of any assessment, upon producing evidence of the extent of his interest satisfactory to the treasurer having charge of the roll.

31-25-524. Sidewalks - water mains - sewers. In ordering the construction of sidewalks, water mains, or sewers, the proceeding shall be as required in section 31-25-503 (2), (3), (4), (5), (6), and (8), but shall not be subject to section 31-25-503 (1) (a) to (1)(c) and (7).

31-25-525. Municipality may establish sewer systems. Any city or incorporated town may establish and maintain sewer systems and sewage disposal plants for sanitary or storm drainage.

31-25-526. District sanitary sewers - contracts - contiguous towns. Whenever the ordering authority declares the same necessary for sanitary reasons, it may order the construction of district sanitary sewers in districts to be prescribed by ordinance, so as to connect with any public or district sewer, or with some natural drainage or disposal plant. Such districts may, by like authority, be divided into subdistricts or enlarged, diminished, or otherwise altered by ordinance at any time, in accordance with the provisions of this part 5. The contract for district sewers may include all necessary manholes, inlets, and appurtenances, and such mains of such reasonable extent outside the district as may be necessary to connect the district with a public sewer or some natural drainage or disposal plant. Any contiguous towns or cities may unite in the construction of a common sewer or cooperate in such construction or extend to each other the right to use any sewer constructed or to be constructed, when such use may be deemed necessary for the discharge of the sewage of either, and such cooperation, common construction, or use shall be upon such terms as regards the apportionment of cost as may be agreed upon between the councils or boards of trustees of such contiguous municipalities.

31-25-527. Private sewers - connection. Private sanitary sewers connecting with public or district sanitary sewers may be constructed under such restrictions and subject to such regulations as may be prescribed by ordinance. No expense shall be incurred by the city or town in constructing or maintaining private sewers. The owner of any premises in any sewer district may be compelled by ordinance to connect the same with the district sewer at his own expense.

31-25-528. Storm drainage sewers - districts. The ordering authority may order the construction of district sewers for storm drainage in districts to be known as storm sewer districts, the same to be prescribed by ordinance. Such sewers may include the necessary manholes, inlets, and appurtenances, and shall be so constructed as to connect with some other sufficient public sewer, or some natural drainage. Such districts may be divided into subdistricts to be especially named or numbered in said ordinance.

31-25-529. Subdistricts in sewer districts. At the time of ordering the construction of district sanitary or storm sewers, or at any time thereafter, the construction may be ordered in like manner in subdistricts, in such manner as to connect the subdistricts, or such part thereof, with the district sanitary or storm sewer for the purpose of sanitary or storm drainage. The cost of subdistrict sanitary or storm sewers in each subdistrict or part thereof, with the appurtenances, may be assessed upon all the land in the subdistrict or in the part improved, in proportion as the area of each piece of land in the subdistrict, or in the part improved, is to the area of all the land in the subdistrict, or in the part improved, exclusive of public highways. Comoined sewers for sanitary and storm drainage may be authorized and constructed in the same manner as provided for the construction of sanitary or storm sewers, and the cost thereof assessed in the same manner and proportion.

31-25-530. Power of governing body to contract debt - question submitted to voters. The city council in such city, or the board of trustees in such town, has power to contract an indebtedness on behalf of the city or town, and upon the credit thereof, by borrowing money or issuing the negotiable interest-bearing bonds of the city or town for the purpose of providing a fund to pay such part of the cost of said improvements as may be determined by the governing body, subject to constitutional limitations. No such indebtedness shall be created except by ordinance, which shall be irrepealable until the indebtedness therein provided for shall be fully paid, which ordinance shall specify the purpose to which the funds to be raised shall be applied, the maximum net effective interest rate which it is proposed the issue of bonds shall bear, provide for the levying of a tax sufficient to pay the annual interest and extinguish the principal of such debt within the time limited for the debt to run, which shall not be less than ten years nor more than fifteen years, and providing that said tax when collected shall be applied only to the purpose specified in said ordinance until the indebtedness shall be paid and discharged. No such debt shall be created for such purposes unless the question of incurring the same, including the question of the maximum net effective interest rate, shall be submitted at a regular election of municipal officers, which election shall be called and conducted, the votes canvassed, and the result declared in the same manner as other municipal elections on questions of incurring bonded indebtedness.

31-25-531. Issuing bonds - property specially benefited. For the purpose of paying all or such portion of the cost of any improvement constructed under the provisions of this part 5 as may be assessed against the property specially benefited and not paid by the city or town, special assessment bonds of the city or town may be issued, of such date and in such form as may be prescribed by the ordering authority, bearing the name of the street, alley, or district improved, and payable to the bearer in a sufficient period of years after date to cover the period of payment provided, but subject to call as provided in section 31-25-533, and in convenient denominations of not more than one thousand dollars each. All such bonds shall be issued upon estimates approved by the ordering authority, and the city or town treasurer shall preserve a record of the same in a suitable book kept for that purpose. All such bonds shall be subscribed by the mayor, countersigned by the city or town treasurer, with the corporate seal thereto affixed, and attested by the city or town clerk. Such bonds shall be payable out of the moneys collected on account of the

assessments made for said improvements. All moneys collected from such assessments for any improvement shall be applied to the payment of the bonds issued, until payment in full is made of all the bonds, both principal and interest. The bonds may be used in payment of the cost of the improvement as specified, or the ordering authority, upon advertisement once a week for three consecutive weeks, in a newspaper of general circulation in such city or town and in such other newspapers as may be designated by the ordering authority, may sell a sufficient number of said bonds to pay such cost in cash for the best bid submitted in accordance with the terms of the notice of sale. All bids may be rejected at the discretion of the ordering authority.

31-25-532. Bonds negotiable - interest. All such bonds shall be negotiable in form and bear interest as may be fixed by the ordering authority not exceeding a maximum net effective interest rate specified by the ordering authority prior to the use of said bonds in payment for improvements or the sale thereof pursuant to section 31-25-531. Such interest shall be payable semiannually, evidenced by coupons, and signed with the facsimile signature of the city or town clerk.

31-25-533. Manner of redemption. Whenever the city or town treasurer has funds in the treasury to the credit of any improvement exceeding six months' interest on the unpaid principal of the bonds issued therefor and outstanding, he shall call in, be advertisement once a week for three consecutive weeks in some newspaper of general circulation in such city or town, a suitable number of such bonds for payment. At the expiration of thirty days from the first publication of such notice, interest on the bonds so called shall cease. The notice shall specify by number the bonds so called, and all such bonds shall be paid in their numerical order. The holder of any such bonds may at any time furnish his post-office address to the city or town treasurer, and, in such case, a copy of the advertisement shall be mailed by the city or town treasurer to the bondholder, at such address, on or before the first day of such publication.

31-25-534. Cont racts for construction - bond - default.
(1) Except as provided in this section, all local improvements made under the provisions of this part 5 shall be constructed by independent contract, and all contracts shall be let by the mayor with the approval of the ordering authority. All such contracts shall be let to the lowest reliable and responsible bidder, after public advertisement once a week for three consecutive weeks in a newspaper of general circulation in such city or town; but, after such advertisement, if it is determined by the ordering authority that the bids are too high, or at the proposed improvement can be made by the city or town for less than the bid of the lowest reliable and responsible bidder,such city or town is hereby empowered to provide for doing the work by hiring labor by the day or otherwise, and to arrange for purchasing necessary material, all under the supervision of the ordering authority.

(2) Except when the city or town does the work, no contract shall be made without a surety bond for its faithful performance, with sufficient sureties, to be approved by the ordering authority. No surety shall be

accepted or approved by the baord or mayor, other than a corporate surety company, unless he is the owner of real estate in this state, free and clear of all encumbrances, in double the amount of his liability on all bonds upon which he may then be surety. Upon default in the performance of any contract, the ordering authority may advertise and relet the remainder of the work in like manner, without further ordinance, and deduct the cost from the original contract price, or, with the approval of the ordering authority, advance any excess out of the funds of the city or town and recover the same by suit on the original bond. In all advertisements the right shall be reserved to reject any or all bids and, upon rejecting all bids, if deemed advisable by the ordering authority, other bids may be advertised for.

31-25-535. Provisions to be inserted. Every contract shall provide that it is subject to the provisions of the laws under which the city or town exists, and of the ordinance authorizing the improvement; that the aggregate payment thereon shall bot exceed the estimates of the engineer or other similar officer, or the amount appropriated; that upon ten days' written notice by the mayor to the contractor, the work under such contract, without cost or claim against the city or town, may be suspended for substantial cause; and that upon complaint of any owner of land to be assessed for the improvement, that the improvement is not being constructed in accordance with the contract, the ordering authority may consider the complaint and make such order in the premises as shall be just, and such order shall be final.

31-25-536. Utility connections may be ordered before paving - costs - default. Before paving in any district in pursuance of this part 5, the ordering authority may order the owners of the abutting property to connect their several premises with the gas or water mains, or with any other utility in the street in front of their several premises. Upon default of any owner for thirty days after such order to make such connections, the city or town may contract for and make the connections at such distance, under such regulations, and in accordance with such specifications as may be prescribed by the ordering authority. The whole cost of each connection shall be assessed against the property with which the connection is made, and the cost shall be paid upon the completion of the work, and in one sum. The cost shall be assessed, shall become a lien, and shall be collected in the same manner as is provided in this part 5 for the assessment and collection of the cost of other special improvements. Upon default in the payment of any such assessment, the property shall be sold in like manner and with like effect.

31-25-537. Figures instead of words - when general description used. In all proceedings and notices authorized by this part 5, figures may be used instead of words, and in districts of extended areas it shall not be necessary to designate each piece of land separately. In such case general descriptions and quantities may be used, except in the assessment rolls. Except in such rolls, the cost may be stated as being of probable or certain amount per front foot or per square foot or per lot of given size.

31-25-538. When mandamus will issue. Whenever any improvement

authorized by this part 5 is petitioned for by the owners of a majority of the abutting frontage, it is the duty of the city or town officials whose duty it is to act, to authorize said improvement, and an order in the nature of mandamus may issue out of any court of competent jurisdiction, requiring said officials to take such action as is required by this part 5; but if the material petitioned for is known to be worthless or of poor quality, or would not make a good, substantial, and reasonable permanent improvement, the ordering authority may refuse to grant a petition for that reason. If a material petitioned for or designated in the specifications is a patented or proprietary article on which there can be but one bid, the ordering authority may refuse to award a contract if the entire bid is excessive as compared with improvements of equal value, or may reject the bid or readvertise.

31-25-539. No action maintainable - exception - grounds - limitations.

(1) No legal or equitable action shall be brought or maintained except to enjoin the collection of assessments levied under this part 5 upon the grounds:

(a) That notice of a hearing upon the amount of the assessment was not given as required in this part 5. Any person presenting objections to the ordering quthority at or before the hearing on assessment shall be deemed to have waived this ground.

(b) That the hearing upon the amount of the assessment as provided in this part 5 was not held;

(c) That the improvement ordered was not one authorized by this part 5;

(d) That the assessment levied exceeds the benefits received by the property assessed.

(2) No action shall be brought on the third or fourth ground unless the objections on which such action is based have been presented to the ordering authority in writing as required in this part 5. Any action brought under this part 5 shall be commenced within thirty days after the passage of the assessing ordinance or else be thereafter perpetually barred.

B-XI

ARTICLE 35

Water and Sewage

PART 3

WATER MAINS AND OTHER IMPROVEMENTS - TOWNS

31-35-301. Construction of water mains.
Whenever any incorporated town in the state of Colorado is the owner of a municipal water plant with water mains in operation throughout the greater portion of said town and feels unable to extend the same so as to cover the entire area contained within the corporate limits of said town, the citizens and resident taxpayers of any area containing four blocks or more, situated in said incorporated town not having water mains therein may agree among themselves or a majority of the owners of the lots therein, for the construction of the same, and, upon application to the board of trustees of said town by a majority of such owners, the board of trustees shall have authority to enter into a contract with said owners of said four blocks or more or with the majority thereof to allow them to construct such water mains in such territory and to connect the same with the supply of water of said town. The town board has authority to enter into a contract with such citizens to allow all the proceeds derived from water rentals going to such addition through such water mains and collected as rental therefor to be applied to the payment of such water pipes, the cost thereof to be limited by the town to not more than the actual cost thereof upon any basis by which the town itself could secure the construction of the same. Said payments shall be made without interest and upon such terms not exceeding ten years as may be agreed upon by contract between the parties thereto.

31-35-302. Petition - plans - contract.
(1) For the purpose of carrying the provisions of this section and section 31-35-301 into effect, the owners of four blocks or more, situated in any incorporated town in this state owning its own municipal water plant which has not been supplied with water mains, shall present a petition to the board of trustees of the town, offering therein to construct such water mains and pipes in the streets and alleys of said town in such manner and at such places and of such sizes as the said town board may require and at a cost to said town as low as the same could be constructed by said incorporated town.

(2) Upon receipt of such petition the town board shall prepare plans and specifications for the supplying of said territory with water mains and pipes, and the petitioners, upon the inspection of said plans and specifications, shall state their willingness to construct the same at a certain price to be paid for out of the revenues derived from water running through said pipes in said district, the same to be charged at no higher rate than the remainder of said town is paying. If such proposition is satisfactory to the board of trustees of said town, it has the right to enter into a contract with said petitioners upon behalf of said town for the construction of such water mains and pipes according to said plans and specifications

and for the price agreed upon not more than that above named and within a time to be set by said board of trustees.

(3) Upon the completion of said works by said petitioners, the town shall inspect and, if satisfactory, accept the same and issue certificates of indebtedness therefor stating therein how the same is to be paid out of the proceeds from such wat er rentals collected from the territory in which said extensions are made, unless otherwise sooner arranged for by said town, and proceed to operate and maintain the same and collect the revenues therefrom and to apply the same to the payment of the indebtedness created for the construction of said pipes without interest until the same is paid for or until said town makes payment therefor in some other manner. Said rentals are to be paid upon said certificates from time to time when the amount of one hundred dollars is received from said rentals for that purpose, and said rentals shall be set apart and kept as a separate fund and used for the purposes aforesaid only until the entire indebtedness is paid.

31-35-303. Necessity declared by ordinance.
Whenever in the opinion of the board of trustees of any incorporated town, whether incorporated under any general law or special charter of this state, it is necessary to make any public improvement, including the establishment, extending, widening, grading, or improving of any street or alley, or the establishment, construction, extending, enlarging, or completing of any sewer, sidewalk, bridge, or viaduct, or removing any irrigating ditch, it shall be lawful for such board to declare by ordinance the necessity for such improvement.

31-35-304. Streets and alleys - eminent domain.
In case such proposed improvements consist of the establishment, opening, extending, or widening of any street or alley in such town and it is necessary to take private property to make such improvement, said ordinance shall declare such necessity, specifying and describing the property to be taken. Thereupon, such town, by its board of trustees and its duly authorized officers, may exercise the right of eminent domain and may condemn, take, or damage any private property that may be necessarily condemned, taken, or damaged in the making of such improvement. The manner of proceeding in such cases shall be as prescribed by the laws of this state for the condemnation of lands in other cases.

31-35-305. Sidewalks - assessment - hearing - lien.
In case such proposed improvement consists of the establishment, construction, extending, or completing of any sidewalk in said town, the ordinance shall specify the property in front of which the sidewalk is to be constructed, extended, or completed, the names of the owners of said property, and the length, width, grade, and material of which the sidewalk is to be constructed, and the board of trustees of such town, as soon thereafter as the cost thereof upon the lots respectively in front of which said sidewalk is to be constructed. Such assessment when completed shall be subject to inspection by any person interested. Notice of the making and completion of the assessment shall be given by the publication of a notice to the effect that said assessment has been made upon said lots and is ready

for inspection. The notice shall be published at least once a week for four successive weeks in some newspaper published, or of general circulation, in said town and shall designate a day upon which the board of trustees shall sit for the purpose of hearing objections thereto and making corrections therein. Upon the day designated, the board of trustees shall sit for said purpose and hear any objections that may be made, and shall thereupon make any such changes in said assessments as may in their judgment be necessary, equitable, or just, and shall thereupon finally determine such assessments. Such assessments when so finally determined shall be a lien upon the property so assessed for the purpose of making said improvement. An appeal shall lie to any court of competent jurisdiction from any decision of such board of trustees.

31-35-306. Other laws not affected.
Nothing in this part 3 shall be so construed as to abridge or otherwise affect the right to make public improvements by virtue of any other laws of this state.

PART 4

SEWER AND WATER SYSTEMS - REVENUE BONDS

31-35-401. Definitions.
As used in this part 4, unless the context otherwise requires:

(1) "Consumer" means any public or private user of water facilities or sewerage facilities, or both.

(2) "Governing body" means the council, body, or board, by whatever name known, in charge of the municipality's water or sanitation facilities.

(3) "Joint system" or "joint water and sewer system" means water facilities and sewerage facilities combined, operated, and maintained as a single public utility and income-producing project.

(4) "Municipality" means any city or town organized under a special act or home rule charter or under the general laws of the state and also means any municipal or quasi-municipal corporation formed under the laws of the state of Colorado principally to acquire, operate, and maintain potable water facilities or sewerage facilities, or both.

(5) "Sewerage facilities" means any one or more of the various devices used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature, or storm, flood, or surface drainage waters, including all inlets, collection, drainage, or disposal lines, intercepting sewers, joint storm and sanitary sewers, sewage disposal plants, outfall sewers, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such sewerage facilities.

(6) "Water facilities" means any one or more devices used in the collection, treatment, or distribution of water for domestic and municipal uses, including a system of raw and clear water and distribution storage reservoirs, deep and shallow wells, pumping, ventilating, and gaging stations, inlets, tunnels, flumes, conduits, canals, collection, transmission, and distribution lines, infiltration galleries, hydrants, meters, filtration and treatment plants and works, all pumping, power, and other equipment and appurtenances, all extensions, improvements, remodeling, additions, and alterations thereof, and any and all rights or interests in such water facilities.

31-35-402. Powers.
(1) In addition to the powers which it may now have, any municipality, without any election of the taxpaying or qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities, or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities, or both, for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service, or combination of them, shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations; or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities, or both;

(d) To accept loans or grants or both from the United States under any federal law in force for the construction of necessary water facilities or sewerage facilities, or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities, or both, whether acquired or constructed by the municipality or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities, or both. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term, but in no event exceeding fifty years, with any consumer for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the

payment periodically by the consumer to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges, or any combination thereof, for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity from, such water facilities or sewerage facilities, or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalties for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding one percent per month, or fraction thereof, reasonable attorneys' fees, and other costs of collection, without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency, bureau, commission, or official, other than the governing body collecting them; and, in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupon appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities, or both, including the revenues of improvements, betterments, or extensions thereto, thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities, or both;

(h) To enter into and perform contracts and agreements with other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities, or both, and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies deem proper for the supervision and general management of the water facilities or sewerage facilities, or both, and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the municipality is created thereby, and if no property, other than money, of the municipality is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the municipality is thereby incurred in any manner for any purpose; and

(j) To issue water, or sewer, or joint water and sewer, refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water, or sewer, or joint water and sewer, revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water facilities or sewerage facilities, or both, as provided in section 31-35-412.

31-35-403. Authorization of facilities and bonds.
(1) The acquisition, construction, reconstruction, lease, improvement, betterment, or extension of any water facilities or sewerage facilities, or both, and the issuance, in anticipation of the collection of revenues of such facilities, of bonds to provide funds to pay the cost thereof may be authorized under this part 4 by action of the governing body of the municipality taken at a regular or special meeting by a vote of a majority of the members of the governing body.

(2) The governing body, in determining such cost, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; interest which it is estimated will accrue during the construction or other acquisition period and for a period of not exceeding one year thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part 4; any discount on the sale of the bonds; costs of financial, professional, and other estimates and advice; contingencies; any administrative, operating, and other expenses of the municipality prior to and during such acquisition period and for a period of not exceeding one year thereafter, as may be determined by the governing body; all such other expenses as may be necessary or incident to the financing, acquisition, improvement, equipment, and completion of any water or sewerage facilities, joint water and sewer system, or part thereof, and the placing of the same in operation; such provision or reserves for working capital, operation, maintenance, or replacement expenses or for payment or security of principal of or interest on any bonds during or after such an acquisition or improvement and equipment as the governing body may determine; and also reimbursements to the federal government, or any agency, instrumentality, or corporation thereof, of any moneys theretofore expended for or in connection with any such water or sewerage facilities, or both.

31-35-404. Bond provisions.
(1) Revenue bonds issued under this part 4 shall bear interest at a rate, such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually or annually, and evidenced by one or two sets of coupons, if any, executed with the facsimile or manually executed signature of any official of the municipality; except that the first coupon appertaining to any bond may evidence interest not in excess of one year. The resolution authorizing the issuance of such bonds shall specify the maximum net effective interest rate. Such bonds may be issued in one or more series, may bear such date, may mature at such time not exceeding the estimated life of the water facilities or sewerage facilities, or both, to be acquired with

the bond proceeds, as determined by the governing body, but in no event beyond forty years from their respective dates, may be in such denomination or denominations, may be payable in such medium of payment, at such place or places within or without the state, including but not limited to the office of any county treasurer in which the municipality is located wholly or in part, may carry such registration privileges, may be subject to such terms of prior redemption in advance of maturity in such order or by lot or otherwise at such time with or without a premium, may be executed in such manner, may bear such privileges for reissuance in the same or other denomination, may be so reissued, without modification of maturities and interest rates, and may be in such form, either coupon or registered, as may be provided by the governing body.

(2) (a) The governing body may provide for preferential security for any bonds, both principal and interest, to be issued under this part 4 to the extent deemed feasible and desirable by such governing body over any bonds that may be issued thereafter.

(b) Said bonds may be sold at, above, or below the principal amounts thereof, but they may not be sold at a price such that the net effective interest rate of the issue of bonds exceeds the maximum net effective interest rate authorized.

(c) Said bonds may be sold at private sale to the United States, or any agency, instrumentality, or corporation thereof, or to the state of Colorado, or any agency or instrumentality thereof. Unless sold to the United States, or any agency, instrumentality, or corporation thereof, or to the state of Colorado, or any agency or instrumentality thereof, said bonds shall be sold at public sale after notice of such sale published once at least five days prior to such sale in a newspaper circulating in the municipality and in a financial newspaper published in either Denver, Colorado; San Francisco, California; Chicago, Illinois; or New York, New York.

(3) Bonds may be issued with privileges for conversion or registration, or both, for payment as to principal or interest, or both; and, where interest accruing on the bonds is not represented by interest coupons, the bonds may provide for the endorsing of payments of interest thereon; and the bonds generally shall be issued in such manner, in such form, either coupon or registered, with such recitals, terms, covenants, and conditions, and with such other details as may be provided by the governing body, except as otherwise provided in this part 4.

(4) Subject to the payment provisions in this part 4 specifically provided, said bonds, any interest coupons thereto attached, and any temporary bonds shall be fully negotiable within the meaning of and for all the purposes of article 3 of title 4, C.R.S. 1973, except as the governing body may otherwise provide; and each holder of each such security, by accepting such security, shall be conclusively deemed to have agreed that such security, except as otherwise provided, is and shall be fully negotiable within the meaning and for all purposes of article 3 of title 4, C.R.S. 1973.

(5) Notwithstanding any other provision of law, the governing body in any proceedings authorizing bonds under this part 4:

(a) May provide for the initial issuance of one or more bonds, in this subsection (5) called "bond", aggregating the amount of the entire issue;

(b) May make such provision for installment payments of the principal amount of any such bond as it may consider desirable;

(c) May provide for the making of any such bond, payable to bearer or otherwise, registrable as to principal or as to both principal and interest and, where interest accruing thereon is not represented by interest coupons, for the endorsing of payments of interest on such bonds; and

(d) May further make provision in any such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(6) If lost or completely destroyed, any security in this part 4 authorized may be reissued in the form and tenor of the lost or destroyed security upon the owner furnishing, to the satisfaction of the governing body: Proof of ownership; proof of loss or destruction; a surety bond in twice the face amount of the security, including any unmatured coupons appertaining thereto; and payment of the cost of preparing and issuing the new security.

(7) Any officer authorized to execute any bond, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed, with a facsimile signature in lieu of his manual signature, any bond authorized in this part 4, if such a filing is not a condition of execution with a facsimile signature of any interest coupon, and if at least one signature required or permitted to be placed on each such bond, excluding any interest coupon, is manually subscribed. An officer's facsimile signature has the same legal effect as his manual signature.

(8) The clerk or secretary of the municipality may cause the seal of the municipality to be printed, engraved, stamped, or otherwise placed in facsimile on any bond. The facsimile seal has the same legal effect as the impression of the seal.

(9) The ordinance or resolution authorizing any bonds or other instrument appertaining thereto may contain any agreement or provision customarily contained in instruments securing revenue bonds, including, without limiting the generality of the foregoing, covenants designated in section 31-35-407.

31-35-405. Signatures on bonds.

(1) The bonds and any coupons bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations of the municipality, notwithstanding that before the delivery

thereof and payment therefor any or all of the persons whose signatures appear thereon have ceased to be officers of the municipality issuing the same.

(2) Any officer authorized or permitted to sign any bond or interest coupon, at the time of its execution and of the execution of a signature certificate, may adopt as and for his own facsimile signature the facsimile signature of his predecessor in office in the event that such facsimile signature appears upon the bond or coupons appertaining thereto, or upon both the bond and such coupons.

31-35-406. Tax exemption.
The bonds and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

31-35-407. Covenants in bond ordinance.
(1) Any ordinance or resolution authorizing the issuance of bonds under this part 4, or trust indenture or other instrument appertaining thereto, to finance in whole or in part the acquisition, construction, reconstruction, improvement, betterment, or extension of water facilities or sewerage facilities, or both, may contain covenants as to:

(a) The rates, fees, tolls, or charges, or combination thereof, to be charged for the services, facilities, and commodities of said water facilities or sewerage facilities, or both, and the use and disposition thereof, including but not limited to the foreclosure of liens for, and collection of, delinquencies; the discontinuance of services, facilities, or commodities or use of any water system or any sewer system, or joint system; prohibition against free service; the collection of penalties and collection costs, including disconnection and reconnection fees; and the use and disposition of any revenues of the municipality derived or to be derived from any water facilities or sewerage facilities, or both;

(b) The creation and maintenance of reserves or sinking funds, and the regulation, use, and disposition thereof, to secure the payment of the principal of and interest on any bonds or of operation and maintenance expenses of any water system, sewer system, or any joint system, or part thereof; the determination or definition of revenues from any water system, sewer system, or joint system, and of the expenses of operation and maintenance of such system; and the source, custody, security, use, and disposition of any such reserves or sinking funds, including but not limited to the powers and duties of any trustee with regard thereto;

(c) A fair and reasonable payment by the municipality to the account of said water facilities or sewerage facilities, or both, for the services, commodities, or facilities furnished said municipality or any of its departments by said water facilities or sewerage facilities, or both;

(d) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of such water facilities or sewerage facilities, or both; the payment of the principal of and interest on any bonds, and the sources and methods thereof, the rank

or priority of any bonds as to any lien or security for payment, or the acceleration of any maturity of any bonds, or the issuance of other or additional bonds payable from or constituting a charge against or lien upon any revenues pledged for the payment of bonds and the creation of future liens and encumbrances thereagainst, and limitations thereon; and the purpose to which the proceeds of the sale of bonds may be applied, and the custody, security, use, expenditure, application and disposition thereof.

(e) Books of account, the inspection and audit thereof, and other records appertaining to a water system, sewer system, or joint system; the insurance to be carried by the municipality and use and disposition of insurance moneys, the acquisition of completion or surety bonds appertaining to any project, funds, or personnel, and the use and disposition of any proceeds of such bonds; the assumption or payment or discharge of any indebtedness, other obligation, lien, or other claim relating to any part of a water system, sewer system, or joint system, or any securities having or which may have a lien on any part of any revenues of such system; and limitations on the powers of the municipality to acquire or operate, or permit the acquisition or operation of, any plants, structures, facilities, or properties which may compete or tend to compete with the water system, sewer system, or joint system;

(f) The rights, liabilities, powers, and duties arising upon the breach by the municipality of any covenants, conditions, or obligations; defining events of default; the payment of costs or expenses incident to the enforcement of the bonds or of the provisions of the ordinance or resolution authorizing the bonds or any trust indenture or other instrument appertaining thereto, or of any covenant or contract with the holders of the bonds; the procedure, if any, by which the terms of any covenant or contract with, or duty to, the holders of bonds, the bond ordinance or resolution, any trust indenture or other instrument, may be amended or abrogated, the amount of bonds the holders of which, or any trustee, must consent thereto, and the manner in which such consent may be given or evidenced; and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(g) The terms and conditions upon which the holders of the bonds or any portion or percentage of them may enforce any covenants or provisions made under this part 4 or duties imposed thereby; and

(h) All such acts and things as may be necessary or convenient or desirable in order to secure its bonds or in the discretion of the governing body of the municipality tend to make the bonds more marketable, notwithstanding that such covenant, act, or thing may not be enumerated in this part 4, it being the intention of this part 4 to give a municipality power to do all things in the issuance of bonds and for their security consistent with continued public ownership of the sewerage facilities or water facilities, or both.

31-35-408. No municipal liability on bonds.
Revenue bonds issued under this part 4 shall not constitute an indebtedness of the municipality within the meaning of any constitutional or statutory limitations. Each bond issued under this part 4 shall recite in

substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof, and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitations.

31-35-409. Remedies of bondholders.

(1) Subject to any contractual limitations binding upon the holders of any issue of bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or trustee therefor, has the right and power, for the equal benefit and protection of all holders of bonds similarly situated:

(a) By mandamus or other suite, action, or proceeding at law or in equity, to enforce his rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel such municipalities or such governing body or any such officers, agents, or employees to perform and carry out their duties and obligations under this part 4 and their covenants and agreements with the bondholders;

(b) By action or suit in equity, to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders; and

(d) To bring suit upon the bonds.

(2) No right or remedy conferred by this part 4 upon any holder of bonds or any trustee therefor is intended to be exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to every other right or remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part 4 or by any other law.

31-35-410. Construction of part 4.

The powers conferred by this part 4 are in addition and supplemental to, and not in substitution for, and the limitations imposed by this part 4 shall not affect, the powers conferred by any other law. Bonds may be issued under this part 4 without regard to the provisions of any other law. The water facilities or sewerage facilities, or both, may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this part 4 for said purposes, notwithstanding, that any law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension for like purposes, and without regard to the requirements, restrictions, debt, or other limitations or other provisions contained in any other law, including, but not limited to, any requirement for any restriction or limitation on the incurring of indebtedness or the issuance of bonds. Insofar as the provisions of this part 4 are inconsistent with the provisions of any other law, the provisions of this part 4 shall be controlling.

31-35-411. Pledge of other utility revenues.

Any municipality having surplus and unpledged revenues of any municipal utility has the power to pledge such revenues for and deposit them in the fund created to pay the interest on and principal of revenue bonds issued pursuant to this part 4.

31-35-412. Refunding bonds.

(1) Any bonds issued for any refunding purpose authorized in section 31-35-402 (1) (j) may either be delivered in exchange for the outstanding bonds authorized to be refunded or may be sold as provided for in section 31-35-404.

(2) No bonds may be refunded under this part 4 unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders thereof voluntarily surrender them for exchange or payment. No maturity of any bond refunded may be extended over fifteen years. The rates of interest on such refunding bonds shall be determined by the governing body. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, excluding from the computation of such limitation the amount of the principal of any refunding bonds issued to pay any interest in arrears or about to become due on the bonds refunded.

(3) The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds to be refunded or be placed in escrow to be applied to the payment of the bonds upon their presentation therefor. Any escrowed proceeds, pending such use, may be invested or reinvested in bonds or notes or in both types of such obligations of the United States or in bonds or notes or in both types of such obligations, the principal and interest of which are unconditionally guaranteed by the United States. Such escrowed proceeds and investments, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient to pay the bonds refunded as they become due at their respective maturities or due at prior redemption dates, as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom.

(4) Refunding revenue bonds may be made payable from any revenues derived from the operation of any water facilities or sewerage facilities or of both water facilities and sewerage facilities comprising a joint water and sewer system, notwithstanding that the pledge of any such revenues for the payment of the outstanding bonds issued by the municipality which are to be refunded is thereby modified.

(5) Bonds for refunding and bonds for any other purpose authorized in this part 4 may be issued separately or issued in combination in one series or more.

(6) Except as expressly provided or necessarily implied in this section and in section 31-35-402 (1) (j), the relevant provisions in this part 4

pertaining to revenue bonds not issued for refunding purposes shall be equally applicable in the authorization and issuance of refunding revenue bonds, including their terms and security, the bond ordinance or resolution, rates, fees, tolls, service charges, and other aspects of the bonds.

(7) The determination of the governing body, that the limitations under this part 4 imposed upon the issuance of refunding bonds have been met, shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

31-35-413. Incontestable recital in bonds.

Any ordinance or resolution authorizing, or any trust indenture or other instrument appertaining to, any bonds under this part 4 may provide that each bond therein authorized shall recite that it is issued under authority of this part 4. Such recital shall conclusively impart full compliance with all of the provisions of this part 4, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value.

31-35-414. Application of bond proceeds.

(1) All moneys received from the issuance of any bonds authorized in this part 4 shall be used solely for the purpose for which issued and the cost of any project thereby delineated.

(2) Any accrued interest and any premium shall be applied to the payment of the interest on or the principal of the bonds, or both interest and principal, or shall be deposited in a reserve therefor, as the governing body may determine.

(3) Any unexpended balance of such bond proceeds remaining after the completion of the acquisition or improvement and equipment of the project or the completion of the purpose for which such bonds were issued shall be paid immediately into the fund created for the payment of the principal of said bonds and shall be used therefor, subject to the provisions as to the times and methods for their payment as stated in the bonds and the proceedings authorizing or otherwise appertaining to their issuance, or into a reserve therefor.

(4) The validity of said bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the acquisition or improvement and equipment of the project or the proper completion of any project for which the bonds are issued.

(5) The purchaser of the bonds shall in no manner be held responsible for the application of the proceeds of the bonds by the municipality or any of its officers, agents, and employees.

31-35-415. Continuing rights of bondholders.

The failure of any holder of any bond or coupon issued under this part 4 to proceed as provided in section 31-35-409 or in any proceedings appertaining to the issuance of such bond or coupon shall not relieve the

municipality, its governing body, or any of its officers, agents, and employees of any liability for failure to perform or carry out any duty, obligation, or other commitment.

31-35-416. Validation.

All revenue bonds, and any coupons appertaining thereto, appertaining to a water system, sewer system, or joint water and sewer system issued or purportedly issued, prior to March 13, 1962, and all acts and proceedings had or taken, or purportedly had or taken, prior to said date by or on behalf of municipalities, as defined in section 31-35-401 (4), under law or under color of law, preliminary to and in the authorization, execution, sale, and issuance of all water revenue bonds, sewer revenue bonds, and joint water and sewer revenue bonds, including any coupons appertaining thereto, the authorization and execution of all other contracts, and the exercise of other powers in this part 4 are validated, ratified, approved, and confirmed by this section, except as provided in section 31-35-417, notwithstanding any lack of power, authority, or otherwise, other than constitutional, and notwithstanding any defects and irregularities, other than constitutional, in such securities, acts, and proceedings, in such authorization, execution, sale, and issuance, and in such exercise of powers; and such securities and other contracts are and shall be binding, legal, valid, and enforceable obligations of such municipality to which they appertain in accordance with their terms and their authorization proceedings.

31-35-417. Effect of and limitations upon validation.

This part 4 shall operate to supply such legislative authority as may be necessary to validate any such securities issued and other contracts executed prior to March 13, 1962, of such municipalities and any acts and proceedings taken appertaining to the issuance of such securities or execution of other contracts by such municipalities or otherwise prior to said date which the general assembly could have supplied or provided for in the law under which such securities were issued or such other contracts were executed and such acts or proceedings were taken; but this part 4 shall be limited to the validation of such securities, other contracts, acts, and proceedings to the extent to which the same can be effectuated under the state and federal constitutions. This part 4 shall not operate to validate, ratify, approve, confirm, or legalize any bond or coupon, other contract, act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined, and shall not operate to confirm, validate, or legalize any bond or coupon, other contract, act, proceeding, or other matter which, prior to March 13, 1962, has been determined in any legal proceeding to be illegal, void, or ineffective.

31-35-418. Creation of board.

(1) The governing body of any city or town, organized under a special act or home rule charter or under the general laws of the state, has the power to create, by ordinance, a nonpolitical local legislative body designated as a board of commissioners, referred to in sections 31-35-418 to 31-35-431 as the "board", to have complete charge and control of such municipality's sewerage facilities or water facilities or joint water and

sewer system, as designated in such ordinance, and in which board are vested all powers, rights, privileges, and duties vested in the municipality creating the board and pertaining to the type of facilities or system designated in such ordinance.

(2) The exercise of any and all executive, administrative, and ministerial powers may be delegated and redelegated by the board to officials and employees of the municipality employed by the board.

(3) The board shall indicate the capacity in which the municipality is acting when such actions are taken by the board, e.g., "the city of ...., acting by and through its board of water and sewer commissioners".

31-35-419. Board - appointments - removal - bonds - meetings.
The municipality shall by ordinance prescribe the number of commissioners, their qualifications, their terms of office, methods for their election or appointment or removal, the amount and nature of any fidelity bond required to be given, the number of meetings required to be held, their compensation, if any, the selection and term of office of its officers and such other matters concerning the board as are not in conflict with this part 4.

31-35-420. Oath - officers.
Each commissioner, before assuming the duties of his office, shall take and subscribe an oath or affirmation, before an officer authorized to administer oaths, that he will support the constitutions and laws of the United States and of this state and that he will faithfully and impartially discharge the duties of his office to the best of his ability. Such oath or affirmation shall be filed in the office of the clerk or secretary of the municipality.

31-35-421. Board's administrative powers.
(1) The board, on behalf and in the name of the municipality, has the following powers:

(a) To fix the time and place, or places, at which its regular meetings shall be held within the municipality and to provide for the calling and holding of special meetings;

(b) To adopt and amend or otherwise modify bylaws and rules for procedure;

(c) To prescribe by resolution a system of business administration, to create any and all necessary offices, and to establish and reestablish the powers, duties, and compensation of all officers, agents, and employees and other persons contracting with the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-419; but, except as may be otherwise therein provided, such compensation shall be established at prevailing rates of pay for equivalent services.

31-35-422. Meetings of board.

(1) All meetings of the board shall be held within the municipality and shall be open to the public.

(2) No business of the board shall be transacted except at a regular or special meeting at which a quorum consisting of at least a majority of the total membership of the board is present.

(3) Any action of the board shall require the affirmative vote of a majority of the directors present and voting thereon.

(4) A smaller number of directors than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the board may provide by resolution or by law.

31-35-423. Additional administrative powers.

(1) The board, on behalf and in the name of the municipality, also has the following powers:

(a) To require and fix the amount of all official fidelity and completion bonds necessary or desirable and convenient in the opinion of the board for the protection of the funds and property of the municipality under the jurisdiction of the board, subject to the provisions of any ordinance adopted pursuant to section 31-35-419 regarding fidelity bonds for commissioners;

(b) To prescribe a method of auditing and allowing or rejecting claims and demands subject to the provisions of section 31-35-424;

(c) To provide a method for the letting of contracts on a fair and competitive basis for the construction of works, the facilities, or any project, or any interest therein, or the performance or furnishing of labor, materials, or supplies as required in this part 4 and to require a contractor's bond in the manner required of a governing body and a city or town in sections 38-26-105 to 38-26-107, C.R.S. 1973;

(d) To designate an official newspaper published in the municipality, or, if none, of general circulation therein and to publish any notice or other instrument in any additional newspaper where the board deems that it is necessary or advisable to do so; and

(e) To make and pass resolutions and orders on behalf of the municipality, not repugnant to the provisions of this part 4, which are necessary or proper for the government and management of the affairs of the municipality, for the execution of the powers vested in the municipality, and for carrying into effect the provisions of this part 4 in connection with the facilities or joint system designated in the ordinance creating the board.

31-35-424. Budgets, accounts, and audits.

The board, in connection with the facilities or joint system under the board's jurisdiction, shall adopt a budget for each fiscal year of the

municipality, shall maintain accounts, and shall cause an annual audit to be made pertaining to the financial affairs of the board as provided in parts 1, 5, and 6 of article 1 of title 29, C.R.S. 1973, except as otherwise provided in this part 4.

31-35-425. Records of board.

(1) On all resolutions and orders, the roll shall be called, and the ayes and noes shall be recorded. All resolutions and orders, as soon as may be after their passage, shall be recorded in a book keep for that purpose and shall be authenticated by the signature of the presiding officer of the board and the secretary or secretary pro tem.

(2) Every legislative act of the board of a general or permanent nature shall be by resolution.

(3) The book of resolutions and orders shall be a public record. A record shall also be made of all other proceedings of the board, minutes of the meetings, certificates, contracts, bonds given by officers, employees, and any other agents of the municipality under the board's jurisdiction, and all corporate acts, which record shall also be a public record.

(4) The treasurer shall keep strict and accurate accounts of all moneys received by and disbursed for and on behalf of the board in a permanent record, which also shall be a public record.

(5) Any permanent record of the municipality under the board's jurisdiction shall be open for inspection by any elector thereof, by any other interested person, or by any representative of the federal government, the state, or any other public body.

31-35-426. Conflicts in interest prohibited.

No commissioner nor officer, employee, or agent of the municipality under the board's jurisdiction shall be interested in any contract or transaction with the municipality except in his official representative capacity or as is provided in his contract of employment with the municipality, subject to the provisions of any ordinance adopted pursuant to section 31-35-419.

31-35-427. Authorization of facilities.

The municipality, acting by and through the board, may acquire, improve, equip, relocate, maintain, and operate the facilities or joint system under the board's jurisdiction, any project, or any part thereof for the benefit of the municipality and the inhabitants thereof, after the board has made such preliminary studies and otherwise taken such action as it determines to be necessary or desirable as preliminaries thereto.

31-35-428. Implementing powers.
The board, in connection with the facilities or joint system of the municipality under the board's jurisdiction and any project pertaining thereto, may from time to time condemn, otherwise acquire, improve, equip, operate, maintain, and dispose of property within or without or both within and without the municipality.

31-35-429. Additional powers of municipality.
(1) The municipality, acting by and through the board, has the following powers:

(a) To have the duties, privileges, immunities, rights, liabilities, and disabilities pertaining to a body corporate and politic and constituting a municipal corporation and political subdivision of the state established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general welfare;

(b) To have perpetual existence and succession;

(c) To adopt, have, and use a corporate seal and to alter the same at pleasure;

(d) To sue and to be sued and to be a party to suits, actions, and proceedings;

(e) To commence, maintain, intervene in, defend, comprise, terminate by settlement or otherwise, otherwise participate in, and assume the cost and expense of any and all actions and proceedings pertaining to the municipality, its board, its officers, agents, or employees, or any of the municipality's powers, duties, privileges, immunities, rights, liabilities, and disabilities, the facilities or joint system, or any project pertaining thereto or any property of the municipality;

(f) To enter into contracts and agreements, including but not limited to contracts with the federal government, the state, and any other public body; and

(g) To trade, exchange, purchase, condemn, or otherwise acquire, operate, maintain, and dispose of real property and personal property, including interest therein, either within or without or both within and without the territorial limits of the municipality.

31-35-430. Financial powers of municipality.
(1) The municipality, acting by and through the board, also has the following powers:

(a) To borrow money and to issue municipal securities evidencing any loan to or amount due by the municipality, to provide for and secure the payment of any municipal securities and the rights of the holders thereof, and to purchase, hold, and dispose of municipal securities; and

(b) To fund or refund any loan or obligation of the municipality and to issue funding or refunding securities to evidence such loan or obligation without any election.

31-35-431. Other powers of board.
The delineation of powers which may be exercised by the board in sections 31-35-421 to 31-35-430 does not by implication deny other powers which are vested in the board pursuant to section 31-35-418 (1) or otherwise granted to the municipality by law.

PART 5

SEWER CONNECTIONS - COMPULSORY

31-35-501. Owner to be notified.
In addition to the powers already had by towns and cities, they have the following powers: Whenever the board of trustees or city council of a town or city having a public sewerage system deems it necessary for the protection of public health that owners of one or more premises connect their premises with the public sewer, thirty days' notice in writing shall be given to said owners, by registered mail, notifying them to connect their premises with the sewer, the date of the notice to begin as of the date of registering the same for mailing, and, if the work of making the connection is not begun within thirty days, the mayor or head of municipal government shall notify the town or city engineer to prepare plans and specifications for making the connection with the public sewer, including water and service pipe for flushing purposes, if the owner has given notice and proof to said board of trustees, city council, or mayor of his financial inability to make the connection himself and if it is only for the necessary connection of a water closet or a privy in an outhouse or both.

31-35-502. Resolution adopted.
The plans or specifications shall be filed in the clerk's or engineer's office, and a resolution shall be adopted by the board of trustees or city council ordering or prescribing in general terms the contemplated sewerage connections, giving location of the premises and the name of the owner, and authorizing the clerk to advertise for bids. The advertisement for bids shall be the same as is now provided for in other cases in which towns and cities receive bids. The board of trustees or city council shall let the contract to the lowest responsible bidder who furnishes satisfactory security, but it has the right to reject all bids.

31-35-503. Cost of connection ascertained.
The entire costs of all sewerage and water connections, closets, equipment pipe, sewer pipe, labor, and necessary engineering, legal, and publication expenses shall be ascertained by the board of trustees or city council, including an additional amount of six percent for costs of inspection, collections, and other incidentals. The cost to each owner shall be

determined according to the material used and work done under the contract in connecting such property to the public sewer and water main. The engineering, legal, and publication expenses shall be charged in proportion as each connection bears to the whole.

31-35-504. Work accepted - assessment - certified copy filed - lien. Upon the final completion of the work, the board of trustees or city council shall accept the same by ordinance and provide for an assessment against the properties connected according to the rules of apportionment as provided in section 31-35-503, each assessment being separately numbered. Thirty days after the last publication of said ordinance, a certified copy of it shall be filed with the county treasurer of the county in which the property is situated and when so filed shall operate as a perpetual tax lien in favor of the town or city superior to all other liens except general tax liens.

31-35-505. Appropriation from general fund.
The board of trustees or city council may make adequate appropriations from the general fund to defray such costs until such time as the taxes are received, and, when received, the general fund shall be reimbursed to the amount of any such appropriation.

31-35-506. Assessments payable - proviso.
Said assessment shall be due and payable within thirty days after final publication of the assessing ordinance without demand; except that all assessments may, at the election of the owner, be paid in installments, as provided in section 31-35-508.

31-35-507. Payment in installments optional.
Failure to pay the whole assessment within said thirty days shall be conclusively considered and held to be an election on the part of the persons interested, whether under disability or not, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to said improvements, and such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the city or town to construct the improvement, the quality of the work, the regularity or sufficiency of the proceedings, or the validity or the correctness of the assessments or the validity of the lien thereof.

31-35-508. Installment payments - due date - interest.
In case of such election to pay in such installments, the assessment shall be payable in two or more equal annual installments of principal, the first of which installments shall be payable as prescribed by the ordering authority in not more than one year, with interest in all cases on the unpaid principal, payable semiannually, at a rate not exceeding six percent per annum. The number of installments, the period of payment, and the rate of interest shall be determined by the ordering authority and set forth in the assessing ordinance.

31-35-509. Default in payment - penalty.

Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and collectible immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate of one percent per month or fraction of a month until the date of sale, as provided in section 31-35-511. At any time prior to the date of sale, the owner may pay the amount of all unpaid installments, with interest at one percent a month or fraction of a month, and all penalties accrued and shall thereupon be restored to the right thereafter to pay in installments in the same manner as if default had not been suffered. The owner of any property not in default as to any installment or payment may at any time pay the whole of the unpaid principal with the interest accruing to the maturity of the next installment of interest or principal.

31-35-510. Discount for cash payment.

Payments may be made to the city or town treasurer at any time within thirty days of the final publication of the assessing ordinance, and an allowance of five percent shall be allowed on all payments made during such period, but not thereafter. At the expiration of the thirty-day period, the city or town treasurer shall return the local assessment roll to the clerk, therein showing all payments made thereon, with the date of each payment.

31-35-511. Payment of assessments - default - sale.

The county treasurer shall receive payment of all assessments on the assessment roll, with interest and, in the case of default in the payment of any installment of principal or interest when due, shall advertise and sell any and all property concerning which such default is suffered for the payment of the whole of the unpaid assessments thereon. The advertisements and sales shall be at the same times, in the same manner, under all the same conditions and penalties, and with the same effect as is provided by general law for sales of real property in default of payment of general and special taxes.

31-35-512. Owner of interest may pay his share.

The owner of any divided or undivided interest in the property assessed may pay his share of any assessment upon producing evidence of the extent of his interest which is satisfactory to the treasurer having the roll in charge.

31-35-513. When collections paid to city.

All collections made by the county treasurer upon such assessment roll in any calendar month shall be accounted for and paid over to the city or town treasurer on or before the tenth day of the next month, with separate statements for all such collections for each improvement.

31-35-514. Construction of part 5.

Nothing contained in this part 5 shall be considered as amending or repealing any other power the towns and cities may have, but this part 5 confers additional powers on towns and cities of which the town or city may take advantage.

31-35-515. Governing body to fix rates and charges.

The governing body of any city, town, or incorporated sewer or sanitary district may, by ordinance, fix such rates and charges for the connections with, and use of, the sewer or sewerage systems of said municipalities or districts as may be just, reasonable, and necessary, and it may provide the manner of levying and collecting such rates and charges.

31-35-516. Revenue kept in separate fund.

(1) The revenue derived from the connections with said sewer or sewerage systems shall be placed in the treasury of the city or town or district and may be kept in a separate fund, and, if it is placed in a separate fund, said revenue shall not be paid out or distributed, except for the purpose of operating, renewing, improving, or extending the sewerage system and the payment of the salaries of the employees engaged in operating said sewerage system. At any time there is a surplus of such funds, it shall be semi-annually placed in a sinking fund for the purposes of acquiring, renewing, or extending such sewerage system or making renewals or extensions thereto or for retiring the bonded indebtedness upon said sewerage system; but, if said surplus fund is used to retire outstanding sewer bonds, the same shall be in addition to the money derived by taxation for such retirement of sewer bonds as is provided by law.

(2) Any city, town, or incorporated sewer or sanitary district which is being provided with services by the governing body fixing such rates and charges is subject to the same charges and rates established as provided in this part 5, or to charges and rates established in harmony therewith, for service rendered such city, town, or incorporated sewer or sanitary district and shall pay such rates or charges when due, and the same shall be deemed to be a part of the revenues of the works as defined by this section and shall be applied as provided in this section for the application of such revenues.

31-35-517. Failure to pay rates and charges - lien.

In the event any user of said sewerage system neglects, fails, or refuses to pay the rates and charges fixed by said governing body for the connection with and use of said sewer, said user shall not be disconnected from said sewerage system or refused the use of said sewer unless the user is outside the city limits, but the rates and charges due therefor may be certified by the city or town clerk or the proper authority of the district to the board of county commissioners of the county in which said delinquent user's property is located, and shall become a lien upon the real property so served by said sewer connection, and shall be collected in the manner as though they were part of the taxes.

31-35-518. Prior rates and charges declared valid.

Any such rates and charges for the connections with, and use of, the sewer or sewerage systems of any town or city or incorporated sewer or sanitary district declared or established by ordinance of said governing body on or before May 1, 1957, are declared to be valid and are hereby ratified.

31-35-519. Surplus revenue diverted to general fund.

The city or town may by ordinance divert to the general fund any surplus moneys in excess of the amounts reasonably required for the purpose of operating, renewing, improving, or extending the sewer system of any cit or town.

PART 6

SEWER RATES - TERRITORY WITHOUT MUNICIPALITY

31-35-601. Municipality may provide service outside boundaries.

Any city or town owning an established sewerage system may, by ordinance, fix just, reasonable, and necessary rates for the connection with and use of the sewerage system, directly or indirectly, by owners of property situated in unincorporated territory without the boundaries of said city or town.

31-35-602. Governing body agency of state.

The council or other governing body of such city or town is declared and determined to be an agency of the state of Colorado for the sole purpose of securing to owners of property situated in unincorporated territory without the boundaries of such city or town adequate sewerage service, at just and reasonable rates, and for the performance of the duties and functions set forth by this part 6.

31-35-603. Publication of ordinance.

Notice of such rates shall be given by publication of the ordinance fixing the same, to which publication there shall be appended a special notice to owners of property in unincorporated territory without the boundaries of said city and using the sewerage system expecially directing attention to said ordinance.

31-35-604. Contents of ordinance.

Such ordinance and notice shall be published in conformity to law with reference to the times and publication of ordinances of such city or town. Such ordinance shall contain a description of the property and the names of the owners thereof, as near as may be, and the annual rate charged to each such property for sewerage service. No error in the name of any property owner shall affect the validity of said ordinance.

31-35-605. Protest - board of adjustment.

Any owner of property affected by the terms of said ordinance may protest in writing to the council or governing body of such city or town, as to the amount of the rate affecting such property, at any time within two weeks after the first publication of said ordinance and notice. The council of said city or town shall sit as a board of adjustment, pursuant to the authority of this part 6, and shall hear and determine all such protests and determine the fairness of said rates. If the rates prescribed in the proposed ordinance are determined to be unreasonable, the council shall amend such ordinance before final passage to conform to its findings in the premises. The final determination of such council shall be conclusive in the premises.

31-35-606. Continuing annual charges.

The rates and charges so established shall be annual charges and shall be continuing annual charges from year to year until such ordinance is amended or repealed. The use of said sewerage system on or after the passage of said ordinance shall be conclusive evidence of the assent of the owner of the property to the provisions of said ordinance and of the acceptance of such service on the conditions and terms imposed thereby not in conflict with this part 6.

31-35-607. Date and place of payment.

Such ordinance shall provide, among other things, that the rates so established per annum may be paid before October first of each year, at the offices of the city treasurer, and after said day payment thereof shall be delinquent.

31-35-608. Nonpayment - penalty - lien.

In the event any person, firm, or corporation using said sewerage system neglects, fails, or refuses to pay when due the rates and charges as fixed by said ordinance, the property of such delinquent person, firm, or corporation shall not be disconnected from said sewerage system or denied the use thereof, but the rates and charges due and unpaid therefor shall be certified by the city clerk to the board of county commissioners of the county in which said delinquent user's property is located on or before November first of each year, and thereupon and until paid shall be a lien upon the real property so served by said sewerage connections, and shall be levied, certified, received, or collected by sale, annually from year to year by the proper county officials, as are county taxes, and the proceeds thereof shall be remitted each month to such city or town.

31-35-609. Voluntary discontinuance by owner.

Nothing in this part 6 shall be construed as denying any property owner affected by such ordinance voluntary discontinuance of the service of such sewerage system. Such discontinuance of service shall be evidenced by disconnection of said property from said sewer system, and not otherwise. In the event of such discontinuance, it is the duty of the council of said city or town to abate all rates or charges accruing thereafter by the terms of such ordinance, and thereafter no such charge shall be certified for collection.

31-35-610. Duty to maintain system.

Nothing in this part 6 shall be construed as imposing upon any such city or town the duty of maintaining sewers or a sewerage system, not owned by it or required for the use of its inhabitants. Such city or town shall maintain, during the life of the ordinance provided for in section 31-35-601, its own sewerage system for the adequate use and benefit of property owners in unincorporated territory without the boundaries thereof whose property has been made subject to such ordinance.

31-35-611. Rates may be collected by action.

Rates imposed upon property which by reason of its ownership, character, or use is not subject to taxation or lien under the constitution and laws of the state of Colorado may be collected by any appropriate legal action begun in the district court in the county wherein such property is located.

31-35-612. Owner to obtain permit - penalty.

Any person making or causing to be made a connection of sewers serving property in any unincorporated territory, directly or indirectly, with a sewerage system of any city or town without a permit from said city or town, and after the passage of the ordinance provided for in section 31-35-601, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than twenty days nor more than ninety days, or by both such fine and imprisonment.

B-XII

TITLE 32

SPECIAL DISTRICTS

MULTI-PURPOSE DISTRICTS

ARTICLE 3

Metropolitan Districts (1947 Act)

32-3-101. Legislatibe declaration. It is hereby declared that the organization of the districts having the purposes, powers, and authority provided in this article will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of the state of Colorado.

32-3-102. Definitions. As used in this article, unless the context otherwise requires:
(1) "Board" means the board of directors of a district.

(2) "District" means any district as defined in this section.

(3) "Fire protection district" means a district which provides protection against fire by any available means.

(4) "Metropolitan district" means a district empowered under the provisions of this article to secure for the inhabitants thereof any two or more of the purposes for which districts under this article may be formed.

(5) "Mosquito control district" means a district which provides for the elimination of mosquitoes.

(6) "Publication", as it pertains to petitions and hearings, means a publication once a week for three consecutive weeks in at least one newspaper of general circulation in the district. It shall not be necessary that the publication be made on the same day of the week in each of the three weeks, but not less than fourteen days excluding the day of the first publication shall intervene between the first and last publication, and the publication shall be complete on the day of the last publication.

(7) "Public park district" means a district to establish and maintain public parks with recreation facilities located thereon.

(8) "Safety protection district" means a districh which provides for traffic and safety controls and devices on streets and highways and at railroad crossings.

(9) "Sanitation district" means a district which provides for storm or sanitary sewers, or both, flood and surface drainage, disposal works and facilities, and all necessary or proper equipment and appurtenances incident thereto.

(10) "Street improvement district" means a district which provides for the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, paving, lighting,

grading, and other street improvements.

(11) "Taxpaying elector" and "elector" of a district have the meanings, respectively, as specified in section 32-1-101.

(12) "Television relay and translator district" means a district to establish and maintain television relay and translator facilities.

(13) "Water district" means a district which supplies water for fire, domestic, and other public and private purposes by any available means and provides all necessary or proper equipment and appurtenances incident thereto.

32-3-103. Boundaries.

(1) A district may be entirely within, or entirely without, or partly within and partly without, one or more municipalities. The property and obligations of a district which is organized in a territory and which is subsequently incorporated in or annexed to a municipality shall be treated, on annexation, as provided by law at the time of such annexation with respect to school district property and obligations.

(2) No district possessing the same powers or authority under this article may be organized wholly or partly within a then existing fire protection, water, or sanitation district. Nothing contained in this section shall prevent a district having different powers and authority from organizing wholly or partly within an existing district. A metropolitan district may be organized wholly or partly within an existing district, but a metropolitan district shall not exercise the same powers within an existing district. No district shall hereafter be organized within an existing metropolitan district.

(3) A district may consist of nocontiguous tracts or parcels of property but no single tract or parcel of land containing more than twenty acres of which, together with the buildings, improvements, machinery, and equipment thereon situate shall have an assessed valuation in excess of twenty-five thousand dollars at the date of filing the petition mentioned in section 32-3-105 may be included in any district organized under this article without written consent of the fee owners thereof filed in the district court in which the proceedings are then pending.

(4) A district has the power to extend its water lines to a source of supply without the district or its sewer lines to an appropriate outlet with the district.

32-3-104. District court authority. The district court sitting in or for any county in this state or any judge thereof on vacation is hereby vested with the jurisdiction, power and authority to establish districts which may be entirely within or partly within or partly without the judicial district in which said court is located. In the event any district by any reason whatsoever subsequently becomes situated entirely without a judicial district, the court on its motion or upon motion of the board shall transfer the entire file pertaining to the district court of the judicial district in which the major portion of the district shall then be located and the district court or judge thereof shall then have full and complete jurisdiction, power, and authority over said district in accordance with this article as if the proceedings had originally been filed there.

32-3-105. Petition.

(1) The organization of a district shall be initiated by petition filed in the office of the clerk of the court vested with jurisdiction in a county in which all or part of the real property of the proposed district is situated. The petition shall be signed by not less than ten per cent or one hundred of the taxpaying electors of the district whichever number is the smaller. The petition shall set forth: (1969 Supp.)

(a) The name of the proposed district;

(b) A general description of the purposes of the district;

(c) A general description of the improvements, if any, to be constructed and installed within or for the district;

(d) An accurate description of the boundaries of the district;

(e) A statement as to whether the proposed district lies wholly or partly within another district or municipality;

(f) A prayer for the organization of the district.

(2) No petition with the requisite signatures shall be declared void on account of alleged defects and the court shall at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the boundaries of the district or in any other particular. No person having signed said petition shall be permitted to withdraw his name therefrom except in cases of fraud and a notice to this effect shall be stated immediately preceding the place on the petition for signatures. Similar petitions or duplicate copies of the same petition for the organization of the same district may be signed and shall together be received as

one petition. All petitions filed prior to the hearing on the first petition filed shall be considered by the court the same as though filed with the first petition placed on file.

32-3-106. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition, a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceedings the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed, not less than ten days distant, and upon failure of the petitioner to execute the same, the petition shall be dismissed.

32-3-107. Notice of hearing.
(1) Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation shall fix a place and time, by order, not less than twenty days nor more than forty days after the petition is filed, for hearing thereon and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon. The clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties and to the governing body of each municipality having territory within the proposed district.

(2) The district court in and for the county in which the petition for the organization of a district has been filed shall thereafter for all purposes of this article, except as otherwise provided in this article, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the district, and of the real property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this article by reason of ownership of property within any proposed district.

32-3-108. Hearings--organizational election.
(1) On the day fixed for such hearings or at an adjournment thereof the court shall ascertain from the tax rolls of the counties in which the district is located or into which it extends, from the last official registry list, and from such other evidence which may be adduced, that the requisite number of taxpaying electors of the proposed district have signed the petition.

(2) If the court finds that no petition has been signed and presented in conformity with this article, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings. Nothing in this section shall

be construed to prevent the filing of subsequent petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

(3) Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owners of any real property within the proposed district may file a petition with the court stating reasons why said property should not be included therein, and praying that said property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall hear said petition and all objections thereto at the time of the hearing on the petition for organization, and shall determine whether said property should be excluded or included in said district.

(4) Upon said hearing if it shall appear that a petition for the organization of a district has been signed and presented in conformity with this article, the court, by order duly entered of record, shall direct that the question of the organization of the district shall be submitted at an election to be held for that purpose in accordance with the provisions of part 8 of article 1 of this title. Such order shall appoint three electors of the district as judges of said election. The clerk of the court having jurisdiction shallgive published notice of the time and place of an election to be held in the in the district as provided in said part 8.

(5) Such election shall be held and conducted as nearly as may be in the same manner as general elections in this state. There shall be no special registration for such election, but for the purpose of determining qualifications of electors, the judges shall be permitted to use the last official registry lists of electors residing in the district, and in addition, they may require the execution of an affidavit concerning the qualifications of any elector.

(6) At such election the voter shall vote for or against the organization of the district, and for five electors of the district, who shall constitute the board of directors of the district, if organized, one director to act until the first biennial election, two until the second, and two until the third biennial election.

(7) The judges of election shall certify the return of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which it shall thereafter be known in all proceedings, and designate the first board of directors elected. Thereupon the district shall be a governmental subdivision of the state of Colorado and a body corporate with all the powers of a public or quasi-municipal corporation.

(8) If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom. The entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of

Colorado, in an action in the nature of a writ of quo warranto commenced by the attorney general within thirty days after said decree declaring such district as organized and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this section.

32-3-109. Filing decree. Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall transmit to the county clerk and recorder in each of the counties in which the district or a part thereof may be or extend, copies of the findings and the decree of the court incorporating said district. The same shall be filed in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations. The clerk and recorder in each county shall receive a fee of one dollar for filing and preserving the same.

32-3-110. Bonds of directors. Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the clerk of court their oaths of office, and individual, schedule, or blanket corporate surety bonds at the expense of the district in an amount not less than one thousand dollars each, the form thereof to be fixed and approved by the court, conditioned for the faithful performance of their duties as directors.

32-3-111. Organization of board -vacancies--compensation.
(1) After taking oath and filing bonds, the board shall choose one of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and district, who may be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars, conditioned on the faithful performance of the duties of his office.

(3) Each member of the board may receive as compensation for his service a sum not in excess of six hundred dollars per annum, payable not to exceed twenty-five dollars per meeting attended if the proposition shall have been submitted at the biennial election and approved as required by section 32-1-108 for authorization of indebtedness. No member of the board shall receive any compensation as an employee of the

district or otherwise, other than that provided in this section. No member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

(5) The court having jurisdiction of the district has the power to remove directors for cause shown, on petition, notice and hearing.

32-3-112. Meetings.
(1) The board shall meet at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the district require, on notice to each member of the board.

(2) Notice of time and place designated for all regular meetings shall be posted in at least three public places within the limits of the district, and, in addition, one such notice shall be posted in the county courthouse in the county or counties in which the district is located. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any officer or member of the board by informing the other members of the date, time and place of such special meeting, and the purpose for which it is called, and by posting as provided in this section at least three days previous to said meeting. All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public.

(3) Three members of the board shall constitute a quorum at any meeting. Any vacancy on the board shall be filled by the remaining members or member of the board, the appointee to act until the next biennial election when the vacancy shall be filled by election. If the board shall fail, neglect or refuse to fill any vacancy within thirty days after the same occurs, the court having jurisdiction shall fill such vacancy.

32-3-113. Elections.
(1) (a) This section is subject to the provisions of part 8 of article 1 of this title. On the second Tuesday of January in the second calendar year after the organization of any district, and on the second Tuesday of January every second year thereafter, an election shall be held, which shall be known as the biennial election of the district.

(b) At the first biennial election in districts heretofore organized under this article there shall be elected three directors, one to serve for a term of four years and two to serve for terms of six years. At the second and each third biennial election thereafter there shall be elected one director to serve for a term of six years. At the third and each third biennial election thereafter, and at the fourth and each third biennial election thereafter there shall be elected two directors to serve for terms of six years.

(c) At the first biennial election in any district organized after May 14, 1947, and each sixth year thereafter, there shall be elected by the electors of the district in the manner provided by part 8 of article 1 of this title, one member of the board to serve for a term of six years. At the second biennial election and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years. At the third biennial election, and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years.

(2) Not later than thirty days before any such election, nominations may be filed with the secretary of the board and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication, and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

32-3-114. General powers. (1) For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence.

(b) To have and use a corporate seal.

(c) To sue and be sued, and be a party to suits, actions and proceedings.

(d) Except as otherwise provided in this article to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, or any town, city, city and county, or the state of Colorado. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts for work, or material, or both, and involving an expense of five thousand dollars or more. The district may reject any and all bids, and if it shall appear that the district can perform the work or secure the material for less than the lowest bid, it may proceed to do so.

(e) To borrow money and incur indebtedness and evidence the same by certificates, notes, or debentures, and to issue bonds, as provided in sections 32-4-123 to 32-4-127, as amended, to carry out any of the purposes and provisions of this article.

(f) To acquire, dispose of and encumber real and personal property including, without limitation, rights and interests in property, leases and easements necessary to the functions or the operation of the district.

(g) To refund any bonded indebtedness of the district without an election. Other than maturity and rate of interest the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds.

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein.

(i) To hire and retain agents, employees, engineers and attorneys.

(j) To have and exercise the power of eminent domain and dominant eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers granted, both within and without the district.

(k) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Colorado, and to construct works and establish and maintain facilities across any stream of water or watercourse, and to enter into contract with public utilities, cooperative electric associations, and municipalities for the purpose of furnishing street lighting service. The district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof.

(l) In any safety protection district, to erect and maintain traffic and safety controls and devices on streets and highways and at railroad crossings; to enter into agreements with the county or counties in which a district is situate, or with adjoining counties or the state department of highways or with railroad companies for the erection of such safety controls and devices, and for the construction of underpasses or overpasses at railroad crossings.

(m) To fix and from time to time decrease or increase the rates, tolls or charges for services or facilities furnished by the district.

(n) To adopt and amend by-laws, not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district.

(o) To pass and enforce regulations promulgated by the board to effectuate the purposes for which the district was organized. Notice of the intent of the board to adopt rules and regulations must be published at least twenty days prior to the date of the public hearing on the adoption of such regulations. Regulations adopted by the board shall become effective ten days after public hearing is had thereon.

(p) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

32-3-115. Specific powers.
(1) In addition to the general powers set forth in section 32-4-114, the board of a sanitation district for and on behalf of the district shall have the following powers: To compel the owners of premises, wherever necessary for the protection of public health, to connect their premises in accordance with the state plumbing code to the sewer lines of the district within twenty days after written notice sent by registered mail, provided such sewer line in within four hundred feet of the premises. If such connection is not begun within twenty days, the board may thereafter connect the premises to the sewer system of the district and have a first and prior lien on the premises to be enforced as if it were a mechanic's lien for the cost of making the connection.

(2) In addition to the general powers set forth in section 32-3-114, the board of a water district for and on behalf of the district shall have the following powers: To compel the owners of premises whenever necessary for the protection of public health, to connect their premises in accordance with the state plumbing code to the water lines of the district within twenty days after written notice is sent by registered mail, provided said lines are within four hundred feet of the premises. If the connection is not begun within the twenty day period, the board may thereafter connect the premises to the water system of the disrtict and have a first and prior lien on the premises to be enforced as if it were a mechanic's lien for the cost of making the connection.

(3) In addition to the powers set forth in section 32-3-114, the board of the fire protection district for and on behalf of the district shall have the following powers: To compel the owners of premises, whenever necessary for the protection of public safety to install fire escapes, fire installations, fire proofing, and safety devices.

(4) In addition to all the powers generally and specifically granted to the board of a district, it shall have the right to accept on behalf of the district real or personal property for the use of the district and to accept gifts and conveyances made to the district upon such terms or conditions as the board may approve.

(5) A district created for water or sanitation purposes, upon the filing of a resolution of the board with the district court having jurisdiction, may become a metropolitan district possessing all the rights, powers and authority of such a district provided that petitions for the creation of a metropolitan district, partially or wholly within the water or sanitation district are not then pending or that a metropolitan district does not already exist wholly or partly within the boundaries of the sanitation or water district.

(6) Where a metropolitan district is orginally organized as such, it shall have all of the powers and authority of a water, sanitation, and fire protection district. A water or sanitation district may exercise all the powers granted to a first protection district in this article upon the filing of a resolution to that effect in the district court having jurisdiction if the fire protection district does not exist within the boundaries of the water or sanitation district. A fire protection district, upon approval at an election called for such purpose, may consolidate with an existing water, sanitation, or metropolitan district; or may exercise the power or authority of a water or sanitation district if a water or sanitation district does not exist within the boundaries of the fire protection district. Before consolidation with an existing district, all of the debts of the fire protection district must be paid and a resolution to such effect passed by the board and contained in the notice of election for the purpose of consolidation, which notice shall be published. The election shall be handled in the same manner as provided in section 89-3-8. Upon consolidation, all of the assets and cash of the fire protection district shall become the property of the district with which it was consolidated. Upon the transfer of said assets and cash, the board of the fire protection district shall cease to function and shall be no longer in existence.

32-3-116. Taxes generally. In addition to the other means of providing revenue for such districts the board shall have the power and authority to levy and collect ad valorem taxes on or against all taxable property within the district.

32-3-117. Levy and collection.

(1) To levy and collect taxes, the board shall determine in each year the amount of money necessary to be raised by taxation taking into consideration all sources of revenue of the district; and shall fix a rate of levy, which when levied upon every dollar of assessed valuation of the property within the district and together with other revenues will raise the amount required by the district annually to supply funds for paying the expenses of the organization and the costs of constructing, operating,

and maintaining the works and equipment of the district, and will pay promptly in full, when due, all interest on and principal of bonds and other obligations of the district. In the event of accruing defaults and deficiencies additional revenue may be made as provided in section 89-3-18. In the event, however, that the board of a sewer, water, or metropolitan district divides that district into areas according to the facilities and services furnished or to be furnished therein, the board shall determine the amount of money necessary to be raised by taxation within such area taking into consideration other sources of revenue within the area and shall fix a rate of revenue which, when levied upon every dollar of assessed valuation of taxable property within such area of the district, will supply funds for the payments of the costs of acquiring, operating and maintaining the services or facilities furnished in such area and will pay promptly, when due, the principal or interest on bonds or other obligations issued and its pro rata share of the general operating expenses of the district. All bonds or obligations issued by a district, however, will be general obligation bonds of the entire district.

(2) No later than the fifteenth day of October in each year, the board shall certify to the board of county commissioners of each county within the district or having a portion of its territory within the district the rate so fixed in order that at the time and in the manner required by law for the levying of taxes such board of county commissioners shall levy such tax upon the assessed valuation of all taxable property within the district.

32-3-118. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiences, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

32-3-119. Rates and charges. A water, sanitation or metropolitan district shall have the right to fix or to increase or decrease, from time to time, water or sewer rates, tolls, charges and license fees, and to pledge such revenue for the payment of any indebtedness of the district. The district shall have the power to establish rates, tolls and charges for services of facilities furnished to any city, town, municipality, school district, tax free agency or another water or sanitation district, whether within or without the boundaries of the district, furnishing such facilities or services and any such city, town or municipality, tax free agency, or water or sanitation district shall pay such rates or charges when due. All rates, tolls, charges and fees to be charged such city, town, municipality, school district, tax free agency or water or sanitation district shall be first approved by the public utilities commission of the state of Colorado

where such facilities or services extend beyond the territorial limits of the district. Except in the case of services or facilities furnished to any city, town, municipality, school district, tax free agency, or other water or sanitation district, the rates, tolls, charges and fees shall constitute a perpetual lien on and against the property served until paid. Any such lien may be foreclosed in the same manner as provided by the laws of the state of Colorado for the foreclosure of mechanic's liens. In every case the board shall have the power and authority to shut off or discontinue services and facilities for delinquencies in the payment of such rates, tolls, charges or fees or in the payment of taxes levied pursuant to this article. The board shall also have the power to prescribe and enforce rules and regulations for connection with or disconnection from the properties of the facilities of the district.

32-3-120. Areas of districts. The board of any district furnishing water or sewer facilities shall have the power and authority to divide the district into areas according to the water or sewer facilities furnished or to be furnished therein. In the event the board finds it infeasible, impracticable or undesirable for the good of the entire district to extend water or sewer lines or to furnish both or either of such facilities to any part of the district, the board may by resolution designate such areas as not to be served with water or sewer facilities or both. No area divided or designated as unserved according to the provisions of this section shall be less than ten acres in extent. The areas shall be clearly described in the resolution of the board. The board shall have the right to fix different rates of levy for tax purposes against all of the taxable property within the several areas of the district according to the services and facilities furnished or to be furnished therein within a reasonable time.

32-3-121. Private construction. Taxpayers of any area of five acres or more or immediately contiguous to a sewer or water district or a metropolitan district furnishing sewer or water facilities may agree among themselves for the construction of water or sewer facilities within such an area and the board of the district having such facilities or services shall have the authority to enter into a contract with such taxpayers to allow them to construct such water or sewer lines in such area and to connect the same with the water or sewer lines of the district. The board shall have the authority to enter into a contract with such taxpayers to allow all the proceeds derived from water, rent or sewer fees from such area to be applied on the payment of the cost of the construction of such water or sewer line. Such payment shall be made without interest and upon such terms as the parties may agree upon providing that payment shall not extend over fifteen years. Such contracts shall not be included within the five thousand dollar limitation of debts provided by this article and shall notrequire approval of the taxpaying electors of the district before being entered into.

32-3-122. Dissolution or elimination of areas. Areas may be eliminated from any district heretofore organized under this article, or that may be hereafter organized, in the manner provided in sections 32-3-123 to 32-3-129, and any such district may be dissolved in the manner provided in part 6 of article 1 of this title.

32-3-123. Majority petition for election for elemination. Whenever a majority of taxpayers in any area exceeding twenty-five thousand square feet in size, within districts formed under this article, shall file with the secretary of the board of directors a petition requesting that a special election shall be called for the purpose of submitting to the qualified electors of the district a proposition to vote on the elimination of a specified area from the district, the secretary of the board shall cause a notice of the filing of such petition to be published in the county in which said property, or the major portion thereof, is located. The petition shall describe the area which petitioners desire to have excluded, the names and addresses of the petitioners and shall be acknowledged in the same manner and form as required in case of a conveyance of land. The notice shall state the filing of the petition, the names and addresses of the petitioners, and a description of the area sought to be excluded. The board of directors shall hear the petition at an open meeting after publication of the notice of its filing. The board, after the hearing, shall either grant or deny the request for the calling of a special election, and the action of the board in this respect shall be final and conclusive. If the board of directors grants the request for a special election, the board shall file an application in the district court as provided in section 32-3-124; provided that in the event there is any outstanding or bonded indebtedness of the district, the judge shall issue an order directing that no such election shall be held, which order shall be final, conclusive, and not appealable. If there is no bonded or outstanding indebtedness, the procedure for the holding of such an election shall be as provided in sections 32-3-125 to 32-3-128.

32-3-124. Application to describe territory. The application shall be made to the district court in which the petition for incorporation of the district was originally filed. The application shall describe the territory embraced in the district and the area desired to be eliminated from the district and shall have fixed thereto an accurate map showing the boundaries of the area to be eliminated and of the district.

32-3-125. Notice of filing petition. Upon presentation of the petition, the court or clerk thereof shall cause a notice to be published in some newspaper published in the county where the district or a greater part thereof is situated. Such notice shall be published for the time prescribed in the rules of civil procedure for the publication of summons. Such notice shall recite the fact that a petition has been filed and by whom and shall describe the area to be eliminated. The notice shall further specify the time and place of the election, which time shall not be less than twenty days nor more than forty days after the date of the

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last publication date of the notice. If, however, an objection is filed in court within nineteen days from the date of the last publication date of the notice the court may continue the election from time to time, not to exceed six months, until such objections have been disposed of and due notice of the time and place of any continued election shall be given in the manner and form prescribed by the court.

32-3-126. Objection to petition.

(1) Any taxpaying elector may file an objection to the petition, which objection must be filed within nineteen days from date of last publication of the notice. No objection filed after nineteen days from date of last publication of notice shall be valid unless it alleges with particularity one of the following grounds:

(a) Failure to comply with the express terms of sections 32-3-122 to 32-3-129;

(b) Lack of jurisdiction of the court in which the application is filed; or

(c) Actual fraud or misrepresentation contained in the petition, or in the obtaining of signatures thereto, or in the application.

32-3-127. Applicable election law - ballot.

(1) The election shall be governed as near as practicable by the general election laws of this state. It shall be the duty of the secretary of the board of directors to prepare the ballots to be used at the election.

(2) In the event that the election is held to determine whether or not a certain area should be eliminated or not, there shall be printed on the ballot substantially the following words:

Shall the following described area (describing it) be eliminated from the ____________ district?

For Elimination _____

Against Elimination _____

32-3-128. Majority vote determines question.--At the time specified in the notice, an election shall be held and the taxpayers shall vote on the question of eliminating a certain area from the district. A majority of the votes cast shall determine the question. If a majority of the taxpaying electors vote to eliminate an area, the area shall be eliminated sixty days after date of the election. Any objections to the election, or proceedings to invalidate the election, must be filed within thirty days from the date of the election.

32-3-129. Order entered--costs. In the event the vote is that an area is to be eliminated, the judge shall enter an order eliminating the area, specifically describing it. A certified copy of such order shall be filed in the county or counties in which the district may be or extend, by the clerk of the district court. The cost thereof shall be collected by the clerk of the court at the time the order is entered.

32-3-130. Districts previously formed validated. All water and sanitation districts created pursuant to the provisions of chapter 238, Session Laws of Colorado, 1947, are hereby validated, and proceedings adopted and obligations incurred by such districts are hereby validated and confirmed.

32-3-131. Validation of districts--bonds. The incorporation, under the provisions of this article, of water sanitation, fire protection, police protection, safety protection, mosquito control, street improvement, television relay and translator, and metropolitan districts by decree of a court of competent jurisdiction entered prior to April 1, 1963, and the bonds of such districts issued prior to the effective date of this section are hereby validated.

32-3-132. Validation of district action. The establishment and maintenance and continued operation of free public libraries and public parks prior to July 9, 1969, by any district organized pursuant to the provisions of this article are hereby expressly validated.

32-3-133. Validation of section 32-3-115 (5) - conversions. The incorporation, under the provisions of part 1 of article 4 of this title, of a water and sanitation district and the subsequent conversion of such district pursuant to section 32-3-115 (5) is hereby validated and confirmed. Any bonds issued or authorized by a water and sanitation district converted to a metropolitan district pursuant to section 32-3-115 (5) are validated, regardless of whether said bonds were issued on or after July 9, 1969, and authorized under this article or part 1 of article 4 of this title.

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ARTICLE 4

LOCAL IMPROVEMENT AND SERVICE DISTRICTS

PART 1

Water and Sanitation Districts

32-4-101. Legislative declaration. It is declared that the organization of water and sanitation districts, having the purposes and powers provided in this part 1, will serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants of said districts.

32-4-102. Definitions.
As used in this part 1, unless the context otherwise requires:

(1) "Board" means the board of directors of a district.

(2) "District" means any district organized under this part 1.

(3) "Publication", as it pertains to petitions and hearings, means to publish once a week for three consecutive weeks, by three publications in at least one newspaper of general circulation in the district. It shall not be necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of the first publication but including the day of the last publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication.

(4) "Sanitation district" means a district organized to provide for storm or sanitary sewers, or both, flood and surface drainage, disposal works and facilities, and all necessary or proper equipment and appurtenances incident thereto, and for those purposes any such district has power to extend its sewer lines to an appropriate outlet outside the district.

(5) "Taxpaying elector" and "elector" of a district have the meanings, respectively, as specified in section 32-1-101.

(6) "Water district" means a district organized to supply water for domestic purposes by any available means, and for that purpose any such district has power to extend its water lines to the source of water supply outside the district.

(7) A district may be created for a combination of water and sewer purposes. A district may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and the district may consist of noncontiguous tracts or parcels of property.

(8) All elections provided for in this part 1 shall be governed by part 8 of article 1 of this title. Election officials shall require the execution of an affadavit by any person desiring to vote at any election of

the district to evidence his qualifications to vote, which affidavit shall be prima facie evidence of the facts stated therein. Registration pursuant to the general election or any other statutes is not required.

32-4-103. District court authority. The district court sitting in and for any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority to establish districts which may be entirely within or partly within and partly without the judicial district in which said court is located.

32-4-104. Petition.

(1) The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction, in the county in which all or part of the real property in the proposed district is situated. The petition shall be signed by not less than ten per cent or one hundred of the taxpaying electors of the district, whichever number is the smaller.

(2) The petition shall set forth:

(a) The name of the proposed district consisting of a chosen name preceding the words, "water district" or "sanitation district", or "water and sanitation district;"

(b) A general description of the improvements to be constructed or installed for the district;

(c) The estimated cost of the proposed improvements;

(d) A general description of the boundaries of the district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the district;

(e) A prayer for the organization of the district.

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(3) No petition with the requisite signatures shall be declared void on account of alleged defects, but the court may at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All such petitions filed prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition placed on file.

32-4-105. Bond of petitioners. At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition a bond shall be filed, with security approved by the court, or a cash deposit made sufficient to pay all expenses connected with the proceedings in case the organization of the district be not effected. If at any time during the proceeding the court shall be satisfied that the bond first executed or the amount of cash deposited is insufficient in amount, it may require the execution of an additional bond or the deposit of additional cash within a time to be fixed, not less than ten days distant, and upon failure of the petitioner to execute or deposit the same, the petition shall be dismissed.

32-4-106. Notice of hearing.

(1) Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation, by order, shall fix a place and time, not less than twenty days nor more than forty days after the petition is filed, for hearing thereon. Thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition, the purposes and boundaries of the district, and of the time and place of hearing thereon. The clerk of said court shall also forthwith cause a copy of said notice to be mailed by United States registered mail to the board of county commissioners of each of the several counties and to the governing body of each municipality having territory within the proposed district.

(2) The district court in and for the county in which the petition for the organization of a district has been filed shall thereafter for all purposes of this article, except as otherwise provided, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the district, and of the property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

(3) No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this part 1 by reason of ownership of property within any proposed district.

32-4-107. Hearings--organizational election.

(1) Upon said hearing, if the court finds that no petition has been signed and presented in conformity with this article, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of

error shall lie from an order dismissing said proceedings. Nothing in this section shall be construed to prevent the filing of a subsequent petition for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

(2) Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner of any real property within the proposed district may file a petition with the court stating reasons why said property should not be included therein, and praying that said real property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall hear said petition and all objections thereto at the time of the hearing on the petition for organization, and shall determine whether said property should be excluded or included in said district. The court shall exclude property located in any home rule municipal corporation in respect to which a petition for exclusion has been filed by such municipal corporation.

(3) Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented in conformity with this article, and that the allegations of the petition are true, the court, by order duly entered of record, shall direct that the question of the organization of the district shall be submitted at an election to be held for that purpose in accordance with the provisions of sections 89-17-9 and 89-17-10. Such order shall appoint three electors of the district as judges of said election. The clerk of the court having jurisdiction shall give notice by publication of the time and place of said election, which shall be held not less than twenty days after the first publication of said notice. Said notice shall state the purposes and boundaries of the district.

(4) Such election shall be held and conducted as nearly as may be in the same manner as general elections in this state. There shall be no registration for such election, but for the purpose of determining qualifications of electors the election judges may require the execution of an affidavit concerning the qualifications of any elector.

(5) At such election the voters shall vote for or against the organization of the district, and for five electors of the district, who shall constitute the board of directors of the district, if organized, one director to act until the first biennial election, two until the second, and two until the third biennial election.

(6) A nomination for director to serve for any designated vacancy may be made by written petition signed by not less than any five electors, regardless of whether or not nominated therein, filed with the district court having jurisdiction not less than ten days prior to the date of said election. Any petition so filed shall designate therein the name of each nominee and the term for which nominated, and shall recite that the subscribers thereto and the nominee or nominees designated therein are electors of the proposed

district. No petition shall designate any qualified person as a candidate for more than one vacancy, nor shall it place in nomination more than five persons, nor shall it designate more than one nominee for any of the five vacancies. No elector shall nominate more than one person for any vacancy. The name of each nominee so designated shall appear on the organizational ballot, but space shall be provided thereon for writing in the name of a candidate for each vacancy. No nominee's name shall appear on the ballot more than once, and if he is nominated by petitions as a candidate for more than one term, his name shall appear only as a candidate for the longer or longest term so designated, unless he shall file not less than seven days before the date of said election with said court a written designation of a term for which he was nominated in a petition so filed and for which he elects to be a candidate.

(7) The judges of election shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give the district the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and designate the first board of directors elected. Thereupon the district shall be a governmental subdivision of the state of Colorado and a body corporate with all the powers of a public or quasi-municipal corporation.

(8) If an order be entered establishing the district, such order shall be deemed final and no appeal nor writ of error shall lie therefrom. The entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Colorado, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty days after said decree declaring such district as organized and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this section.

32-4-108. Filing decree. Within thirty days after the district has been declared a corporation by the court, the clerk of the court shall transmit to the county clerk and recorder in each of the counties in which the district or a part thereof may be or extend, copies of the findings and the decree of the court incorporating said district. The same shall be filed in the same manner as articles of incorporation are now required to be filed under the general laws concerning corporations. The clerk and recorder in each county shall receive a fee of one dollar for filing and preserving the same.

32-4-109. Board to file oath and bond.--Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the clerk of court their oaths of office, and individual, schedule, or blanket corporate surety bonds at the expense of the district in an amount not less than one thousand dollars each, the form thereof to be fixed and approved by the court, conditioned for the faithful performance of their duties as directors.

32-4-110. Organization of board--compensation--audit--removal.

(1) After taking oath and filing bonds, the board shall choose one of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may be members of the board. The secretary and the treasurer may be one person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all of its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection of all owners of real property in the district, as well as to all other interested parties.

(2) The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars, conditioned on the faithful performance of the duties of his office.

(3) Each member of the board may receive as compensation for his service a sum not in excess of six hundred dollars per annum, payable at the rate of twenty-five dollars per meeting. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that provided in this section, and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

(4) It is the duty of the board of directors to cause audits to be made in accordance with the "Colorado Local Government Audit Law". It is the further duty of the board of directors to publish a short form balance sheet, which shall include the major categories of assets and liabilities, and a short form income and expense statement, which shall include the major categories of revenues and expenses from each audit and to publish notice that the financial statement which shall be certified by the person making the audit, or by the governing body, if unaudited, is available for inspection at the special district office and the state auditor's office in one issue of a newspaper of general circulation in the district. Such publication shall be no later than thirty days following completion of the audit or report. The court having jurisdiction of the district has the power to remove directors for cause shown, on petition, notice, and hearing.

32-4-111. Meetings--vacancies.

(1) The board shall meet regularly at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the district require, on notice to each member of the board.

(2) Notice of time and place designated for all regular meetings shall be posted in at least three public places within the limits of the district, and, in addition, one such notice shall be posted in the county courthouse in the county or counties in which the district is located. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any officer or member of the board by informing the other members of the date, time and place of such special meeting, and the purpose for which it is called, and by posting as provided in this section at least three days previous to said meeting. All business of the board shall be conducted only during said regular or special meetings, and all said meetings shall be open to the public.

(3) Three members of the board shall constitute a quorum at any meeting. Any vacancy on the board shall be filled by the remaining members or member of the board, the appointee to act until the next biennial election when the vacancy shall be filled by election. If the board shall fail, neglect or refuse to fill any vacancy within thirty days after the same occurs, the court having jurisdiction shall fill such vacancy.

32-4-112. Election of directors.
(1) This section is subject to the provisions of part 8 article 1 of this title. On the second Tuesday of August, in the second calendar year after the organization of any district, and on the second Tuesday of August every second year thereafter an election shall be held, which shall be known as the biennial election of the district.

(2) At the first biennial election and each sixth year thereafter, there shall be elected by the electors of the district, one member of the board to serve for a term of six years. At the second biennial election and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years. At the third biennial election, and each sixth year thereafter, there shall be elected two members of the board to serve for terms of six years. Such biennial elections shall be held and conducted in the manner provided in part 8 of this article 1 of this title.

(3) Not later than thirty days before any such election, written nominations may be filed with the secretary of the board. Such nominations shall be signed by not less than five electors, regardless of whether or nor nominated therein, shall designate therein the name of each nominee and the term for which nominated, if there be more than one, and shall recite that the subscribers thereto and the nominee or nominees designated therein are electors of the district. No written nomination shall designate a qualified person as a candidate for more than one vacancy, nor shall it designate more than one nominee for any vacancy. No elector shall nominate more than one person for any vacancy. If a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot. If he is nominated by petitions as a candidate for more than one term, his name shall appear only once on the ballot as a candidate for the longer or longest term so designated unless he shall file not less than twenty-five days prior to said election with said secretary a written designation of a term for which he was so nominated and for which he elects to be a candidate.

(4) The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication, and shall arrange such other details in connection therewith as the board may direct. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidates, according to the number of directors to be elected, receiving the most votes, shall be elected and shall assume office on September first following. Any new member of the board shall qualify in the same manner as members of the first board qualify.

32-4-113. Powers of board. (1) For and on behalf of the district the board shall have the following powers:

(a) To have perpetual existence.

(b) To have and use a corporate seal.

(c) To sue and be sued, and be a party to suits, actions and proceedings.

(d) Except as otherwise provided in this article, to enter into contracts and agreements affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities. Except in cases in which a district will receive aid from a governmental agency, a notice shall be published for bids on all construction contracts for work, or material or both, involving an expense of five thousand dollars or more. The districts may reject any and all bids, and if it shall appear that the district can perform the work or secure material for less than the lowest bid, it may proceed so to do.

(e) To borrow money and incur indebtedness and evidence the same by certificates, notes or debentures, and to issue bonds, in accordance with the provisions of this article.

(f) To acquire, dispose of and encumber real and personal property, water, water rights, water and sewer works and plants, and any interest therein, including leases and easements.

(g) To refund any bonded indebtedness as provided in sections 32-4-134 to 32-4-139.

(h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district improvements therein.

(i) To hire and retain agents, employees, engineers and attorneys.

(j) To have and exercise the power of eminent domain and dominant eminent domain and in the manner provided by law for the condemnation of private property for public use to take any property necessary to the exercise of the powers granted, both within and without the district.

(k) (I) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state of Colorado, and to construct works and establish and maintain facilities across any stream of water or watercourse; provided that the board of county commissioners of any county in which any public streets or highways are situated which are to be cut into or excavated in the construction or maintenance of any such facilities, shall have authority to make such rules as they may deem necessary in regard to any such excavations, and may require the payment of such reasonable fees against the district as may be fixed by them to insure proper restoration of such streets or highways.

(II) When such fee is paid, it will be the responsibility of the board of county commissioners to promptly restore such street or highway to its former state. If the fee is not fixed and paid, the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof.

(l) (I) To fix and from time to time to increase or decrease tap fees and water and sewer rates, tolls, or charges for services or facilities furnished by the district, and the board may pledge such revenue for the payment of any indebtedness of the district;

(II) To fix and from time to time increase or decrease minimum charges, and reasonable rates, tolls, or charges for making water or sewer services or facilities, or both, available and shall pledge such revenue for payment of any indebtedness of the district. No tap fee or rate, toll, or charge for connection to or use of services or facilities of the district shall be considered a fee, rate, toll, or charge for the availability of services or facilities. Such rates, tolls, and charges for availability of services or facilities shall be made only where the district has a mill levy assessed against all taxable property located within the district of not less than ten mills and a notice, stating that such rates, tolls, and charges for availability of services or facilities are being considered and stating the date, time, and place of the meeting at which they are to be considered, has been mailed by first class United States mail, postage prepaid, to each taxpaying owner of the district at his last known address, as disclosed by the tax records of the county or counties within which said district is located;

(III) Rates, tolls, or charges for making water or sewer services, or both water and sewer services available, shall be assessed solely for the purpose of paying principal of and interest on any outstanding indebtedness of the district, and shall not be used to pay any operation or maintenance expenses of, nor for capital improvements within or for such districts.

(IV) "Availability of service or facilities" for the purposes of this section shall mean that water, or sewer, or both water and sewer lines are installed and ready for connection, within one hundred feet of any property line of the residential lot or residential lot equivalent to be assessed, but to one or both of which line or lines the particular lot or lot equivalent to be assessed is not connected.

(V) The rates, fees, tolls, or charges for making specific services or facilities available shall be a percentage, not to exceed fifty percent, of the rates, fees, tolls, or charges for use of services or facilities of the district, such percentage to be determined by the board. If the rates, fees, tolls, or charges vary dependent upon quantities of usage, the rates, fees, tolls, or charges for making specific services or facilities available shall be a percentage, not to exceed fifty percent, of the average usage derived by dividing the total usage quantity for the district for the last preceding

fiscal year by the total number of users in the district, such per centage to be determined by the board. In addition the aggregate amount of revenue budgeted and expected to be derived from rates, fees, tolls, or charges for making specific services or facilities available shall not exceed the total amount of principal of and interest on the outstanding indebtedness of the district for such service currently budgeted for and to mature or accrue during the annual period within which said rate, fee, toll, or charge is payable, less the amount budgeted and expected to be produced during such period by the mill levy allocable to such service then being budgeted for, levied, and assessed by said district.

(VI) Until paid, all rates, tolls, or charges shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the state of Colorado for the foreclosure of mechanics' liens. The board shall shut off or discontinue service for delinquencies in the payment of such rates, tolls, or charges, or in the payment of taxes levied pursuant to this article, and prescribe and enforce rules and regulations for the connection with and the disconnection from properties of the facilities of the district.

(m) For health and sanitary purposes, to compel the owners of inhabited property within a sanitation district to connect their property with the sewer system of such district and upon a failure so to connect within sixty days after written notice by the board so to do the board may cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection. No owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within four hundred feet of his dwelling place.

(n) To adopt and amend by-laws, not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the district.

(o) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article.

(p) When a district lies entirely within a city or town and when all of its indebtedness has been fully paid or satisfied, to convey to such city or town with the consent of the governing authority thereof, all of the property of such district upon the condition that such city or town will operate and maintain such property. Upon such conveyance the district shall be dissolved and a certificate to such effect shall be signed by the clerical officer of the city or town and filed with the county clerk and recorders of the counties in which the order establishing the district is filed.

(q) When two or more districts are using the same or joint facilities and when the obligations of each district are fully paid or satisfied, to consolidate such districts into one. In such an event the consolidated district shall be under the control of a joint board consisting of the members of each board, until by the occurrence of vacancies or expiration of terms of office the board is reduced to five members. Thereafter the members of the board shall be elected as provided in section 89-5-12.

32-4-114. Power to levy taxes. In addition to the other means providing revenue for such districts, the board shall have power and authority to levy and collect ad valorem taxes on and against all taxable property within the district.

32-4-115. Levy and collection of taxes.

(1) To levy and collect taxes, the board shall determine, in each year, the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district,and shall fix a rate of levy, which, when levied upon every dollar of assessed valuation of taxable property within the district, and together with other revenues, will raise the amount required by the district annually to supply funds for paying expenses of organization and the costs of construction, operating and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interests on and principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 32-4-116.

(2) No later than the fifteenth day of October in each year, the board shall certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed in order that at the time and in the manner required by law for the levying of taxes, such board of county commissioners shall levy such tax upon the assessed valuation of all taxable property within the district.

32-4-116. Levies to cover deficiencies. The board, in certifying annual levies, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district, are not sufficient punctually to pay the annual installments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

32-4-117. County officers to levy and collect. It shall be the duty of the body having authority to levy taxes within each county to levy the taxes provided in this article. It shall be the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected pay the same to the district ordering its levy and collection. The payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district. All taxes levied under this article, together with interest thereon and penalties for default in payment thereof, and all costs of collecting the same, shall constitute, until paid, a perpetual lien on and against the property taxed, and such lien shall be on a parity with the tax lien of other general taxes.

32-4-118. Sale for delinquencies. If the taxes levied are not paid, then delinquent real property shall be sold at the regular tax sale for the payment of said taxes, interest and penalties, in the manner provided by the statutes of the state of Colorado for selling real property for the nonpayment of general taxes. If there are no bids at said tax sale for the property so offered, said property shall be struck off to the county, and the county shall account to the district in the same manner as provided by law for accounting for school, town and city taxes. Delinquent personal property shall be distrained and sold as provided by law.

32-4-119. Sinking fund. Whenever any indebtedness has been incurred by a district, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and provide extension of and betterments to the improvements of the district.

32-4-120. Boundary changes--liability of property.

(1) The boundary of any district organized under the provisions of this article may be changed in the manner prescribed in sections 32-4-121 and 32-4-122, but the change of boundaries of the district shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had such change of boundaries not been made.

(2) Property included within or annexed to a district shall be subject to the payment of taxes and charges, as provided in section 32-4-122. Real property excluded from a district shall thereafter be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the district outstanding at the time of such exclusion. Personal property may be excluded from a district on such terms and conditions as may be prescribed by the board of the district involved.

32-4-121. Exclusion.

(1) A fee owner of real property situate in the district, or the fee owners of any real properties which are contiguous to each other and which constitute a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the property which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings.

(2) The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said property or the major portion thereof is located. The notice shall state the filing of such petition, the names of petitioners, description of the property mentioned in

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said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted.

(3) The board at the time and place mentioned in the notice, or at the times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the property mentioned in the petition, or any part thereof.

(4) The board, if it deems it not for the best interest of the district that the property mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied in whole or in part as the case may be. If the board deems it for the best interest of the district that the property mentioned in the petition, or some portion thereof be excluded from the district, it shall order that said petition be granted in whole or in part as the case may be. There shall be no withdrawal from a petition after consideration by the board nor shall further objection be filed except in case of fraud or misrepresentation. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such change with the clerk of the court and upon order of the court said property shall be excluded from the district.

32-4-122. Inclusion of lands. (1) The boundaries of a district may be enlarged by the inclusion of additional real property therein in the following ways:

(a) The fee owner or owners of any real property capable of being served with facilities of the district may file with the board a petition in writing praying that such property be included in the district. The petition shall set forth an accurate legal description of the property owned by the petitioners and shall state that assent to the inclusion of such property in the district is given by the signers thereto, constituting all the fee owners of such property. The petition must be acknowledged in the same manner required for conveyance of land. There shall be no withdrawal from a petition after consideration by the board nor shall further objections be filed except in case of fraud or misrepresentation. The board of directors shall hear the petition at an open meeting after publishing the notice of the filing of such petition, and of the place, time and date of such meeting, and the names and addresses of the petitioners, which notice shall be published in the county where the district is organized. The board shall grant or deny the petition and the action of the board shall be final and conclusive. If the petition is granted as to all or any of the real property therein described, the board shall make an order to that effect, and file the same with the clerk of the court wherein the district was established, and the judge of the court shall thereupon order the property to be included in the district.

(b) (I) Not less than ten per cent or one hundred, whichever number is smaller, of the taxpaying electors of an area which is contiguous to the district and which area contains twenty-five thousand or more square feet

of land may file a petition with the board of directors in writing praying that such area be annexed and included within the district; provided that no single tract, or parcel of property, containing ten acres, or more, may be included in any district without the consent of the owners thereof. The petition shall describe the area to be included, and shall be acknowledged in the same manner as conveyances of land are required to be acknowledged. The secretary of the board shall cause notice of the filing of the petition to be published in the county in which the property is situated. The notice shall state the fact that such a petition has been filed, the names of the petitioners, the description of the area desired to be included, and the date and place of the hearing, and a statement that all persons interested shall appear at the time and place stated in the notice and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after consideration by the board nor shall further objections be filed except in case of fraud or misrepresentation. The board, at the time and place mentioned in the notice, shall proceed to hear the petition and all written objections thereto. The failure of any person in the existing district to file a written objection shall be taken as an assent on his part to the inclusion of the area described in the notice. The board shall determine if such annexation or inclusion is feasible and to the best interests of the district, which action shall be final and conclusive and not subject to review.

(II) If the petition is granted, the board shall make an order to that effect and file the same with the clerk of the court. The judge shall direct that the question of inclusion of the area within the district shall be submitted to the electors of the area to be included or annexed, and shall order the secretary of the board to give published notice of the time and place of the election, not less than twenty days after first publication of the notice. Such election shall be held within the area sought to be included or annexed and shall be conducted in the manner provided in section 89-5-7. Said election shall be held and conducted and the results thereof determined, in the manner provided in section 89-17-9. The ballot shall be prepared by the secretary of the district and shall contain the following words:

"Shall the following described area (describe it) become a part of the ________________________ district?

For inclusion ________________________
Against inclusion ________________________

(III) If a majority of the votes cast at such election favor inclusion, the court shall enter an order making such an area a part of the district. This order shall be recorded in the office of the clerk and recorder where the area to be included, or any part thereof, is situate. The validity of such inclusion may not be questioned directly or indirectly in any suit, action or proceeding except as provided in section 32-4-107.

General provisions:

(3) (a) Nothing in this section shall affect the validity of any area or property included or excluded from a district by virtue of prior laws.

(b) After the date of its inclusion in such district, such property shall be subject to all of the taxes and charges imposed by the district, and shall be liable for its proportionate share of existing bonded indebtedness of the district; but it shall not be liable for any taxes or charges

levied or assessed prior to its inclusion in the district, nor shall its entry into the district be made subject to or contingent upon the payment or assumption of any penalty, toll, or charge, other than the tolls and charges, which are uniformly made, assessed or levied for the entire district.

(c) The cost of extending water or sewer lines into annexed or included territory shall be paid by the owners of property in such territory. Taxes shall be levied on and against annexed or included property for its proportionate share of annual operation and maintenance charges of the entire district. In addition, in sanitation districts if taxes shall be levied for a main outlet or a sewage disposal plant, or in water districts if taxes shall be levied for water or water rights or facilities to convey water to the district, such annexed or included property shall be liable for its proportionate share of the cost thereof and taxes shall be certified and levied therefor. Nothing in this section shall prevent an agreement between a board and the owners of property sought to be annexed to or included in a district with respect to the terms and conditions on which such property may be annexed or included.

32-4-123. Power to issue bonds--interest--maturity--denominations. To carry out the purposes of this article, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest at a rate or rates such that the net effective interest rate of the issue of bonds does not exceed the maximum net effective interest rate authorized, payable semiannually, and shall be due and payable serially, either annually or semiannually, commencing not later than three years and extending not more than twenty years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium, not exceeding three percent of the principal thereof. Said bonds shall be executed in the name of and on behalf of the district and signed by the chairman of the board with the seal of the district affixed thereto and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board.

32-4-124. Debt question submitted to voters--resolution.
(1) Whenever any board shall determine, by resolution, that the interest of said district and the public interest or necessity demand the acquisition, construction, installation, or completion of any works or other improvements or facilities, or the making of any contract with the United States of other persons or corporations, to carry out the objects or purposes of said district, requiring the creation of an indebtedness exceeding five thousand dollars or one percent of the valuation for assessment of the taxable property in the district, whichever is the larger amount, said board shall order the submission of the proposition of issuing such obligations or bonds, or creating other indebtedness at an election held for that purpose. Such election shall be held and conducted

and the results thereof determined, in the manner provided in part 8 of article 1 of this title and section 32-1-108. Any such election may be held separated or may be consolidated or held concurrently with any other election authorized by this article.

(2) The declaration of public interest or necessity required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum net effective interest rate to be paid on such indebtedness. Whenever the board determines that the district should incur indebtedness in an amount which does not require approval at an election under subsection (1) of this section, it shall establish the maximum net effective interest rate prior to the time such debt is incurred or contracted. Shall resolution shall also fix the date upon which such election shall be held and and the manner of holding the same and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling places and shall appoint, for each polling place from the electors of the district, the officers of such election consisting of three judges, one of whom shall act as clerk.

32-4-125. Notice of election. The board shall prescribe the form of the notice of election, and direct the publication of the same, the first publication of said notice to be not less than twenty days prior to the election.

32-4-126. Conduct of election - canvass. The election boards shall conduct the election in the manner prescribed in part 8 of this article 1 of this title and shall make their returns to the secretary of the district. At any regular or special meeting of the board, the returns thereof shall be canvassed and the results thereof declared as provided in said part 8.

32-4-127. Effect of subsequent elections. If any such proposition shall be approved at such election in the manner required by section 32-4-108 the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, or issue and sell such bonds of the district, as the case may be, all for the purposes and objects provided for in the proposition submitted under this part 1 and in the resolution therefor, and in the amount so provided and at a price or prices and a rate or rates of interest such that the maximum net effective interest rate recited in such resolution is not exceeded. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent elections called for such purpose.

32-4-128. Correction of faulty notices. In any case where a notice is provided for in this part 1 if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall order due notice to be given, and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice has been properly given in the first instance.

32-4-129. Early hearings. All cases in which there may arise a question of validity of the organization of a district, or a question of the validity of any proceeding under this article, shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this part 1.

32-4-130. Liberal construction. -This part 1 being necessary to secure and preserve the public health, safety, convenience, and welfare, it shall be liberally construed to effect its purpose.

32-4-131. Law not exclusive. No part of this part 1 shall repeal or affect any other law or any part thereof, it being intended that this article shall provide a separate method of accomplishing its objects, and not an exclusive one.

32-4-132. Districts previously formed validated. All water and sanitation districts created pursuant to the provisions of chapter 175, Session Laws of Colorado, 1939, as amended, are hereby validated, and proceedings adopted and obligations incurred by such districts are hereby validated and confirmed.

32-4-133. Dissolution of districts.--Any water, sanitation, or water and sanitation district organized under this article may be dissolved in the manner provided in part 6 of article 1 of this title.

32-4-134. Refunding bonds. bonds issued by any district may be refunded without an election, by the district issuing them, or any successor thereof, in the name of the district issuing the bonds being refunded, but subject to provisions concerning their payment and to any other contractual limitations in the proceedings authorizing their issuance or otherwise appertaining thereto, by the issuance of bonds to refund, pay, and discharge all or any part of such outstanding bonds, including any interest on the bonds in arrears or about to become due, and for the purpose of avoiding or terminating any default in the payment of interest on and principal of the bonds, of reducing interest costs or effecting other economies, or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any system appertaining thereto, or for any combination of the foregoing purposes. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold as provided in this article for an original issue of bonds.

32-4-135. Limitations upon issuance. No bonds may be refunded under sections 32-4-134 to 32-4-139 unless the holders thereof voluntarily surrender them for exchange or payment, or unless they either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds. Provision shall be made for paying the bonds refunded within said period of time. No maturity of any bond refunded may be extended over fifteen years. The interest rate or rates on such refunding bonds shall be determined by the board. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed such unaccrued costs of the bonds refunded, except to the extent any interest on the bonds refunded in arrears or about to become due is capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

32-4-136. Use of proceeds of refunding bonds. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in any state or national bank within the state which is a member of the federal deposit insurance corporation to be applied to the payment of the bonds being refunded upon their presentation therefor; provided, to the extent any incidental expenses have been capitalized, such refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest thereon and the principal thereof, or both interest and principal, or may be

deposited in a reserve therefor, as the board may determine. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other moneys available for its purpose. Any proceeds in escrow, pending such use, may be invested or reinvested in bills, certificates of indebtedness, notes, or bonds which are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States of America. Such proceeds and investments in escrow, together with any interest to be derived from any such investment, shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due, and any charges of the escrow agent payable therefrom, to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the board shall exercise a prior redemption option. Any purchaser of any refunding bond issued under sections 32-4-134 to 32-4-139 shall in no manner be responsible for the application of the proceeds thereof by the district or any of its officers, agents, or employees.

32-4-137. Combination of refunding and other bonds. Bonds for refunding and bonds for any other purpose or purposes authorized in this article may be issued separately or issued in combination in one series or more by any district.

32-4-138. Applicability of other bond provisions. Except as otherwise provided in sections 32-4-134 to 32-4-139, both inclusive, the limitations appertaining to the issuance and the terms and conditions of refunding bonds shall be the same as those provided in this article for an original issue of bonds.

32-4-139. Board's determination final. The determination of the board that the limitations under sections 32-4-134 to 32-4-139 imposed upon the issuance of refunding bonds have been met shall be conclusive in the absence of fraud or arbitrary and gross abuse of discretion.

32-4-139. Validation of districts--bonds. The incorporation, under the provisions of part 1 of water and sanitation districts by decree of a court of competent jurisdiction entered prior to April 1, 1963, and the bonds of such districts issued prior to the effective date of this section are hereby validated.

C. Rules, Regulations, and Standards

C-XII

C-XVIII

D. Judicial Decisions

D. JUDICIAL DECISIONS

THE ERIE WATER AND SANITATION DISTRICT, IN THE COUNTY OF WELD, STATE OF COLORADO, Plaintiff, vs. GEORGE MAZZINI and PEARL MAZZINI, Defendents.

Civil Action No. 14048

IN THE DISTRICT COURT

IN AND FOR THE COUNTY OF WELD

STATE OF COLORADO

Civil Action No. 14048

THE ERIE WATER AND SANITATION DISTRICT, IN THE COUNTY OF WELD, STATE OF COLORADO, Plaintiff, vs. GEORGE MAZZINI and PEARL MAZZINI, Defendants.	ORDER AND DIRECTION FOR ENTRY OF JUDGMENT.

The hereinabove entitled cause was submitted to the Court upon a stipulation and agreed statement of facts and thereafter plaintiff filed its brief and defendants filed their brief and it was agreed that the cause be considered by the Court upon the briefs without oral argument.

The Court having so considered the matter now adopts plaintiff's brief as its opinion in the matter.

Accordingly, IT IS CONSIDERED, ORDERED AND ADJUDGED, that judgment be entered for the plaintiff against the defendants.

IT IS FURTHER ORDERED, that the defendants shall within ninety (90) days from this date comply with the orders of the Board of Directors of the Erie Water and Sanitation District and shall connect their premises described in the Complaint to the sewer line of the said Sanitation District and shall pay the installation cost thereof and the sewer connection charge of the District and thereafter shall pay the applicable service charges of the District.

IT IS FURTHER ORDERED, that plaintiff have its costs.

IT IS FURTHER ORDERED, that motion for new trial be dispensed with.

Done in open Court, this 23rd day of February, 1960, at Greeley, Colorac

BY THE COURT:

(signed) William E. Buck
Judge.

THE ERIE WATER AND SANITATION DISTRICT
ERIE, COLORADO

November, 1958

Dear______________________:

You have previously received the required Statutory Notice from the District giving you, as an owner of inhabited property situated in the District and within 400 feet of the sewer line of the District, 60 days in which to connect your property to the system. The time expired September 18, 1958.

We understand that this connection, in your case has not been made.

The Board of Directors of the District proposes to compel connection and will commence proceedings in the immediate future to do so.

If you have any questions as to the powers of the district in this regard, your obligation as an owener of inhabited property or desire to specify cause why you feel, in your particular case, this should not be done, the Board will be glad to consider any written questions or statement, or you are invited to present them personally at the next regular meeting of the Board.

Very truly yours,

THE BOARD OF DIRECTORS
ERIE WATER AND SANITATION DISTRICT

BY:______________________
Charles A. Stephens, Secretary

BRIEF

ERIE WATER AND SANITATION DISTRICT

Statement of Facts:

Erie Water and Sanitation District in a corporation organized under what is now Chapter 89, Article 5 of the Colorado Revised Statutes of 1953 (formerly C S A, Chapter 173 A). Session Laws of 1949 P. 749 at end. It was incorporated on June 20, 1955.

The powers granted such a district are those contained in # 89-5-13 CRS "53 which provided, inter alias, as follows:

"89-5-13 - Powers of Board

(12) .....For health and sanitary purposes the board shall have the powerto compel the owners of inhabited property within a sanitation district to connect their property with the sewer system of such district and upon a failure so to connect within sixty days after written notice by the board so to do the board any cause such connection to be made and a lien to be filed against the property for the expense incurred in making such connection. No owner shall be compelled to connect his property with such system unless a service line is brought, by the district, to a point within four hundred feet of his dwelling place."

On the 9th day of May, 1956, the Board of Directors, by resolution, adopted Rules and Regulations for the District

In the Spring of 1956, work was commenced to install Sewer Systems.

On the 11th day of April, 1956, the Board of Directors by Resolution, provided that a period of two years. commencing with date of completion of Sewer System would be allowed for voluntary connection to the Sewer System by owners of inhabited property in the district.

The work on the system was completed on July 1, 1956.

On July 1, 1958, the period of two years. so specified, expired.

On the 14th day of July 1958, the Board of Directors, at a regular meeting by Resolution provided that all owners of inhabited property not then connected to the Sewer System be required to connect and be given Notice to connect to the system within 60 days as required by Section 89-5-13 (12) of the enabling statutes. This N otice was given by the Secretary to all owners of inhabited property situated within the district and located within 400 feet of a service line. The 60 day period expired on the 18th day of September, 1958.

Questions to be Determined:

1. Are the Statutes providing for the organization of Water and Sanitation Districts Constitutional.

2. Is the grant of power with reference to compulsory connection in Section 89-5-18 (12) constitutional.

3. Is such power as exercised by the Erie Water and Sanitation District within the Police Power and has such power been exercised in a manner which would be considered arbitrary or unreasonable.

4. What is the interpretation to be placed on the phrase "for health and sanitation purposes", as contained in Section 29-5-13 (12).

ARGUMENT:

1. Does the State have power,within the framework of the Constitution, to create special improvement districts such as is here involved - namely Water and Sanitation Districts? The answer to this is clearly, yes.

These types of local, special improvement districts, fall generally into the type of governmental organization called "quasi-municipal corporations." The growth of these types governmental units has been extensive in the last quarter century. Where the statutory provisions for their creation are reasonable and the rights of the individual citizens within the District proposed to be formed have been safeguarded they have been sustained.

In People vs. Proposed Toll Gate Sanitation District 128 Colo. 33, 261 f 2d 152 the Court said in part:

"We thus approach the expressed declaration of intention in the formation of such sanitation districts, and must not overlook THAT THIS IS AN EXPRESSION OF THE UNQUESTIONED POLICE POWER OF THE STATE in serving a public use for the "health, safety..........of the inhabitants of said districts."

2. Is the statutory provision contained in # 89-5-13 (12) granting the Board of Directors of the District the power to compel connection with the system of the District a proper exercise of the police power of the legislature and of the district?

Answer - yes.

In Volume 9, Am. Jur., Buildings, Section 14, it is stated:

"Statutes and ordinances compelling owners of buildings to install water closets and to connect their premises with public sewers when not plaingly unreasonable or arbitrary are also within the police power."

The leading cause in this field is the decision handed down by the Supreme Court of the United States in Hutchinson v Valdosta, 227 U.S. 303, 33 S. Ct. 290 57 L. 2d. 520 (1913)

This was a case appealed from the Circuit Court of Appeals, Southern District of Georgia, to review a decree sustaining a demurrer to and dismissing the bill in a suit to restrain the enforcement of a municipal ordinance requiring property owners to connect with the sewer system. The decision of the C.C.A. was affirmed. Mr. Justice McKenna delivered the opinion of the Court.

In part the Court said:

"The City is given the power, through it's Mayor and Council, to enact such rules and regulations for the transaction of its business and for the welfare and the proper government thereof as the Mayor and Council may deem best; and the bill shows that the Courts of the State decided that the ordinance was within this delegation of power. IT IS THE COMMONEST EXERCISE OF THE POLICE POWER OF A STATE OR CITY TO PROVIDE FOR A SYSTEM OF SEWERS, AND TO COMPEL PROPERTY OWNERS TO CONNECT THEREWITH, and this duty may be enforced by criminal penalties."

The Court further said:

"It may be that an arbitrary exercise of the power could be restrained but it would have to be palpably so to justify a Court in interfering with so salutary a power and one so necessary to the public health. There is certainly nothing in the facts alleged to justify the conclusion that the City was induced by anything in the enactment of the ordinance other than the public good, or that such was not its effect."

In similar suit questioning the right of a local governmental unit to compel connection to its Sewer System, the Supreme Court of the State of Kentucky said in MOURSE VS. RUSSELVILLE, 257 Ky 525, 78 Sw 2d 761 (1935) the following:

"Why authorize the construction of costly sewer system without granting power to require its universal use for the disposition of sewage serving the entire population. A municipal ordinance adopted under the power granted by the Legislature in these matters is regarded as an act of the State within the 14th Amendment of the Federal Constitution. North American Storage Co. v Chicago, 211 UG 306, 28 S. Ct. 101, 53 L. Ed. 195."

The Court further said in its decision in that case:

"The Supreme Court has many times declared that where the public interest is involved it is to be preferred over the property interest of the individual, even to the extent of its destruction, if necessary. Miller v. Schopse, 276 U.S. 272, 48 S.C.T. 246, 72 L. Ed. 568."

In an early case in this field involving compulsory connection to sewer systems and the propriety of such legislation under the police power, the Supreme Court of Massachusetts said in COMMONWEALTH vs. ROBERTS, 155 Mass. 381, 25 SE 522 (1892):

"There can be no doubt that the Statute in question is within the constitutional powers of the legislature as a police power. It is an act for the preservation of the public health, and relates to the disposal of one of the most dangerous forms of sewage. As said by

> Morton, J. in Nickerson v. Boscan, 133 Mass. 386: "It belongs to that class of police regulation to which private rights are held subject, and is founded upon the right of the public to protect itself from nuisances, and to preserve the general health. The authority of the legislature to pass laws of this character is too well settled to be questioned."

As stated the right and power of the legislature and the District to require compulsory connection to the sewer system of the District is a proper exercise of the Police Power subject to the limitation (also generally expressed in the decisions) that such legislation is not arbitrary or the provisions under which connection be accomplished are not unreasonable.

3. What have the Courts considered to be a reasonable exercise of the power to compel connection to a sewer system and which is not an arbitrary exercise of the Police Power, and

Are the provisions of Section 89-5-13 (12) and the Resolutions adopted by the Board of Directors of the District and their proceedings thereunder a reasonable and non-arbitrary exercise of such power within the procedures which have been approved by the Courts.

Answer - yes.

If a man already has a private system which is operating properly, can the District compel him to abandon it and connect to the system, or is such a demand unreasonable and arbitrary?

> The Supreme Court of the United States in District of Columbia v. Brooks, 214 U.S. 138, 28 Sup. Ct. 560, 53 L, Hd. 941 (1900) has said that it can.

This case was brought on appeal to the Court of Appeals of District of Columbia to review a judgment which affirmed a judgment of the Supreme Court of the District quashing, on cerbiorari, an assessment for a drainage tax.

The Supreme Court of the United States remanded with directions to reverse the judgment of the Supreme Court of the District and to dismiss the Petition.

Mr. Justice McKenna speaking for the Court said:

> "The second contention of defendant in error is that the record fails to disclose that any nuisance existed on her property, or that the means of drainage already there was unsanitary or insufficient, or that any necessity existed for making the connection. This contention seems to be made in this Court for the first time. But suppose the fact has been alleged: a property owner cannot urge against the drainage system of the District that he had adopted a system of his own, and challenge a comparison with that of the District and obey or disobey the law according to the result of the comparison. The contention denies any power in Congress to create a system of drainage to which a lot owner must conform."

Again, as to what is proper and reasonable, the Supreme Court of the State of Louisiana sustained the exercise of the power in PRISTON vs. CITY OF CROWLEY 142 La. 393, 75 So. 812 (1917).

In this case the City of Crowley adopted an ordinance requiring owners of improved property situated within 300 feet from the public sewer to connect their premises with the sewerage system. The ordinance conformed precisely with the Statute on this subject granting to municipalities having a public sewerage system the authority exercised in this instance.

Mr. Priston owned property within 300 feet but refused to comply with the ordinance.

The Court, in sustaining the validity of the ordinance, said:

> "This Ordinance, in our opinion is not an arbitrary or unreasonable act on the part of the Municipal Government but is a legitimate exercise of the Police Power."

The ordinance in question does not deprive the property owner of his liberty or freedom of action by requiring him to pay for material furnished by a contractor under contract with the Municipality. On the contrary, the Ordinance allows the property owner ample o-portunity to select and purchase material and have the work done. In that respect, the Ordinance differs from that which was declared invalid by the Supreme Court of North Carolina in Slaughter V. O'Barry, 126 N.C. 181, 35 SE 261.

In a dissenting opinion in this same case (the dissent was based on other technical grounds as to method of collection of costs by the City) Justice Provosty of the Court said:

> "The Act empowers the Municipality to have the work done only after the owner himself has failed to do it after due notification. We think the right of the public through the legislature and the local government to compel the installation of sanitary closets connected with the Municipal sewerage and water systems can hardly be doubted in this day of awakened public sentiment on the subject of sanitation. And if the owner will not do it himself after due notification there is nothing left but for the Municipality to have it done at his expense. And necessarily it can be done only by providing the furnishing and going on the premises to install them."

We have no doubt, observance of such an ordinance might well be enforced by fine and imprisonment under proper legislative authority, but suppose the recalcitrant householder will pay fines and go to jail rather than make the installation? Is the Municipality in the meantime to remain subject to contagion for his unsanitary closet? To do the work for him if he will not do it is evidently the more certain, direct, sensible and practical way.

Another more recent decision on this same point is that handed down by the Supreme Court of Iowa in 1956 - State vs City of Iowa Falls, ________Iowa__________, 74 NW 2d 594.

An ordinance was enacted by the City of Iowa Falls which required connection to the City sewer system if property was within 300 feet of the property line. The property in question was located 152 feet from and 2 feet lower than the sewer line. To connect to the sewer line would have required, in addition to the cost of the line and the sewer connect charges of the City, the installation of a pump to lift the sewage from the property to the line of the City. The installation would have been rather expensive and the owner desired to install a septic tank system and apparently, at an earlier date when he purchased the property, had been advised by one of the City officials that such an installation would be accepted.

When the issuance of a building permit by the City was refused unless he agreed to connect to the sewer system, owner brought Mandamus to force the City to issue the permit. His suit was dismissed and he appealed.

Supreme Court Affirmed.

The Court, by Mr. Justice Smith, said in reaching its decision:

> "Nor can there be any serious question of a city's right and duty to erect REASONABLE regulations concerning disposal of sewage in the interest of the health and cleanliness of the City, including the power to require an abutting landowner to connect his building with a public sewer. Such legislation is a valid exercise of Police Power."

> "A grave question presented pertains to the reasonableness of Ordinance 190... the case must stand or fall on the legality of Ordinance 198. In order to succeed the relator must establish that it constitutes "an arbitrary exercise of Police Power. This, under the record, he has failed to do."

> "It may be conceded the case some years ago might have been considered close. But the decision of the Trial Court must be affirmed if we are to abide by the present weight of authority."

Another recent decision going to the heart of this same question and extremely persuasive is THE WENNER CITY SANITATION COMMISSION vs. R. C. CRAFT, 196 Va. 1140, 87 SE 2d 193 (1955).

A suit was brought by Sanitation Commission to require landowner to connect with waterworks system and pay water rates. The Trial Court dismissed the Complaint and Commission appealed.

The Supreme Court held that Statute creating sanitary district and establishing commission to operate district, and commissioners' resolution requiring that abutting property owners connect with district waterworks and abandon private sub-surface water for personal use and consumption were within Police Power and did not affect an unconstitutional deprivation of property. Reversing and remanding, the Court said:

> "The sole issue and question presented by the pleadings and evidence in this case is whether or not Section 6 (13) of chapter 523 of the Acts of 1948 and the Resolution (of the commissioners) of June 6, 1950, adopted pursuant thereto are constitutional or whether they contribute a valid exercise of the Police Power of the State."

"The Commission was also authorized and empowered to require abutting property owners to connect with any water system which might be owned and operated by it. Section 6 (13). Pursuant to this section for the preservation of the health and welfare of the inhabitants of said district, the commission on June 15, 1950 adopted and enacted the resolution here challenged requiring abutting property owners 'to connect with said water works for domestic uses and personal consumption of water upon such abutting premises and to abandon the use and consumption of any private sub-surface water for such use and consumption' as and when water and water service were made available to the inhabitants within said district."

"Depositions on behalf of Craft tended to show the facts alleged in his answer, that the water supply on his premises was adequate for his needs and that the water had been approved by the State Department of Health; that he had spent approximately $2,500 in constructing his private water system and had never applied nor contracted for its use."

Craft challenged the Commission's assertion that Sec. 6(13) and the resolutions were enacted and adopted for the preservation of the general health and welfare of the inhabitants of the district, contending that the system was installed for the purpose of supplying adequate water to the inhabitants without any thought to the health and welfare of said inhabitants; that the Commission was set up by the Act to supply water for convenience and that convenience alone was not sufficient to bring the section of the Act or the resolution within the purview of the Police Power.

"He asserts that the resolution requiring abutting property owners to connect to the system was adopted without notice to the owners and without providing for a right of judicial review. He further asserts that an abutting property owner should not be required to pay for a service which he does not want or need, and for which he has not contracted, and wholly against his will.

"If # 6 (13) of the Act and the Resolution of June 16, 1950 were validly enacted and adopted in furtherance of the general Police Power of the State then, in that event, these contentions are unbanable."

> 'At the outset of this consideration it must be remembered that every presumption is made in favor of the constitutionality of an Act of the Legislature. A reasonable doubt as to the constitutionality of a law must be resolved in favor of its validity. The Constitution is not a grant of power, but only the restriction of powers otherwise practically unlimited and and except so far as restrained by the Constitution of this State and the Constitution of the United States, the legislature has plenary power. It is only in a case where a Statute is plainly repugnant to some provision of the Constitution that the Courts can declare it null and void. The 'Wisdom and propriety of the Statute comes within the provision of the legislature.' "

City of Newport News v Elizabeth City County 189 Va 825, 55 SE 2 d 56,

Almond v Gilmer 188 Va. 822, 51 SE 2 d 272.

"Under our system the Police Power is vested in the General Assembly which may, through appropriate legislation, delegate the power to Municipalities and other governmental subdivision of the State."

"In Virginia the establishment of sanitary districts is now new. Their creation is encouraged both by the general law code, 1950, Vol. 4, Page 433, # 21-224 at saq. "sanitation District Law of 1946." and the Virginia Constitution, #147."

"Clearly the general law as well as Section 6(13) of Chapter 523 of the Acts of the General Assembly of 1948, both sanctioned by the Constitution, and the resolution adopted pursuant thereto, were enancted for the purpose of promoting the public convenience and general prosperity as well as the public health and safety of the people of the district. Both purposes are embraced within the State's Police Power."

"As said by Justice Marlan in Chicago B & Q. R. Co. v. State of Illinois, 200 US 561, 26 Sec. 141, 50 L. Ed. 596:

> 'We hold that the Police Power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety.'

"So far as we know, the power of the State, under its Police Power, to provide for the health of its people, has never been questioned, but on the contrary has been stressed as one of the powers which may be given the broadest application; and it is common knowledge that this power has been increasingly exercised, in keeping with advances made in the Science of Medicine and sanitation, in recent years. In these circumstances, Courts are reluctant to place limits on what may be done in the interest of the health of a community, so long as unreasonable methods are not employed, nor the natural rights and constitutional rights of citizens invaded

....

"Thus # 6 (13) of the Act and the resolution of June 15, 1950, adopted pursuant thereto, were clearly designed to preserve and protect the public health of the inhabitants and such legislation falls directly within the Police Power delegated by the State to the Commission and is therefore constitutional. Even in the absence of such convincing evidence it must be assumed that the legislature acted with wisdom and propriety in passing the legislation. Craft has, in no way, rebutted the presumption; nor has he shown an unconstitutional deprivation of property (nee Nugler v State of Kansas 132 U.S. 623 8 S. Ct. 273, 31 L. Ed. 205.

....

"Craft also contends that # 6 (13) of the Act is unconstitutional because the enforcement of the provision thereof and the provisions of the resolutior of June 16, 1950, constitute a special assessment on abutting property owners in violation of Sec. 170 of the Constituion of Virginia. There is no merit in this contention. This section of the Constitution among other things, prohibits a City, Town or County from imposing taxes or assessments upon abutting property owners for local improvements. No such tax or assessment is here involved. Section 6 (a) and Section 7 (a) of the Act provide that the Commission shall have power to establish, impose and enforce the collection of water rates and charge for the use and service of the water system. Such are not "taxes or assessments" as contemplated by the prohibitions of Section 170 of the Constitution of Virginia."

....

(No merit in contention Craft not given value of hearing)

"We hold under the authorities cited, and in sound reasoning, that no such requirement is demanded, Hutchinson vs Valdenta 237 U.S. 308."

"The Exercise of the Police Power cannot be circumscribed within narrow limits nor can it be confied to precedents resting upon conditions of the past. As civilization changes and advancements are made the Police Power must, of necessity, develop and expand to meet such conditions."

4. The question then remains as to the interpretation of the phrase "for health and sanitation purposes" as contained in the Colorado Statutes, particularly 39-5-13(12), and whether the order to compel connection can be sustained within the language used by the Colorado Legislature. The answer is yes.

Is this language indicative of an intention by the Legislature to limit what would otherwise be clearly within a proper exercise of the Police Power in requiring connection or is it purely descriptive of the requirements against arbitrary or unreasonable exercise of such power to which the decisions of the Courts have constantly referred?

We believe that it is purely descriptive. That is to say, the creation of water and sanitation districts was done by the Legislature with the view in mind that such provision should be made for health and sanitary purposes of the citizens of the State and to provide some organization through which the inhabitants of a particular area could accomplish these purposes.

As indicated by the cases hereinbefore referred to, the legislation becomes meaningless unless universal compliance can be required. The legislature when again using the phrase "for health and sanitary purpose" with reference to the power of the district to compel connection was thinking of the term with reference to the power of the district to compel connection was thinking of the term with reference to the larger requirements of the entire district - not to the particular situation of each individual property with the idea that the district must necessarily prove that in each suchcase there was a particularly unhealthy or unsanitary condition existing.

If (looking at the situation of the whole district) it can be said that the order requiring connection to the system of the district will operate to protect or improve the health and sanitation of the area in some way, it would then be "for health and sanitary purposes" within the meaning intended by the legislature and clearly supported by the present weight of case authority.

What the legislature is trying to prevent in the use of this power for some purpose unrelated to health or sanitation; as, for example, the district was doing it in such a way as to indicate that it was simply a device to secure money -- or to benefit a particular plumbing or sewer contractor.

It is agreed that the question of definition is ultimately for the Court to determine and the question of arbitrary or unreasonableness is also a matter for the Court to determine on the facts and how applicable to a particular situation, but the Courts have very generally sustained the exercise of the Police Power in this area of health and sanitation as the cases cited so clearly indicate.

There is one aspect of the Weber case above cited at length bearing upon this matter of the phraseology "for health and sanitation purposes" as used by the Colorado Legislature which deserves consideration.

It is to be noted in the opinion of the Virginia Supreme Court that, as one of his objections, Craft argued that the construction of the water system by the Commission and its demand that all be connected to the system was a matter of convenience and not for health, sanitation and public welfare. The Court, in answer to this objection, said

> "that the language used by the legislature in granting the power to compel connection was sufficient to be within the proper exercise of the Police Power on WINNER of two basis -
> 1. General convenience or
> 2. Health and Welfare."

So the contention of Craft could not be supported if either basis existed.

In the Colorado legislation, the legislature expressly provided that connection can be compelled "for health and sanitation purposes."

In the light of the Virginia Statute and the Weber case this may, then, have some meaning -- that is to say the Colorado legislature was familiar with the provisions of the Virginia Statutes and the decision in the Weber case and, by thi language, intended to limit the exercise of the power to compel connection ONLY to the one situation - i.e. - that of health, sanitation and public welfare and not simply for the purpose of public convenience.

However, this does not appear, in my opinion, to be a very limiting factor. As said before, and indicated by an overwhelming weight of authority, the acts which have been sustained in the field of local control of health and sanitation for public welfare are very broad.

We have the situation, then, where the Legislature has felt it desirable to provide for the creation of water and sanitation districts - the people of the district felt it desirable to create the district. How, shall we permit the salutary results thus intended to be defeated by the objection of certain individuals who refuse to comply? The answer, of course, must be NO.

E. Federal Water Pollution Control Law

E. FEDERAL WATER POLLUTION CONTROL LAW

I. FEDERAL WATER POLLUTION CONTROL ACT

The Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, enacted October 18, 1972, replaces the Federal Water Pollution Control Act of 1956 and the amendments to that act, namely, the Water Quality Act of 1965, Clean Water Restoration Act of 1966, and the Water Quality Improvement Act of 1970. The 1972 Act was amended by P.L. 93-207 (December 28, 1973) and P.L. 93-243 (January 2, 1974). These amendments have been added herein.

For a complete, updated compilation of the federal water pollution control laws, regulations and standards, refer to Environmental Reporter: Federal Laws and Federal Regulations, The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037; or Environmental Law Reporter, Current Volume, Environmental Law Institute, 1346 Connecticut Ave. N.W., Washington, D.C. 20036.

The Act contained herein was extracted from the United States Statutes At Large, Volume 86, 92nd Congress, 2nd Session, 1972, and advance copies of P.L. 93-207 and P.L. 93-243, 93rd Congress.

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FEDERAL WATER POLLUTION CONTROL ACT,
AS AMENDED BY CLEAN WATER ACT OF 1977

Title I - Research and Related Programs

Declaration of Goals and Policy

Sec. 101. (a) The objective of this Act 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 Act--

(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; and

(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.

(b) 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 Act. It is the policy of Congress that the States manage the construction grant program under this Act and implement the permit programs under sections 402 and 404 of this Act. 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) 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) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called "Administrator") shall administer this Act.

(e) 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 Act 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) It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act 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) 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 Act. It is the further policy of Congress that nothing in this Act 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.

Comprehensive Programs for Water Pollution Control

Sec. 102. (a) 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) (1) In the survey of 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 or 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 benefits of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this Act 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 Power 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 208 of this Act, and any State plan developed pursuant to section 303(e) of this Act.

(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.

(d) 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 Act, and the programs by which State and Federal agencies allocate quantities of water. Such report shall include recommendations concerning the policy in section 101(g) of the Act to improve coordination of efferts to reduce and eliminate pollution in concert with programs for managing water resources.

Interstate Cooperation and Uniform Laws

Sec. 103. (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.

Research, Investigations, Training,
and Information

Sec. 104. (a) 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 Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 516; 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 Act; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) 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 sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5), 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; and

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

(c) 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, Education, and Welfare.

(d) 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 201 of this Act;

(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) 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 403 of this Act, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) 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) (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 retaining 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 insitutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional 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 Act, 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 sections 3648 and 3709 of the Revised Statutes;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including travel 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) 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) 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) 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 312 of this Act. 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) 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) (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 Act 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and shall submit a final report to Congress within 18 months after such date of enactment.

(n) (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, 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and annually thereafter in the report required under subsection (a) of section 516. 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) 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) (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, 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.

(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 Act related to paragraph (1) of this subsection and to subsection (e) (2) of section 105; (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.

(r) The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of fresh water 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) 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) 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 fresh water 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 enactment of this subsection, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 316 of this Act and by the States in proposing thermal water quality standards.

(u) There is authorized to be appropriated (1) $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, for carrying out the provisions of this section other than subsections (g) (1) and (2), (p), (r), and (t): (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, and $3,000,000 for fiscal year 1980, for carrying out the provisions of subsection (g) (1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, for carrying out the provisions of subsection (g) (2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975 for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

Grants for Research and Development

Sec. 105. (a) 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 improvement 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) 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 water quality improvement techniques.

(c) In order to carry out the purposes of section 301 of this Act, the Administrator is authorized 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) 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) (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 104 (p), and section 304 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) 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) Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

(h) 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) 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 104, or section 113 of this Act prior to the date of enactment of this subsection 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 title II of this Act.

(j) The Administrator is authorized to make a grant to any grantee who received an increased grant pursuant to section 202 (a) (2) of this Act. 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.

Grants for Pollution Control Programs

Sec. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section--

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980; 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) 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) The Administrator is authorized to pay 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, whichever amount is the lesser.

(d) 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) 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 305 of this Act;

(2) authority comparable to that in section 504 of this Act and adequate contingency plans to implement such authority.

(f) Grants shall be made under this section on condition that--

(1) Such State (or interstate agency) filed with the Administrator within one hundred and twenty days after the date of enactment of this section:

(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 309 (a) (2) 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 the date of enactment of this section and before July 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 Act in such form and content as the Administrator may prescribe.

(g) 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.

Mine Water Pollution Control Demonstrations

Sec. 107. (a) 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) Prior to undertaking any demonstration project under this section in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965, as amended), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended.

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

Sec. 108. (a) 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) 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) 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) (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 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) 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.

Training Grants and Contracts

Sec. 109. (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 205 of this Act, 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 204 (a) (3) of this Act. 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.

Application for Training Grant or Contract;
Allocation of Grants or Contracts

Sec. 110. (1) A grant or contract authorized by section 109 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 109 and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 111;

(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 109 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, or students enrolled in programs set forth in applications approved under paragraph (1).

Award of Scholarships

Sec. 111. (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 accordance 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 for by the applicant in an application, if any, submitted pursuant to section 110 of this Act; 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 support 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 this course of studies as the Administrator determines appropriate.

Definitions and Authorizations

Sec. 112. (a) As used in sections 109 through 112 of this Act--

(1) The term "institution of higher education" means an educational institution described in the first sentence of section 1201 of the Higher Education Act of 1965 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency of 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 section 109 through 112 of this Act, 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 this fiscal year ending September 30, 1979, and $7,000,000

for this fiscal year ending September 30, 1980, to carry out sections 109 through 112 of this Act.

Alaska Village Demonstration Projects

Sec. 113. (a) 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 elimination 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) In carrying out this section the Administrator shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) The Administrator shall report to Congress not later than July 1, 1973, the results of the demonstration projects authorized by this section together with his recommendations, including any necessary legislation, relating to the establishment of a statewide program.

(d) 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 this fiscal year ending September 30, 1978 and $220,000 for the fiscal year ending September 30, 1979.

(e) The Administrator is authorized to coordinate with the Secretary of the Department of Health, Education, and Welfare, 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 servcies in Alaska villages. This study shall be coordinated with the programs and projects authorized by sections 104 (q) and 105 (e) (2) of this Act. 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 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) 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) 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.

Lake Tahoe Study

Sec. 114. (a) 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, shall conduct a thorough and complete study on the adequacy of and need for extending Federal oversight and control in order to preserve the fragile ecology of Lake Tahoe.

(b) Such study shall include an examination of the interrelationships and responsibilities of the various agencies of the Federal Government and State and local governments with a view to establishing the necessity for redefinition of legal and other arrangements between these various governments, and making specific legislative recommendations to Congress. Such study shall consider the effect of various actions in terms of their environmental impact on the Tahoe Basin, treated as an ecosystem.

(c) The Administrator shall report on such study to Congress not later than one year after the date of enactment of this subsection.

(d) There is authorized to be appropriated to carry out this section not to exceed $500,000.

In-Place Toxic Pollutants

Sec. 115. 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.

Title II - Grants for Construction of Treatment Works

Purpose

Sec. 201. (a) It is the purpose of this title to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this Act.

(b) 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) 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) The Admnistrator 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) 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) The Administrator shall encourage waste treatment management which combines "open space" and recreational considerations with such management.

(g) (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.

(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 title; 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 the date of enactment of Federal Water Pollution Control Act Amendments of 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 systens) 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 section 201 (d) of this Act 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) 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 the date of enactment of this subsection where the Administrator finds that--

(1) a public body otherwise eligible for a grant under subsection (g) of this section 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 204 of this Act 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 collection and central treatment of such wastes.

In the case of any treatment works assisted under this subsection serving commercial users any such agreement under paragraph (2) shall make provision for the payment to the United States by the commercial users of the treatment works of that portion of the cost of construction of such works which is applicable to the treatment of commercial wastes to the extent attributable to the Federal share of the cost of construction.

(i) The Administrator shall encourage waste treatment management methods, processes, and techniques which will reduce total energy requirements.

(j) The Administrator is authorized to make a grant for any treatment works utilizing processes and techniques meeting the guidelines promulgated under section 304 (d) (3) of this Act, if the Admnistrator 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 effective alternative by more than 15 per centum.

Federal Share

Sec. 202. (a) (1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator). Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendemtns of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section.

(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 201 (g) (5) shall be 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.

(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 201 (g) (5) of this Act and which can be fully funded from funds available for such purpose in such State in the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981. Such term does not include collector sewers, interceptors, storm or sanitary sewers or the separation thereof, or major sewer rehabilitation.

(b) 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 finds 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.

Plans, Specifications, Estimates, and Payments

Sec. 203. (a) 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 201 (g) (1) from funds allotted to the State under section 205 and which otherwise meets the requirements of this Act. The Admnistrator 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. 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. If any State is found by the Administrator to have unusually high costs of construction, the Administrator may authorize a single grant under the preceding sentence where the estimated total cost of the treatment works does not exceed $3,000,000.

(b) 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) 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) Nothing in this Act shall be construed to require, or to authorize the Administrator to require, that grants under this Act 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) At the request of a grantee under this title, 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 title, and to intervene in any civil action involving the enforcement of such a contract.

Limitations and Conditions

Sec. 204. (a) Before approving grants for any project for any treatment works under section 201 (g) (1) the Administrator shall determine--

(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;

(2) that such works are in conformity with any applicable State plan under section 303 (e) of this Act;

(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 303 (e) of this Act, except that any priority list developed pursuant to section 303 (e) (3) (H) 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 304 (d) (3) of this Act 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 203 (a) of this Act which utilizes processes and techniques meeting the guidelines promulgated under section 304 (d) (3) of this Act;

(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 capacity 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 title 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 208; or an applicable municipal master plan of development. For the purpose of this paragraph, section 208, 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;

(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 on performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal".

(b) (1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201 (g) (1) 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; (B) has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction (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); and (C) 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 the date of enactment of this sentence, 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 waste, and other appropriate factors) and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, tnen 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.

(2) The Administrator shall, within one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and non-industrial 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) The grantee shall retain an amount 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 elgible project costs provided pursuant to this title as determined by the Administrator, equal to (A) the amount of the non-Federal cost of such project paid by the grantee plus (B) the amount, determined in accordance with regulations promulgated by the Administrator, necessary for the administrative costs associated with the requirement of paragraph (1) (B) of this subsection and future expansion and reconstruction of the project, except that such retained amount shall not exceed 50 per centum of such revenues from such project. All revenues from such project not retained by the grantee shall be deposited by the Administrator in the Treasury as miscellaneous receipts. That portion of the revenues retained by the grantee attributable to clause (B) of the first sentence of this paragraph, together with any interest thereon shall be used solely for the purposes of future expansion and reconstruction of the project. Notwithstanding paragraph (1) (B) of this subsection, subject to the approval of the Administrator, a grantee that received a grant prior to the enactment of the Clean Water Act of 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.

(4) 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.

(5) 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 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 costs of the waste treatment services.

(6) The Administrator is authorized to exempt from the requirement of paragraph (1) (B) of this subsection any industrial user with a flow into such treatment works per day equivalent to twenty-five thousand gallons or less per day of sanitary waste, if such industrial user does not introduce into such treatment works any pollutant which interferes or is incompatible with, or contaminates or reduces the utility of the sludge of such works.

Allotment

Sec. 205. (a) Sums authorized to be appropriated by section 207 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the 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 516 (b) of this Act and only after such revised cost estimate shall have been approved by law specifically enacted hereafter.

(b) (1) Any sums allotted to a State under subsection (a) shall be available for obligation under section 203 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 amount 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 title during any fiscal year.

(2) Any sums which have been obligated under section 203 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) Sums authorized to be appropriated pursuant to section 207 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 the date of enactment of the Clean Water Act of 1977. Notwithstanding any other provision of law, sums authorized for the fiscal years ending September 30, 1978, September 30, 1979, 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.

(d) 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 title during any fiscal year.

(e) For the fiscal years 1978, 1979, 1980, and 1981, 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 on 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, and 1981. 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) Notwithstanding any other provision of this section, sums made available between January 1, 1975, and March 1, 1975, by the Administrator for obligation shall be available for obligation until September 30, 1978.

(g) (1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the allotment made to each State under this section on or after October 1, 1977, 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.

(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 201, 203, 204, and 212 of this Act 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 administering an approved program under section 402 or 404, administering a statewide waste treatment management planning program under section 208 (b) (4), and managing waste treatment construction grants for small communities.

(h) The Administrator shall set aside from funds authorized for each fiscal year beginning on or after October 1, 1978, four per centum 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 four per centum 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) 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, and September 30, 1981, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatments works utilizing innovative processes and techniques from 75 per centum to 85 per centum pursuant to section 202 (a) (2) of this Act. Including the expenditures authorized by the preceding sentence, a total of two per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, and 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 202 (a) (2) of this Act.

Reimbursement and Advanced Construction

Sec. 206. (a) 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 8 of this Act 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 8 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 8 (f) of the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 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) 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 8 of this Act prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 but which was constructed without assistance under such section 8 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 allotted 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) 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 the date of enactment of

the Federal Water Pollution Control Act Amendments of 1972. Any application filed within such one year period may be revised from time to time, as may be necessary.

(d) 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 appropriations. 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 all such approved projects on the date of enactment of such appropriation.

(e) 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) (1) In any case where all funds allotted to a State under this title have been obligated under section 203 of this Act, and there is construction of any treatment work 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 title 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 future fiscal year for which the application requests payment, which authorization will insure such payment without exceeding the State's expected allotment from such authorization.

(2) In determining the allotment for any fiscal year under this title, 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 the project is eligible for reimbursement has expired, whichever occurs first.

Authorization

Sec. 207. There is authorized to be appropriated to carry out this title, other than sections 206 (e), 208 and 209, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts, for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982, not to exceed $5,000,000,000 per fiscal year.

Areawide Waste Treatment Management

Sec. 208. (a) For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans--

(1) The Administrator, within ninety days after the date of enactment of this Act 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) Exiting 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) (1) (A) Not later than one year after the date of designation of any organization under subsection (a) of this section such organizations shall have in operation a continuing areawide waste treatment management planning process consistent with section 201 of this Act. 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 201 (c),

(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 waste 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 of (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 303 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 each 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 404 conducted pursuant to this Act,

(iii) a process to assure that any activity conducted pursuant to a best management practice will comply with the guidelines established under section 404 (b) (1), and sections 307 and 403 of this Act,

(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 404 of this Act, no person shall be required to obtain an individual permit pursuant to such section, or to comply with a general permit issued pursuant to such section, with respect to any appropriate activity within such State for which a best management practice has been approved by the Administrator under the program approved by the Administrator pursuant to this paragraph.

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

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

(c) (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 potential 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 grant, 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) 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 201 (g) (1) within such area except to such designated agency and for works in conformity with such plan.

(e) No permit under section 402 of this Act shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

(f) (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, 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.

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

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

(i) (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 Act.

(j) (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 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 30, 1988. Under such contracts the landowner 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 landowners 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 304 (k) of this Act, 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.

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture $200,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980, 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.

Basin Planning

Sec. 209. (a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act 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 208 of this Act.

(b) 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) There is authorized to be appropriated to carry out this section not to exceed $200,000,000.

Annual Survey

Sec. 210. 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 Act, 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 516 (a) of this Act.

Sewage Collection Systems

Sec. 211. (a) No grant shall be made for a sewage collection system under this title 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 201 of this Act.

(b) 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) No grant shall be made under this title from funds authorized for any fiscal year during the period beginning October 1, 1977, and ending September 30, 1982, for treatment works for control of pollutant discharges from separate storm sewer systems.

Definitions

Sec. 212. As used in this title--

(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, 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 201 of this Act, 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 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 is used for ultimate disposal of residues resulting from such treatment.

(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 301 or 302 of this Act, or the requirements of section 201 of this Act.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after the date of enactment of this title, 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 title 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.

Loan Guarantees for Construction of Treatment Works

Sec. 213. (a) 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 title, 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 title (other than this section), which project the Administrator has determined to be eligible for such financial assistance under this title, including, but not limited to, projects eligible for reimbursement under section 206 of this title.

(b) 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) 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) 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, (1) all or any portion of the funds retained by such grantee under section 204 (b) (3) of this act, and (2) any funds received by such grantee from the amounts appropriated under section 206 of this Act.

Public Information

Sec. 214. The Administrator shall develop and operate within one year of the date of enactment of this section, 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.

Requirements for American Materials

Sec. 215. Notwithstanding any other provision of law, no grant for which application is made after February 1, 1978, shall be made under this title 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, material, 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.

Determination of Priority

Sec. 216. Notwithstanding any other provision of this Act, 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 Act, 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 title 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.

Cost-Effectiveness Guidelines

Sec. 217. Any guidelines for cost-effectiveness analysis published by the Administrator under this title shall provide for the identification and selection of cost effective alternatives to comply with the objective and goals of this Act and sections 201 (b), 201 (d), 201 (g) (2) (A), and 301 (b) (2) (B) of this Act.

Title III - Standards and Enforcement

Effluent Limitations

Sec. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act 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 304 (b) of this Act, 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 307 of this Act; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act 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 304 (d) (1) of this Act; or

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations, (under authority preserved by section 510) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(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 304 (b) (2) of this Act,

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 315), that such elimination is technologically and economically achievable for category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304 (b) (2) of this Act 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 307 of this Act;

(B) not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements set forth in section 201 (g) (2) (A) of this Act;

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table I of Committee Print Number 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;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established.

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304 (a) (4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304 (b) (4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) 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) 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) Effluent limitations established pursuant to this section or section 302 of this Act shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act.

(f) Notwithstanding any other provisions of this Act it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) (1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b) (2) (A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304 (a) (4) of this Act, toxic pollutants subject to section 307 (a) of this Act, and the thermal component of discharges from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that--

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b) (1) (A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment of 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.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time-period as he is eligible to apply for a modification under this subsection.

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b) (1) (B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment

works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that--

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304 (a) (6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in an on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) any funds available to the owner of such treatment works under title II of this Act will be used to achieve the degree of effluent reduction required by section 201 (b) and (g) (2) (A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101 (a) (2) of this Act.

(i) (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 Act 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 402 of this Act 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 the date of enactment of this subsection. 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, 1983, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 201 of this Act, section 307 of this Act, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this Act.

(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 Act 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 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 402 to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection 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 Act.

(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, 1983; 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, 1983, and will meet the requirements to 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 204 of this Act, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires point source to meet all requirements under section 307 (a) and (b) during the period of such time modification.

(j) (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 than 270 days after the date of enactment of the Clean Water Act of 1977;

(B) subsection (b) (2) (A) as it applies to pollutants identified in subsection (b) (2) (F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not later than 270 days after the date of enactment of the Clean Water Act of 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities, and that there is a substantial 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.

(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b) (2) (A) 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 402, in consultation with the Administrator) may establish a date for compliance under subsection (b) (2) (A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industrywide application.

(l) The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307 (a) (1) of this Act.

Water Quality Related
Effluent Limitations

Sec. 302. (a) Whenever, in the judgment of the Administrator discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301 (b) (2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in an on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) (1) Prior to establishment of any effluent limitations pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other available control strategies are available) there is no reasonable relationship between

the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

Water Quality Standards and Implementation Plans

Sec. 303. (a) (1) In order to carry out the purpose of this Act, 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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) (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 the date of enactment of the Federal Water Pollution Control Act Amendments of 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) 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 a designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies,

propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(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 Act, 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 Act, 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 Act, or

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

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 Act.

(d) (1) (A) Each state shall identify those waters within its boundaries for which the effluent limitations required by section 301 (b) (1) (A) and section 301 (b) (1) (B) 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 301 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 304 (a) (2) 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) (D) 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 304 (a) (2) (D), 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 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 304 (a) (2) 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.

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

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty

days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act 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 301 (b) (1), section 301 (b) (2), section 306, and section 307, 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 208, and applicable basin plans under section 209 of this Act;

(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 301 and 302.

(f) 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 301 (b) (1) and 301 (b) (2) nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Water quality standards relating to heat shall be consistent with the requirements of section 316 of this Act.

(h) For the purposes of this Act the term "water quality standards" includes thermal water quality standards.

Information and Guidelines

Sec. 304. (a) (1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (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 the date of enactment of this title (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 303, 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 the date of enactment of the Clean Water Act of 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 301 (g) of this Act and within six months after the date of enactment of the Clean Water Act of 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 301 (h) of this Act and within six months after the date of enactment of the Clean Water Act of 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 enactment of the Clean Water Act of 1977 and annually thereafter, for purposes of section 301 (h) of this Act publish and revise as appropriate information identifying each water quality standard in effect under this Act of State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) For the purpose of adopting or revising effluent limitations under this Act the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and, at least annually therafter, 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 301 of this Act shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

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

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b) (2) of section 301 of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories of 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 301 (b) (2) (E) of this Act 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) 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 enactment of this title (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 306 of this Act. 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) (1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after enactment of this title (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 the date of enactment of this title (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 201 of this Act.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after the date of enactment of this subsection guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 201 (g) (5) of this Act.

(e) 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 307 (a) (1) or 311 of this Act, 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 301, 302, 306, 307, or 403, as the case may be, in any permit issued to a point source pursuant to section 402 of this Act.

(f) 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 208 of this Act, within one year after the effective date of this subsection (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) (1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, 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 interfers 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) The Administrator shall, within one hundred and eighty days from the date of enactment of this title, 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 401 of this Act or permit application pursuant to section 402 of this Act.

(i) The Administrator shall (1) within sixty days after the enactment of this title 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 402 of this Act, and (2) within sixty days from the date of enactment of this

title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act 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) 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.

(k) (1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act.

(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.

Water Quality Inventory

Sec. 305. (a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies shall prepare a report to be submitted to the Congress on or before January 1, 1974, which shall--

(1) describe the specific quality, during 1973, with appropriate supplemental descriptions as shall be required to take into account

seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants, into all navigable waters and the waters of the contiguous zone; and

(3) identify specifically those navigable waters, the quality of which--

(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

(B) can reasonably be expected to attain such level by 1977 or 1983; and

(C) can reasonably be expected to attain such level by any later date.

(b) (1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to the 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 Act (as identified by the Administrator pursuant to criteria published under section 304 (a) of this Act) 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 beachieved by the requirements of this Act, 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 Act 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.

National Standards of Performance

Sec. 306. (a) For the 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, operation 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) (1) (A) The Administrator shall, within ninety days after the date of enactment of this title 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;
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) 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) Notwithstanding any other provision of this Act, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards 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 the Internal Revenue Code of 1954, whichever period ends first.

(e) 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.

Toxic and Pretreatment Effluent Standards

Sec. 307. (a) (1) On and after the date of enactment of the Clean Water Act of 1977, the list of toxic pollutants or combination of pollutants subject to this Act 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 the date of enactment of the Clean Water Act of 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 the toxicity of the pollutant, its persistence, degradability, the usual or potential presence 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 re-determination.

(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 section 301 (b) (2) (A) and 304 (b) (2) of this Act. 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 standards (or prohibition) with such modifications 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 301 (b) (2) (A) and 304 (b) (2) 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 the date of enactment of the Clean Water Act of 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 cateogries of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such 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) (1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act) which are publicly owned, which pollutant interfers 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 405 of this Act, then the pretreatment requirements for the sources actually discharging such toxic pollutant into such publicly owned treatment works may be reviewed 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 alternative 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) 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 306 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 306 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) 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.

Inspections, Monitoring and Entry

Sec. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, 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 305, 311, 402, 404 (relating to State permit programs), and 504 of this Act--

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

(B) the Administrator or his authorized representative, upon presentation of his credentials--

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located 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) Any records, reports, or information obtained under this section (1) shall, in the case of effluent date, 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 of the United States Code, 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 Act or when relevant in any proceeding under this Act.

(c) 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).

Federal Enforcement

Sec. 309. (a) (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 301, 302, 306, 307, 308, 318, or 405 of this Act in a permit issued by a State under an approved permit program under section 402 or 404 of this Act, 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 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State or in a permit issued under section 404 of this Act 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 308 of this Act 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 Act or in any permit issued under this Act, 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 402 of this Act was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 301 (b) (1) (A) 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 301 (b) (1) (A) or (C) of this Act, (B) that such person cannot meet the requirements for a time extension under section 301 (i) (2) of this Act, and (C) that the most expeditious and appropriate means of compliance with this Act 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 Act 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) 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) (1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State, shall be 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.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowlingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502 (5) of this Act, any responsible corporate officer.

(d) Any person who violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, and any person who

violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) 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) Whenever, on the basis of anyinformation available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 307, 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 Act. 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 Act.

EDITORS NOTE: The following sections have been deleted because of their nonapplicability to Colorado.

Section 310 - International Pollution Abatement

Section 311 - Oil and Hazardous Substance Liability

Section 312 - Marine Sanitation Devices

Federal Facilities Pollution Control

Sec. 313. (a) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement, whatsoever), (B) to the exercise of any Federal, State, or local 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 reporting 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 his section, and any such proceeding may be removed in accordance with 28 U.S.C. 1441 et seq. No officer, agent, or employee of the United States shall be personally

liable for any civil penalty arising from the performance of 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 306 or 307 of this Act. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. In addition to any such exemption of a particular effluent source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.

(b) (1) The Administrator shall coordinate with the head of each department, agency, or instrumentality of the Federal Government having jurisdiction over any property or facility utilizing federally owned wastewater facilities to develop a program of cooperation for utilizing wastewater control systems utilizng those innovative treatment processes and techniques for which guidelines have been promulgated under section 304 (d) (3). 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 402 of this Act.

Clean Lakes

Sec. 314. (a) 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.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under 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) (1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975; $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978; $60,000,000 for fiscal year 1979; and $60,000,000 for fiscal year 1980 for grants to States under this section which sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

National Study Commission

Sec. 314. (a) 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 301 (b) (2) of this Act.

(b) Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works 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) 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 non-governmental entities, for the investigation of matters within their competence.

(d) 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) 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 the date of enactment of this title.

(f) 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 V of the United States Code, including travel time and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

(g) In addition to authority to appoint personnel subject to the provisions of title 5, United States Code, 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 of the Senate and House of Representatives, respectively.

(h) There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,250,000.

Thermal Discharges

Sec. 316. (a) With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, 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) Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capability of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Notwithstanding any other provision of this Act, any point source of a discharge having a thermal component, the modification of which point source is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which, as modified, meets effluent limitations established under section 301, or, if more stringent, effluent limitations established under section 303 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 the Internal Revenue Code of 1954, whichever period ends first.

Financing Study

Sec. 317. (a) The Administrator shall continue to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling and abating pollution as directed in the Water Quality Improvement Act of 1970 (Public Law 91-224), including, but not limited to, the feasibility of establishing a pollution abatement trust fund. The results of such investigation and study shall be reported to the Congress not later than two years after enactment of this title, together with recommendations of the Administrator for financing the programs for preventing, controlling and abating pollution for the fiscal years beginning after fiscal year 1976, including any necessary legislation.

(b) There is authorized to be appropriated for use in carrying out this section, not to exceed $1,000,000.

Aquaculture

Sec. 318. (a) 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 402 of this Act.

(b) 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 402 of this title, as the Administrator determines necessary to carry out the objective of this Act.

(c) 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 Act.

Title IV - Permits and Licenses

Certification

Sec. 401. (a) (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation or other limitation under sections 301 (b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511 (c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this

section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

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

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

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

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

(6) Except with respect to a permit issued under section 402 of this Act, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permits a certification and otherwise meets the requirements of this section.

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

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

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

National Pollutant Discharge Elimination System

Sec. 402. (a) (1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301 (a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementating actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) The Aministrator 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 13 of the Act of March 3, 1899, shall be deemed to be to be permits issued under this title, and permits issued under this title shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act.

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899, after the date of enactment of this title. Each application for a permit under section 13 of the Act of March 3, 1899, pending on the date of enactment of this Act shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this Act, to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on the date of enactment of this Act and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304 (h) (2) of this Act, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this Act. No such permit shall be issued if the Administrator objects to such issuance.

(b) At any time after the promulgation of the guidelines required by subsection (h) (2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which--

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

(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 308 of this Act, or

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

(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 307 (b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

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

(c) (1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304 (i) (2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

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

(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.

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

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

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

(4) In any case where, after the date of enactment of this paragraph, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, or request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 90 days after the date of such objection, the Administrator may

issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this Act.

(e) In accordance with guidelines promulgated pursuant to subsection (h) (2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (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) 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) 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) In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 309 (a) of this Act that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

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

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

(k) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 301, 306, and

402, of this Act, or (2) section 13 of the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899, the discharge by such source shall not be a violation of this Act if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

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

Ocean Discharge Criteria

Sec. 403. (a) No permit under section 402 of this Act for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 402 if the Administrator determines it to be in the public interest.

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

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

(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 at 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 402 of this Act.

Permits for Dredged
or Fill Material

Sec. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zones, and the ocean under section 403 (c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

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

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

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

(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) (1) Except as provided in paragraph (2) of this subsection, the discharge of dredge 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 farms 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 208 (b) (4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301 (a) or 402 of this Act (except for effluent standards or prohibitions under section 307).

(2) Any discharge of dredged or fill material into the navigable waters incidential 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) (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 thereof), 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) (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 section (b) (1) of this section, and sections 307 and 403 of this Act;

(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 308 of this Act, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act.

(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 recommendation to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

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

(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 subsection (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 before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

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

(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h) (2) (A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b) (1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt

of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

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

(e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

(k) In accordance with guidelines promulgated pursuant to subsection (h) (2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h) (2) (A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

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

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

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

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

(p) Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

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

after the date the notice of such application is published under subsection (a) of this section.

(r) The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301 (a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b) (1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.

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

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

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

(4) (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 502 (5) of this Act, any responsible corporate officer.

(5) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

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

Disposal of Sewage Sludge

Sec. 405. (a) Notwithstanding any other provision of this Act or of any other law, in the case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of this Act.

(b) The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to subsection (a) of this section and section 402 of this Act. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title.

(c) Each State desiring to administer its own permit program for disposal of sewage sludge subject to subsection (a) of of this section within its jurisdiction may do so in accordance with section 402 of this Act.

(d) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection and from time to time thereafter, regulations providing

for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall--

(1) identify uses for sludge, including disposal;

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

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

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

(e) The determination of the manner of disposal or use of sludge is a local determination except that it shall be unlawful for the owner or operator of any publicly owned treatment works to 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.

Title V - General Provisions

Administration

Sec. 501. (a) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act.

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

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

(d) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

(e) (1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions

of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this Act, or otherwise does not have a satisfactory record with respect to environmental quality.

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

General Definitions

Sec. 502. Except as otherwise specifically provided, when used in this Act:

(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 of compact approved by the Congress, or any other agency of two or more. States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, 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 208 of this Act.

(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" within the meaning of section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas, 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 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 "Division D--Manufacturing" and such other classes of significant waste products 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.

Water Pollution Control Advisory Board

Sec. 503. (a) (1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the president, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this Act, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

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

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

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

Emergency Powers

Sec. 504. (a) Notwithstanding any other provision of this Act, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to such pollution or to take such other action as may be necessary.

(b) (1) The Administrator is authorized to provide assistance in emergencies caused by the release into the environment of any pollutant or other contaminant including, but not limited to, those which present, or may reasonably be anticipated to present, an imminent and substantial danger to the public health or welfare.

(2) There is hereby established a contingency fund to carry out paragraph (1) of this subsection and there is authorized to be

appropriated to such fund not to exceed $10,000,000. The amounts appropriated under this paragraph shall remain available until expended. There is authorized to be appropriated such sums as are necessary to maintain that portion of such fund available for emergency assistance at a $10,000,000 level.

(3) The Administrator shall submit a report annually to each House of Congress on his activities in carrying out this subsection.

(4) This subsection shall not be construed to relieve the Administrator of any requirement imposed on the Administrator by any other Federal law. Nothing contained in this subsection shall (A) affect any final action taken under such other Federal law, or (B) in any way affect the extent to which human health or the environment is to be protected under such other Federal law.

(5) The Administrator is authorized to provide emergency assistance under this subsection whenever the Administrator determines--

(A) such assistance is immediately required to prevent, limit, or mitigate the emergency;

(B) there is an immediate significant risk to the public health or welfare and the environment; and

(C) such assistance will not otherwise be provided on a timely basis.

(6) Emergency assistance provided under this subsection may include (A) measures to abate and remedy the emergency, (B) the performance of research on the effects of an emergency on public health, welfare, and the environment, and (C) providing officers and employees of the agency to administer, at the site of any emergency, the authority under this or other Federal law to minimize and mitigate the adverse effects of the emergency.

(7) The Administrator shall prepare and publish a contingency plan for responding to emergencies under this subsection. Such contingency plan shall include actions and responsibilities comparable to those specified in section 311 (c) (2) of this Act.

(8) If emergency assistance is provided under this subsection in an emergency caused by the discharge of any pollutant subject to section 311 of this Act, the cost of such assistance shall, at the discretion of the Administrator, be a cost of removal for the purpose of subsections (f) and (g) of such section, and added to any liability which may be imposed under subsection (b)(2) of such section.

(9) The cost of any emergency assistance provided under this subsection in an emergency caused by the discharge of a pollutant in violation of any requirement of section 301, 306, 307, 402, or 403 of this Act, shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309 of this Act.

Citizen Suits

Sec. 505. (a) Except as provided in subsection (b) of this section, 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 of limitation under this Act, 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 Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309 (d) of this Act.

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

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

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

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any 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) 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 against the Administrator or a State agency).

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

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

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

Appearance

Sec. 506. The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action.

Employee Protection

Sec. 507. (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.

(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his bindings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

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

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

(e) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this Act, including,

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

Federal Procurement

Sec. 508. (a) No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 309 (c) of this Act, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

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

(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after enactment of this Act, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

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

(e) The President shall annually report to the Congress on the 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.

Administrative Procedure and Judicial Review

Sec. 509. (a) (1) For the purposes of obtaining information under section 305 of this Act, or carrying out section 507 (e) of this Act, the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person 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 subpoenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 304 (b) and (c) of this Act. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpoena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b) (1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306 (b) (1) (C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit

program submitted under section 402 (b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, or 306, and (F) in issuing or denying any permit under section 402, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety 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 ninetieth 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.

(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable ground 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 Adminsitrator 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.

State Authority

Sec. 510. Except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency or adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this Act, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this Act; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such State.

Other Affected Authority

Sec. 511. (a) The Act shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with the Act; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899 (30 Stat. 1112); except that any permit issued under section 404 of this Act shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 10 of the Act of March 3, 1899, or (3) affecting or impairing the provisions of any treaty of the United States.

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

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

(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 Act or the adequacy of any certification under section 401 of this Act; 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 Act.

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

Separability

Sec. 512. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

Labor Standards

Sec. 513. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C., sec. 276a through 276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

Public Health Agency Coordination

Sec. 514. The permitting agency under section 402 shall assist the applicant for a permit under such section in coordinating the requirements of this Act with those of the appropriate public health agencies.

Effluent Standards and Water Quality Information Advisory Committee

Sec. 515. (a) (1) There is established an Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after the date of enactment of this Act.

(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) (1) No later than one hundred and eight days prior to the date on which the Administrator is required to publish any proposed regulations required by section 304 (b) of this Act, any proposed standard of performance for new sources required by section 306 of this Act, or any proposed toxic effluent standard required by

section 307 of this Act, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

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

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

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

(d) Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

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

Reports to Congress

Sec. 516. (a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this Act, on measures taken toward implementing the objective of this Act, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 102 of this Act, areawide plans under section 208 of this Act, basin plans under section

209 of this Act, and plans under section 303 (e) of this Act; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments, studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status 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 such Act during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this Act; (7) a summary of the results of the survey required to be taken under section 210 of this Act; (8) his activities including recommendations under sections 109 through 111 of this Act; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

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

(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 not later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 201 (g) (2) (A) of this Act and water quality standards established pursuant to section 303 of this Act, and all costs of treatment works as defined in section 212 (2), including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

(c) The Administrator shall submit to the Congress by October 1, 1978, a report on the status of combined sewer overflows in municipal treatment works operations. The report shall include (1) the status of any projects funded under this Act to address combined sewer overflows, (2) a listing by State of combined sewer overflow needs identified in the 1977 State priority listings, (3) an estimate for each applicable municipality of the number of years necessary, assuming an annual authorization and appropriation for the construction grants program of $5,000,000,000 to correct combined sewer overflow problems, (4) an analysis using representative municipalities faced with major combined sewer overflow needs, of the annual discharges of pollutants from overflows in comparison to treated effluent discharges, (5) an analysis of the technological alternatives available to municipalities to correct major combined sewer overflow problems, and (6) any recommendations of the Administrator for legislation to address the problem of combined sewer overflows, including whether a separate authorization and grant program should be established by the Congress to address combined sewer overflows.

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

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

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA-1, O.M.B. No. 158-R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 201 (g) (2) (A) of this Act and water quality standards established pursuant to section 303 of this Act, and all costs of treatment works as defined in section 212 (2), including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974.

General Authorization

Sec. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106 (a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (k), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, and $150,000,000 for the fiscal year ending September 30, 1980.

Short Title

Sec. 518. This Act may be cited as the "Federal Water Pollution Control Act" (commonly referred to as the Clean Water Act).

Authorizations for Fiscal Year 1972

Sec. 3. (a) There is authorized to be appropriated for the fiscal year ending June 30, 1972, not to exceed $11,000,000 for the purpose of carrying out section 5 (n) (other than for salaries and related expenses) of the Federal Water Pollution Control Act as it existed immediately prior to the date of the enactment of the Federal Water Pollution Control Act Amendments of 1972.

(b) There is hereby authorized to be appropriated for the fiscal year ending June 30, 1972, not to exceed $350,000,000 for the purpose of making grants under section 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

(c) The Federal share of all grants made under section 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from sums herein and heretofore authorized for the fiscal year ending June 30, 1972, shall be that authorized by section 202 of such Act as established by the Federal Water Pollution Control Act Amendments of 1972.

(d) Sums authorized by this section shall be in addition to any amounts heretofore authorized for such fiscal year for sections 5 (n) and 8 of the Federal Water Pollution Control Act as it existed immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972.

Savings Provision

Sec. 4. (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 shall abate by reason of the taking effect of the amendment made by section 2 of this Act. 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 otheractions 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, 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, shall continue in full force and effect after the date of enactment of this Act, until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act.

(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act 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 and in subsection (c) of section 3 of this Act.

Oversight Study

Sec. 5. In order to assist the Congress in the conduct of oversight responsibilities the Comptroller General of the United States shall

conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution, including waste treatment and disposal techniques, which are conducted, supported, or assisted by any agency of the Federal Government pursuant to any Federal law or regulation and assess conflicts between, and the coordination and efficacy of, such programs, and make a report to the Congress thereon by October 1, 1973.

International Trade Study

Sec. 6. (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 programs.

(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 or 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 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

Sec. 7. The President shall undertake to enter into international agreements 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.

Loans to Small Business Concerns for Water Pollution Control Facility

Sec. 8. (a) Section 7 of the Small Business Act is amended by inserting at the end thereof a new subsection as follows:

"(g) (1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any small business concern in affecting additions to or alterations in the equipment, facilities (including the construction of pretreatment facilities and interceptor sewers), or methods of operation of such concern to meet water pollution control requirements established under the Federal Water Pollution Control Act, if the Administration determines that such concern is likely to suffer substantial economic injury without assistance under this subsection.

"(2) Any such loan--

"(A) shall be made in accordance with provisions applicable to loans made pursuant to subsection (b) (5) of this section, except as otherwise provided in this subsection;

"(B) shall be made only if the applicant furnishes the Administration with a statement in writing from the Environmental Protection Agency, or, if appropriate, the State, that such additions or alterations are necessary and adequate to comply with requirements established under the Federal Water Pollution Control Act.

"(3) The Administrator of the Environmental Protection Agency shall, as soon as practicable after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and not later than one hundred

and eighty days thereafter, promulgate regulations establishing uniform rules for the issuance of statements for the purpose of paragraph (2) (B) of this subsection.

"(4) There is authorized to be appropriated to the disaster loan fund established pursuant to section 4 (c) of this Act not to exceed $800,000,000 solely for the purpose of carrying out this subsection."

(b) Section 4 (c) (1) (A) of the Small Business Act is amended by striking out "and 7 (c) (2)" and inserting in lieu thereof "7 (c) (2), and 7 (g)".

Environmental Court

Sec. 9. The President, acting through the Attorney General, shall make a full and complete investigation and study of the feasibility of establishing a separate court, or court system, having jurisdiction over environmental matters and shall report the results of such investigation and study together with his recommendations to Congress not later than one year after the date of enactment of this Act.

National Policies and Goals Study

Sec. 10. The President shall make a full and complete investigation and study of all of the national policies and goals established by law for the purpose of determining what the relationship should be between these policies and goals, taking into account the resources of the Nation. He shall report the results of such investigation and study together with his recommendations to Congress not later than two years after the date of enactment of this Act. There is authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this section.

Efficiency Study

Sec. 11. The President shall conduct a full and complete investigation and study of ways and means of utilizing in the most effective manner all of the various resources, facilities, and personnel of the Federal Government in order most efficiently to carry out the objective of the Federal Water Pollution Control Act. He shall utilize in conducting such investigation and study, the General Accounting Office. He shall report the results of such investigation and study together with his recommendations to Congress not later than two hundred and seventy days after the date of enactment of this Act.

Environmental Financing

Sec. 12. (a) This section may be cited as the "Environmental Financing Act of 1972".

(b) 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) 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) (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 effect 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) (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.

(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; 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.

(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) 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 purpose of this subsection.

(g) (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 limitation, 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 the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act 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.

(h) 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) 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) 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) 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) 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) 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) The sixth sentence of the seventh paragraph of section 5136 of the Revised Statutes, as amended (12 U.S.C. 24), is amended by inserting "or obligations of the Environmental Financing Authority" immediately after "or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association".

(o) The budget and audit provisions of the Government Corporation Control Act (31 U.S.C. 846) shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations.

(p) Section 3689 of the Revised Statutes, as amended (31 U.S.C. 711), is further amended by adding a new paragraph following the last paragraph appropriating moneys for the purposes under the Treasury Department to read as follows:

"Payment to the Environmental Financing Authority: For payment to the Environmental Financing Authority under subsection (h) of the Environmental Financing Act of 1972."

Sex Discrimination

Sec. 13. 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, the Federal Water Pollution Control Act, or the Environmental Financing Act. 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. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee.

Existing Guidelines*

Sec. 73. Within 90 days after the date of enactment of this Act, the Administrator shall review every effluent guidelines promulgated prior to the date of enactment of this Act which is final or interim final (other than those applicable to industrial categories listed in table 2 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives) and which applies to those pollutants identified pursuant to section 304 (a) (4) of the Federal Water Pollution Control Act. The Administrator shall review every guideline applicable to industrial categories listed in such table 2 on or before July 1, 1980. Upon completion of each such review the Administrator is authorized to make such adjustments in any such guidelines as may be necessary to carry out section 304 (b) (4) of such Act. The Administrator shall publish the results of each such review, including, with respect to each such guideline, the determination to adjust or not to adjust such guideline. Any such determination by the Administrator shall be final except that if, on judicial review in accordance with section 509 of such Act, it is determined that the Administrator either did not comply with the requirements of this section or the determination of the Administrator was based on arbitrary and capricious action in applying section 304 (b) (4) of such Act to such guideline, the Administrator shall make a further review and redetermination of any such guideline.

Seafood Processing Study*

Sec. 74. The Administrator of the Environmental Protection Agency shall 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. In addition, such study shall examine 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. The results of such study shall be submitted to Congress not later than January 1, 1979.

Cost Recovery Study*

Sec. 75. (a) The Administrator of the Environmental Protection Agency (hereafter in this section referred to as the "Administrator") shall study the efficiency of, and the need for, the payment by industrial users of any treatment works of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of industrial wastes to the extent attributable to the Federal share of the cost of construction. Such study shall include, but not be limited to, an analysis of the impact of such a system of payment upon rural communities and on industries in economically distressed areas or areas of high unemployment. No later than the last day of the twelfth month which begins after the date of enactment of this section, the Administrator shall submit a report to the Congress setting forth the results of such study.

(b) During the period beginning on the date of enactment of this section and ending on the last day of the eighteenth month which begins after the date of enactment of this section (both dates inclusive), no officer or employee of the Federal Government shall enforce, or require any recipient of a grant under section 201 (g) (1) of the Federal Water Pollution Control Act (33 U.S.C. 1284) to enforce, any provision in an application for a grant or in a grant agreement by industrial users pursuant to section 204 (b) (1) (B) of such Act.

(c) For purposes of this section, the terms "industrial user" and "treatment works" have the same meaning given such terms in the Federal Water Pollution Control Act.

(d) Any payment by an industrial user which, but for subsection (b) of this section, was due and payable during the eighteen-month period described in such subsection shall after such eighteen-month period be paid in accordance with the applicable provisions of the Federal Water Pollution Control Act in equal annual installments prorated over the remaining useful life of the treatment works with respect to which they are requested to be paid.

Lake Chelan Delegation*

Sec. 76. 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 and by sections 9, 10, and 13 of the Act of March 3, 1899, 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.

Secondary Treatment Facility Site*

Sec. 77. The Administrator of the Environmental Protection Agency shall reimburse the city of Boston, Massachusetts, an amount equal to 75 per centum, but not to exceed $15,000,000, of the cost of constructing a modern correctional detention facility on a site in such city, on condition that such city convey to the Commonwealth of Massachusetts all of its right, title, and interest in and to that real property owned by such city on Deer Island which is the site of the existing correctional detention facility for use by such Commonwealth as the site for a publicly owned treatment works providing secondary treatment. There is authorized to be appropriated $15,000,000 to carry out the purposes of this section.

Total Treatment System Funding*

Sec. 78. 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 for the same treatment works exceeds the actual construction costs for such treatment works (as defined in that Act) 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 grants were approved, and

(2) an application for assistance for the construction of such sewage collection system was filed in accordance with section 702 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3102) before all such section 201 grants were made and such section 702 grant could not be approved due to lack of funding under such section 702.

The total of all grants for sewage collection systems made under this section shall not exceed $2,800,000.

*Provisions from the Clean Water Act of 1977

COLORADO RIVER BASIN SALINITY CONTROL ACT*

AN ACT

To authorize the construction, operation, and maintenance of certain works in the Colorado River Basin to control the salinity of water delivered to users in the United States and Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Colorado River Basin Salinity Control Act".

TITLE I - PROGRAMS DOWNSTREAM FROM IMPERIAL DAM

Section 101. (a) The Secretary of the Interior, hereinafter referred to as the "Secretary", is authorized and directed to proceed with a program of works of improvement for the enhancement and protection of the quality of water available in the Colorado River for use in the United States and the Republic of Mexico, and to enable the United States to comply with its obligations under the agreement with Mexico of August 30, 1973 (Minute No. 242 of the International Boundary and Water Commission, United States and Mexico), concluded pursuant to the Treaty of February 3, 1944 (TS 994), in accordance with the provisions of this Act.

(b) (1) The Secretary is authorized to construct, operate, and maintain a desalting comples, including (1) a desalting plant to reduce the salinity of drain water from the Wellton-Mohawk division of the Gila project, Arizona (hereinafter referred to as the division), including a pretreatment plant for settling, softening, and filtration of the drain water to be desalted; (2) the necessary appurtenant works including the intake pumping plant system, product waterline, power transmission facilities, and permanent operating facilities; (3) the necessary extension in the United States and Mexico of the existing bypass drain to carry the reject stream from the desalting plant and other drainage waters to the Santa Clara Slough in Mexico, with the part in Mexico, subject to arrangements made pursuant to section 101 (d); (4) replacement of the metal flume in the existing main outlet drain extension with a concrete siphon; (5) reduction of the quantity of irrigation return flows through acquisition of lands to reduce the size of the division, and irrigation efficiency improvements to minimize return flows; (6) acquire on behalf of the United States

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*P.L. 93-320 signed by the President on June 24, 1974. Passed the House on June 11, 1974, and Senate on June 12, 1974, as HR 12165, 93rd Congress 2nd Session.

such lands or interest in lands in the Painted Rock Reservoir as may be necessary to operate the project in accordance with the obligations of Minute No. 242, and (7) all associated facilities including roads, railroad spur, and transmission lines.

(2) The desalting plant shall be designed to treat approximately one hundred and twenty-nine gallons a day of drain water using advanced technology commercially available. The plant shall effect recovery initially of not less than 70 per centum of the drain water, and shall effect reduction of not less than 90 per centum of the dissolved solids in the feed water. The Secretary shall use sources of electric power supply for the desalting complex that will not diminish the supply of power to preference customers from Federal power systems operated by the Secretary. All costs associated with the desalting plant shall be nonreimbursable.

(c) Replacement of the reject stream from the desalting plant and of any Wellton-Mohawk drainage water bypasses to the Santa Clara Slough to accomplish essential operation except at such times when there exists surplus water of the Colorado River under the terms of the Mexican Water Treaty of 1944, is recognized as a national obligation as provided in section 202 of the Colorado River Basin Project Act (82 Stat. 895). Studies to identify feasible measures to provide adequate replacement water shall be completed not later than June 30, 1980. Said studies shall be limited to potential sources within the States of Arizona, California, Colorado, New Mexico, and those portions of Nevada, Utah, and Wyoming which are within the natural drainage basin of the Colorado River. Measures found necessary to replace the reject stream from the desalting plant and any Wellton-Mohawk drainage bypassed to the Santa Clara Slough to accomplish essential operations may be undertaken independently of the national obligation set forth in section 202 of the Colorado River Basin Project Act.

(d) The Secretary is hereby authorized to advance funds to the United States section, International Boundary and Water Commission (IBWC), for construction, operation, and maintenance by Mexico pursuant to Minute No. 242 of that portion of the bypass drain within Mexico. Such funds shall be transferred to an appropriate Mexican agency, under arrangements to be concluded by the IBWC providing for the construction, operation, and maintenance of such facility in Mexico.

(e) Any desalted water nat needed for the purposes of this title may be exchanged at prices and under terms and conditions satisfactory to the Secretary and the proceeds therefrom shall be deposited in the General Fund of the Treasury. The city of Yuma, Arizona, shall have first right of refusal of any such water.

(f) For the purpose of reducing the return flows from the division to one hundred and seventy-five thousand acrefeet or less, annually, the Secretary is authorized to:

(1) Accelerate the cooperative program of Irrigation Management Services with the Wellton-Mohawk Irrigation and Drainage District, hereinafter referred to as the district, for the purpose of improving irrigation efficiency. The district shall bear its share of the cost of such program as determined by the Secretary.

(2) Acquire, by purchase or through eminent domain or exchange, to the extent determined by him to be appropriate, lands or interests in lands to reduce the existing seventy-five thousand developed and undeveloped irrigable acres authorized by the Act ot July 30, 1947 (61 Stat. 628), known as the Gila Reauthorization Act. The intial reduction in irrigable acreage shall be limited to approximately ten thousand acres. If the Secretary determines that the irrigable acreage of the division must be reduced below sixty-five thousand acres of irrigable lands to carry out the purpose of this section, the Secretary is authorized, with the consent of the district, to acquire additional lands, as may be deemed by him to be appropriate.

(g) The Secretary is authorized to dispose of acquired lands and interests therein on terms and conditions satisfactory to him and meeting the objective of this Act.

(h) The Secretary is authorized, either in conjunction with or in lieu of land acquisition, to assist water users in the division in installing system improvements, such as ditch lining, change of field layouts, automatic equipment, sprinkler systems and bubbler systems, as a means of increasing irrigation efficiencies: Provided, however, that all costs associated with the improvements authorized herein and allocated to the water users on the basis of benefits received, as determined by the Secretary, shall be reimbursed to the United States in amounts and on terms and conditions satisfactory to the Secretary.

(i) The Secretary is authorized to amend the contract between the United States and the district dated March 4, 1952, as amended, to pro provide that--

(1) the portion of the existing payment obligation owning to the United States allocable to irrigable acreage eliminated from the division for the purposes of this title, as determined by the Secretary, shall be non reimbursable; and

(2) if deemed appropriate by the Secretary, the district shall be given credit against its outstanding repayment obligation to offset any increase in operation and maintenance assessments per acre which may result from the district's decreased operation and maintenance base, all as determined by the Secretary.

(j) The Secretary is authorized to acquire through the Corps of Engineers fee title to, or other necessary interests in, additional lands above the Painted Rock Dam in Arizona that are required for the temporary storage capacity needed to permit operation of the dam and reservoir in times of serious flooding in accordance with the obligations of the United States under Minute No. 242. No funds shall be expended for acquisition of land or interests therein until it is finally determined by a Federal court of competent jurisdiction that the Corps of Engineers presently lacks legal authority to use said lands for this purpose. Nothing contained in this title nor any action taken pursuant to it shall be deemed to be a recognition or admission of any obligation to the owners of such land on the part of the United States or a limitation or deficiency in the rights or powers of the United

States with respect to such lands or the operation of the reservoir.

(k) To the extent desirable to carry out sections 101 (f) (1) and 101 (h), the Secretary may transfer funds to the Secretary of Agriculture as may be required for technical assistance to farmers, conduct of research and demonstrations, and such related investigations as are required to achieve higher on-farm irrigation efficiencies.

(l) All cost associated with the desalting complex shall be nonreimbursable except as provided in sections 101 (f) and 101 (h).

Section 102. (a) To assist in meeting salinity control objectives of Minute No. 242 during an interim period, the Secretary is authorized to construct a new concrete-lined canal or, to line the presently unlined portion of the Coachella Canal of the Boulder Canyon project, California, from station 2 plus 26 to the beginning of siphon numbered 7, a length of approximately forty-nine miles. The United States shall be entitled to temporary use of a quantity of water, for the purpose of meeting the salinity control objectives of Minute No. 242, during a interim period, equal to the quantity of water conserved by constructing or lining the said canal. The interim period shall commence on completion of construction or lining said canal and shall end the first year that the Secretary delivers main stream Colorado River water to California in an amount less than the sum of the quantities requested by (1) the California agencies under contracts made pursuant to section 5 of the Boulder Canyon Project Act (45 Stat. 1057), and (2) Federal establishments to meet their water rights acquired in California in accordance with the Supreme Court decree in Arizona against California (376 U.S. 340).

(b) The charges for total construction shall be repayable without interest in equal annual installments over a period of forty years beginning in the year following completion of construction: Provided, That, repayment shall be prorated between the United States and the Coachella Valley County Water District, and the Secretary is authorized to enter into a repayment contract with Coachella Valley County Water District for that purpose. Such contract shall provide that annual repayment installments shall be nonreimbursable during the interim period, defined in section 102 (a) of this title and shall provide that after the interim period, said annual repayment installments or portions thereof, shall be paid by Coachella Valley County Water District.

(c) The Secretary is authorized to acquire by purchase, eminent domain, or exchange private lands or interests therein, as may be determined by him to be appropriate, within the Imperial Irrigation District on the Imperial East Mesa which receive, or which have been granted rights to receive, water from Imperial Irrigation District's capacity in the Coachella Canal. Costs of such acquisitions shall be nonreimbursable and the Secretary shall return such lands to the public domain. The United States shall not acquire any water rights by reason of this land acquisition.

(d) The Secretary is authorized to credit Imperial Irrigation District against its final payments for certain outstanding construction charges payable to the United States on account of capacity to be

relinquished in the Coachella Canal as a result of the canal lining program, all as determined by the Secretary: Provided, That, relinquishment of capacity shall not affect the established basis for allocating operation and maintenance costs of the main All-American Canal to existing contractors.

(e) The Secretary is authorized and directed to cede the following land to the Cocopah Tribe of Indians, subject to rights-of-way for existing levees, to be held in trust by the United States for the Cocopah Tribe of Indians:

Township 9 south, range 25 west of the Gila and Salt River meridian Arizona;

Section 25: Lots 18, 19, 20, 21, 22, and 23;
Section 26: Lots 1, 12, 13, 14, and 15;
Section 27: Lot 3; and all accretion to the above described lands.

The Secretary is authorized and directed to construct three bridges, one of which shall be capable of accomodating heavy vehicular traffic, over the section of the bypass drain which crosses the reservation of the Cocopah Tribe of Indians. The transfer of lands to the Cocopah Indian Reservation and the construction of bridges across the bypass drain shall constitute full and complete payment of said tribe for the rights-of-way required for construction of the bypass drain and electrical transmission lines for the works authorized by this title.

Section 103. (a) The Secretary is authorized to:

(1) Construct, operate, and maintain, consistent with Minute No. 242, well fields capable of furnishing approximately one hundred and sixty thousand acre-feet of water per year for use in the United States and for delivery to Mexico in satisfaction of the 1944 Mexican Water Treaty.

(2) Acquire by purchase, eminent domain, or exchange, to the extent determined by him to be appropriate, approximately twenty-three thousand five hundred acres of lands or interests therein within approximately five miles of the Mexican border on the Yuma Mesa: Provided, however, That any such lands which are presently owned by the State of Arizona may be acquired or exchanged for Federal lands.

(3) Any lands removed from the jurisdiction of the Yuma Mesa Irrigation and Drainage District pursuant to clause (2) of this subsection which were available for use under the Gila Reauthorization Act (61 Stat. 628), shall be replaced with like lands within or adjacent to the Yuma Mesa division of the project. In the development of these substituted lands or any other lands within the Gila project, the Secretary may provide for full utilization of the Gila Gravity Main Canal in addition to contracted capacities.

(b) The cost of work provided for in this section, including delivery of water to Mexico, shall be nonreimbursable; except to the extent that the waters furnished are used in the United States.

Section 104. The Secretary is authorized to provide for modifications of the projects authorized by this title to the extent he determines appropriate for purposes of meeting the international settlement objective of this title at the lowest overall cost to the United States. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to the appropriate committees of the Congress, unless the Congress approves an earlier date by concurrent resolution. The Secretary shall notify the Governors of the Colorado River Basin States of such modifications.

Section 105. The Secretary is hereby authorized to enter int contracts that he deems necessary to carry out the provisions of this title in advance of the appropriation of funds therefor.

Section 106. In carrying out the provisions of this title, the Secretary shall consult ant cooperate with the Secretary of State, the Administrator of the Enviornmental Protection Agency, the Secretary of Agriculture, and other affected Federal, State, and local agencies.

Section 107. Nothing in this Act shall be deemed to modify the National Enviornmental Policy Act of 1969, the Federal Water Pollution Control Act, as amended, or, except as expressly stated herein, the provisions of any Federal law.

Section 108. There is hereby authorized to be appropriated the sum or $121,500,000 for the construction of the works and accomplishment of the purposes authorized in sections 101 and 102, and $34,000,000 to accomplish the purposes of section 103, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in construction costs involved therein, and such sums as may be required to operate and maintain such works and to provide for such modifications as may be made pursuant to section 104. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 90-646).

TITLE II - MEASURES UPSTREAM FROM IMPERIAL DAM

Section 201. (a) The Secretary of the Interior shall implement the salinity control policy adopted for the Colorado River in the "Conclusions and Recommendations" published in the Proceedings of the Reconvened Seventh Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and Its Tributaries in the States of California, Colorado, Utah, Arizona, Nevada, New Mexico, and Wyoming, held in Denver, Colorado, on April 26-27, 1972, under the authority of section 10 of the Federal Water Pollution Control Act (33 U.S.C. 1160), and approved by the Administrator of the Enviornmental Protection Agency on June 9, 1972.

(b) The Secretary is hereby directed to expidite the investigation, planning, and implementation of the salinity control program generally as described in chapter VI of the Secretary's report entitled, "Colorado River Water Quality Improvement Program, February 1972".

(c) In conformity with section 201 (a) of this title and the authority of the Enviornmental Protection Agency under Federal Laws, the Secretary, the Administrator of the Enviornmental Protection Agency, and the Secretary of Agriculture are directed to cooperate and coordinate their activities effectively to carry out the objective of this title.

Section 202. The Secretary is authorized to construct, operate, and maintain the following salinity control units as the initial stage of the Colorado River Basin salinity control program.

(1) The Paradox Valley unit, Montrose County, Colorado, consisting of facilities for collection and disposition of saline ground water of Paradox Valley, including wells, pumps, pipelines, solar evaopration ponds, and all necessary appurtenant and associated works such as roads, fences, dikes, power transmission facilities, and permanent operating facilities.

(2) The Grand Valley unit, Colorado, consisting of measures and all necessary appurtenant and associated works to reduce the seepage of irrigation water from the irrigated lands of Grand Valley into the ground water and thence into the Colorado River. Measures shall include lining of canals and laterals, and the combining of existing canals and laterals into fewer and more efficient facilities. Prior to intiation of construction of the Grand Valley unit the Secretary shall enter into contracts through which the agencies owning, operating, and maintaining the water distribution systems in Grand Valley, singly or in concert, will assume all obligations relating to the continued operation and maintenance of the unit's facilities to the end that the maximum reduction of salinity inflow to the Colorado River will be achieved. The Secretary is also authorized to provide, as an element of the Grand Valley unit, for a technical staff to provide information and assistance to water users on means and measures for limiting excess water applications to irrigated lands: Provided, That such assistance shall not exceed a period of five years after funds first become available under this title. The Secretary will enter into agreements with the Secretary of Agriculture to develop a unified control plan for the Grand Valley unit. The Secretary of Agriculture is directed to cooperate in the planning and construction of on-farm system measures under programs available to that Department.

(3) The Crystal Geyser unit, Utah, consisting of facilities for collection and disposition of saline geyser discharges; including dikes, pipelines, solar evaporation ponds, and all necessary appurtenant works including operating facilities.

(4) The Las Vegas Wash unit, Nevada, consisting of facilities for collection and disposition of saline ground water of Las Vegas Wash, including infiltration galleries, pumps, desalter, pipelines, solar evaporation facilities, and all appurtenant works including but not limited to roads, fences, power transmission facilities, and operating facilities.

Section 203. (a) The Secretary is authorized and directed to--

(1) Expedite completion of the planning reports on the following units, described in the Secretary's report, "Colorado River Water Quality Improvement Program, February 1972":

(i) Irrigation source control:
Lower Gunnison
Uintah Basin
Colorado River Indian Reservation
Palo Verde Irrigation District

(ii) Point source control:
LaVerkin Springs
Littlefield Springs
Glenwood-Dotsero Springs

(iii) Diffuse source control:
Price River
San Rafael River
Dirty Devil River
McElmo Creek
Big Sandy River

(2) Submit each planning report on the units named in section 203 (a) (1) of this title promptly to the Colorado River Basin States and to such other parties as the Secretary deems appropriate for their review and comments. After receipt of comments on a unit and careful consideration thereof, the Secretary shall submit each final report with his recommendations, simultaneously, to the President, other concerned Federal departments and agencies, the Congress, and the Colorado River Basin States.

(b) The Secretary is directed--

(1) in the investigation, planning, construction, and implementation of any salinity control unit involving control of salinity from irrigation sources, to cooperate with the Secretary of Agriculture in carrying out research and demonstration projects and in implementing on-the-farm improvements and farm management practices and programs which will further the objectives of this title;

(2) to undertake research on additional methods for accomplishing the objective of this title, utilizing to the fullest extent practicable the capabalities and resources of other Federal departments and agencies, interstate institutions, States, and private organizations.

Section 204. (a) There is hereby created the Colorado River Basin Salinity Control Advisory Council composed of no more than three members from each State appointed by the Governor of each of the Colorado River Basin States.

(b) The Council shall be advisory only and shall--

(1) act as liaison between both the Secretaries of Interior and Agriculture and the Administrator of the Enviornmental Protection Agency and the States in accomplishing the purposes of this title;

(2) receive reports from the Secretary on the progress of the salinity control program and review and comment on said reports; and

(3) recommend to both the Secretary and the Administrator of the Enviornmental Protection Agency appropriate studies of further projects, techniques, or methods for accomplishing the purposes of this title.

Section 205. (a) The Secretary shall allocate the total costs of each unit or separable feature thereof authorized by section 202 of this title, as follows:

(1) In recognition of Federal responsibility for the Colorado River as an interstate stream and for international comity with Mexico, Federal ownership of the lands of the Colorado River Basin from which most of the dissolved salts originate, and the policy embodied in the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816), 75 per centum of the total costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof shall be nonreimbursable.

(2) Twenty-five per centum of the total costs shall be allocated between the Upper Colorado River Basin Fund established by section 5 (a) of the Colorado River Storage Project Act (70 Stat. 107) and the Lower Colorado River Basin Development Fund established by section 403 (a) of the Colorado River Basin Project Act (82 Stat. 895), after consultation with the Advisory Council created in section 204 (a) of this title and consideration of the following items:

(i) benefits to be derived in each basin from the use of water of improved quality and the use of works for improved water management;

(ii) causes of salinity; and

(iii) availability of revenues in the Lower Colorado River Basin Development Fund and increased revenues to the Upper Colorado Basin Fund made available under section 205 (d) of this title: Provided, That costs allocated to the Upper Colorado River Basin Fund under section 205 (a) (2) of this title shall not exceed 15 per centum of the costs allocated to the Upper Colorado River Basin Fund and the Lower Colorado River Basin Development Fund.

(3) Costs of construction of each unit or separable feature thereof allocated to the upper basin and to the lower basin under section 205 (a) (2) of this title shall be repaid within a fifty-year

period withour interest from the date such unit or separable feature thereof is determined by the Secretary to be in operation.

(b) (1) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the lower basin under section 205 (a) (2) of this title shall be paid in accordance with subsection 205 (b) (2) of this title, from the Lower Colorado River Basin Developement Fund.

(2) Section 403 (g) of the Colorado River Basin Project Act (82 Stat. 896) is hereby amended as follows: strike the word "and" after the word "Act," in line 8; insert after the word "Act," the following "(2) for repayment to the general fund to the Treasury the costs of each salinity control unit or separable feature thereof payable from the Lower Colorado River Basin Development Fund in t accordance with sections 205 (a) (2) 205 (a) (3), and 205 (b) (1) of the Colorado River Salinity Control Act and"; change pagagraph (2) to paragraph (3).

(c) Costs of construction, operation, maintenance, and replacement of each unit or separable feature thereof allocated for repayment by the upper basin under section 205 (a) (2) of this title shall be paid in accordance with section 205 (d) of this title from the Upper Colorado River Basin Fund within the limit of the funds made available under section 205 (e) of this title.

(d) Section 5 (d) of the Colorado River Storage Project Act (70 Stat. 108) is hereby amended as follows: strike the word "and" at the end of paragraph (3); strike the period after the word "years" at the end of paragraph (4) and insert a semicolon in lieu thereof followed by the word "and"; add a new paragraph (5) reading:

> "(5) the costs of each salinity control unit or separable feature thereof payable from the Upper Colorado River Basin Fund in accordance with sections 205 (a)(2), 205 (a) (3), and 205 (c) of the Colorado River Salinity Control Act.".

(e) The Secretary is authorized to make upward adjustments in rates charged for electrical energy under all contracts administered by the Secretary under the Colorado River Storage Project Act (70 Stat. 105, 43 U.S.C. 620) as soon as practicable and to the extent necessary to cover the costs of construction, operation, maintenance, and replacement of units allocated under section 205 (a) (2) and in conformity with section 205 (a) (3) of this title: Provided, That revenues derived from said rate adjustments shall be available solely for the construction, operation, maintenance, and replacement of salinity control unity in the Colorado River Basin herein authorized.

Section 206. Commencing on January 1, 1975, and every two years thereafter, the Secretary shall submit, simultaneously, to the President, the Congress, and the Advisory Council created in section 204 (a) of this title, a report on the Colorado River salinity control program authorized by this title covering the progress of investigations, planning, and construction of salinity control units for the previous fiscal year, the effectiveness of such units, anticipated work needed

to be accomplished in the future to meet the objectives of this title, with emphasis on the needs during the five years immediately following the date of each report, and any special problems that may be impeding progress in attainint an effective salinity control program. Said report may be included in the biennial report on the quality of water of the Colorado River Basin prepared by the Secretary pursuant to section 15 of the Colorado River Storage Project Act (70 Stat. 111; 43 U.S.C. 602n), section 15 of the Navajo Indian irrigation project, and the initial stage of the San Juan Chama Project Act (76 Stat. 393).

Section 207. Except as provided in section 205 (b) and 205 (d) of this title, with respect to the Colorado River Basin Project Act and the Colorado River Storage Project Act, respectively, nothing in this title shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 994; 59 Stat. 1219), the decree entered by the Supreme Court of the United States in Arizona against California and others (376 U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), section 1t of the Colorado River Storage Project Act (70 Stat. 111; 43 U.S.C. 620n), the Colorado River Basin Project Act (82 Stat. 885), section 6 of the Fryingpan-Arkansas Project Act (76 Stat. 393), section 15 of the Navajo Indian irrigation project and initial stage of the San Juan-Chama Project Act (76 Stat. 102), the National Enviornmental Policy Act of 1969, and the Federal Water Pollution Control Act, as amended.

Section 208. (a) The Secretary is authorized to provide for modifications of the projects authorized by this title as determined to be appropriate for purposes of meeting the objective of this title. No funds for any such modification shall be expended until the expiration of sixty days after the proposed modification has been submitted to appropriate committees of the Congress, and not then if disapproved by said committees, except that funds may be expended prior to the expiration of such sixty days in any case in which the Congress approves an earlier date by concurrent resolution. The Governors of the Colorado River Basin States shall be notified of these changes.

(b) The Secretary is hereby authorized to enter into contracts that he deems necessary to carry out the provisions of this title. in advance of the appropriation of funds therefor. There is hereby authorized to be appropriated the sum of $125,100,000 for the construction of the works and for other purposes authorized in section 202 of this title, based on April 1973 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations in costs involved therein, and such sums as may be required to operate and maintain such works. There is further authorized to be appropriated such sums as may be necessary to pay condemnation awards in excess of appraised values and to cover costs required in connection with the Uniform Policies Act of 1970 (Public Law 90-646).

Section 209. As used in this title--

(a) all terms that are defined in the Colorado River Compact shall have the meanings therein defined;

(b) "Colorado River Basin States" means the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

E. FEDERAL WATER POLLUTION CONTROL LAW

II. ENVIRONMENTAL PROTECTION AGENCY POLICY REQUIREMENTS, REGULATIONS AND STANDARDS ON SALINITY CONTROL FOR THE COLORADO RIVER SYSTEM*

ENVIRONMENTAL PROTECTION AGENCY

(40 CFR Part 120)

Colorado River System

The purpose of this notice is to propose amendments to 40 CFR Part 120, to set forth a salinity control policy and procedures and requirements for establishing water quality standards for salinity and a plan of implementation for salinity control in the Colorado River System which lies within the States of Arizona, Califoria, Colorado, Nevada, New Mexico, Utah, and Wyoming pursuant to section 303 (b) of the Federal Water Pollution Control Act, as amended of the Colorado River and its tributaries within the United States of America.

High salinity (total dissolved solids) is recognized as a significant water quality problem causing adverse impacts on water uses. Salinity concentrations are affected by two basic processes: (a) Salt loading--the addition of mineral salts from various natural and man-made sources, and (b) salt concentrating--the loss of water from the system through stream depletion.

Studies to date have demonstrated that the high salinity of stream systems can be alleviated. Although further study amy be required to determine the economic and technical feasibility of controlling specific sources, sufficient information is available to develop a salinity control program.

Salinity standards for the Colorado River System would be useful in the formulation of an effective salinity control program. In developing these standards, the seven states must cooperate with one another and the Federal Government to support and implement the conclusions and recommendations adopted April 27, 1972, by the reconvened 7th Session of the Conference in the Matter of Pollution of the Interstate Waters of the Colorado River and its Tributaries.

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*Published in 39 Federal Register 20703, June 13, 1974. Approved December 18, 1974, 30 Federal Register 43721.

As a measure to implement the recommendations of the Conference and meet the requirements of the Act, a salinity control policy is proposed to be promulgated and proposed regulations are set forth which would require the development and adoption of water quality standards for salinity and a plan of implementation for salinity constrol for the Colorado River System. The first step will be the establishment of procedures within 30 days of the effective date of these regulations which will lead to adoption on or before October 18, 1975, of water quality standards for salinity including numeric criteria and an implementation plan for salinity control.

In consideration of the foregoing, it is hereby proposed that 40 CFR Part 120 be amended as follows:*

Section 120.5 Colorado River System Salinity Standards and Implementation Plan.

(a) "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) It shall be the policy that the flow weighted average annual salinity in the lower main stem of the Colorado River System be maintained at or below the average value found during 1972. To carry out this policy, water quality standards for salinity and a plan of implementation for salinity control shall be developed and implemented in accordance with the principles of paragraph (c) below.

(c) The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming are required to adopt and submit for approval to the Enviornmental Protection Agency on or before October 18, 1975.

(1) Adopted water quality standards for salinity including numeric criteria consistent with the policy stated above for appropriate points in the Colorado River System.

(2) A plan to achieve compliance with these standards as expeditiously as practicable providing that:

(i) The plan shall identify State and Federal regulatory authorities and programs necessary to achieve compliance with the plan.

(ii) The salinity problem shall be treated as a basinwide problem that needs to be solved in order to maintain lower main stem salinity at or below 1972 levels while the basin States continue to develop their compact apportioned waters.

(iii) The goal of the plan shall be to achieve compliance with the adopted standards by July 1, 1983. The date of compliance with the adopted standards shall take into account the necessity for Federal salinity control actions set forth in the plan. Abatement measures within the control of the States shall be implemented as soon as practicable.

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* Text as approved in December 1974.

(iv) Salinity levels in the lower main stem may temporarily increase above the 1972 levels if control measures to offset the increases are included in the control plan. However, compliance with 1972 levels shall be a primary consideration.

(v) The feasibility of establishing an interstate institution for salinity management shall be evaluated.

(d) The States are required to submit to the respective Enviornmental Protection Agency Regional Administrator established procedures for achieveing (c) (1) and (c) (2) above within 30 days of the effective date of these regulations and to submit progress reports quarterly thereafter. EPA will on a quarterly basis determine the progress being made in the development of salinity standards and the implementation plan.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM*

Subpart A - Criteria and Standards for Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.1 Purpose and scope.

This Subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

§ 125.2 Definitions

For the purpose of this Part, any reference to "the Act" shall mean the Clean Water Act of 1977 (CWA). Unless otherwise noted, the definitions in Parts 122,123 and 124 apply to this Part.
(125.2 revised by 45 FR 33512, May 19, 1980)

§ 125.3 Technology-based treatment requirements in permits.

(a) General. Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.60, 122.61 and 122.62 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines:
(125.3(a) amended by 45 FR 33512, May 19, 1980)

(1) For POTW's, effluent limitations based upon:
(i) Secondary treatment-from date of permit issuance; and
(ii) The best practicable waste treatment technology-not later than July 1, 1983; and
(2) For dischargers other than POTW's except as provided in § 122.67(d), effluent limitations requiring:
(125.3(a)(2) amended by 45 FR 33512, May 19, 1980)
(i) The best practicable control technology currently available (BPT)-from date of permit issuance;
(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)-not later than July 1, 1984;

*(40 CFR 125; 38 FR 13527, May 22, 1973; as amended by Code of Federal Regulations, Volume 40, Revised as of July 1, 1975; 40 FR 29848, July 16, 1975; 41 FR 11303 and 11458, March 18, 1976; 41 FR 24709, June 18, 1976; 41 FR 24893, July 12, 1976; 41 FR 36918, September 1, 1976; 43 FR 22160, May 23, 1978; 44 FR 32854, June 7, 1979; Effective August 13, 1979; 44 FR 34816, June 15, 1979; 45 FR 33512, May 19, 1980)

(iii) For all toxic pollutants referred to in Committee Print No. 95-30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)-not later than July 1, 1984;

(iv) For all toxic pollutants other than those listed in Committee Print No. 95-30, effluent limitations based on the BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit; and

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT not later than three years after the date such effluent limitations are incorporated into an NPDES permit, or July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(b) Statutory variances and extensions. (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 122.53; (125.3(b)(1) amended by 45 FR 33512, May 19, 1980)

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (Subpart G);

(ii) For dischargers other than POTW's;

(A) A section 201(c) economic variance from BAT (Subpart E);

(B) A section 301(g) water quality related variance from BAT (Subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (Subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 122.53: (125.3(b)(2) amended by 45 FR 33512, May 19, 1980)

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (Subpart J);

(ii) For dischargers other than POTW's:

(A) A Section 301(i) extension of the BPT deadline (Subpart J); and

(B) A section 301(k) extension of the BAT deadline (Subpart C).

(c) Methods of imposing technology-based treatment requirements in permits. Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under §122.53 and Subpart D of this Part.
(125.3(c)(1) amended by 45 FR 33512, May 19, 1980)

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in section 304 of the Act, and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available

information (including EPA draft or proposed development documents or guidance); and

(ii) Any unique factors relating to the applicant.

(Comment: These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.)

(3) Through a combination of the methods in paragraphs (c)(1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(4) Limitations developed under paragraph (c)(2) of this section may be expressed, where appropriate, in terms of toxcity (e.g., "The LC 50 for fat head minnow of the effluent from outfall 001 shall be greater than 25%), provided that is shown that the limits reflect the appropriate requirements (for example, technology-based or water-quality-based standards) of the Act.

(125.3(c)(4) added by 45 FR 33512, May 19, 1980)

(d) Technology-based treatment requirements are applied prior to or at the point of discharge.

(e) Technology-based treatment requirements cannot be satisfied through the use of "non-treatment" techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The Discharger agrees to waive any opportunity to request a variance under sections 301(c), (g) or (h) of the Act: and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(f) Technology-based effluent limitations shall be established under this Subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(125.3(g) added by 45 FR 33512, May 19, 1980)

(g)(1) The director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification under section 301(c) or (g) of the Act where:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant, or

(ii)(A) The limitation reflects BAT level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(B) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the

limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in paragraph (g)(1)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(2) The Director may set a permit limit for a conventional pollutant level more stringent than BCT when:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance, or

(ii)(A) The limitation reflects BAT-level control of discharges (or an appropriate level determined under section 301(c) or (g) of the Act) of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT (or other appropriate) limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(B) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate level) control of the hazardous substances discharges identified in paragraph (g)(2)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(iii) Hazardous substances which are also toxic pollutants are subject to paragraph (g)(1) of this section.

(3) The Director may not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(4) Toxic pollutants identified under paragraph (g)(1) of this section remain subject to the requirements of §122.61(a)(1)(notification of increased discharges of toxic pollutants above levels reported in the application form).

Subpart B - Criteria for Issuance of Permits to Aquaculture Projects

§ 125.10 Purpose and scope.

(a) These regulations establish guidelines under sections 318 and 402 of the Act for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to determine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. EPA policy is to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) Permits issued for discharges into aquaculture projects under this Subpart are NPDES permits and are subject to the applicable requirements of Parts 122, 123 and 124. Any permit shall include such conditions (including monitoring and reporting requirements) as are

necessary to comply with those Parts. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

§ 125.11 Criteria

(a) No NPDES permit shall be issued to an aquaculture project unless:

(1) the Director determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

(2) The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under culture over what would naturally occur in the area;

(3) The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.
(Comment: Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of section 404 of the Act.)
(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Subpart C - Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act - (Reserved)

Subpart D - Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1) (A), 301(b)(2)(A)and (E), and 307(b) of the Act.

§ 125.30 Purpose and scope.

(a) This Subpart establishes the criteria and standards to be used in determining whether effluent limitations or standards alternative to those required by promulgated EPA effluent limitations guidelines or standards under sections 301, 304, and 307(b) of the Act (hereinafter referred to as "national limits") should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This Subpart applies to all national limits promulgated under sections 301, 304 and 307(b) of the Act, except for those contained in 40 CFR Part 423(stream electric generating point source category).
(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b), 304(g) and 307(b) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different factors variance under §122.53(i)(1). In addition, such a variance may be proposed by the Director in the draft permit.
(125.30(b) amended by 45 FR 33512, May 19, 1980)

§125.31 Criteria.

(a) A request for the establishment of effluent limitations under

this Subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of Part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

(Comment: (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA. (2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a). Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See §125.2(c)(2).)

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technology.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.
(Comment: Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment)

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;
(Comment: Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.)

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this Subpart shall be submitted in duplicate to the Director in accordance with Part 124 Subpart F

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed on §125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of §125.31 have been met.

Subpart E - Criteria for Granting Economic Variances from Best Available Technology Economically Achievable Under Section 301(c) of the Act - (Reserved)

Subpart F - Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act (Reserved)

Subpart G - Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

(Subpart G added by 44 FR 34816, June 15, 1979)

§125.56 Scope and purpose.

This Subpart establishes the criteria and standards to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be imposed, in addition to terms and conditions required under Part 122, in any permit incorporating a section 301(h) modification of the secondary treatment requirement ("section 301(h) modified permit").

§125.57 Law authorizing issuance of a section 301(h) modified permit.

Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that -

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) Such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) The Applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) Any funds available to the owner of such treatment works under Title II of this Act will be used to achieve the degree of effluent reduction required by section 201(b) and (g)(2)(A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act.

§ 125.58 Definitions

For the purpose of this Subpart:

(a) "Applicant" means an applicant for a modified NPDES permit under section 301(h) of the Act.

(b) "Application format" means EPA's "Application Format for Modification of the Requirements of Secondary Treatment" provided in Part II of this regulation.

(c) "Balanced, indigenous population" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(d) "Current discharge" means the volume, composition, and location of an applicant's discharge as of any time between December 27, 1977 and (3 months after date of publication) as designated by the applicant.

(e) "Final application" means a submission for a section 301(h) modified permit to EPA not later than (90 days after date of publication). The final application shall contain:

(1) A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment;

(2) A signed, completed NPDES application Standard Form A, Parts I, II, and III; and

(3) The following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), and based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." (see § 125.59(d)(1)).

(f) "Improved discharge" means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system; or

(4) Implementation of a planned program to eliminate or control the introduction of pollutants into the applicant's treatment works.

(g) "Industrial source" means any source of nondomestic pollutants regulated under section 307(b) or (c) of the Act which discharges into a POTW.

(h) "Modified discharge" means the volume, composition and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested.

(i) "Nonindustrial source" means any source of pollutants which is not an industrial source.

(j) "Ocean waters" means those coastal waters landward of the baseline of the territorial seas, and the deep waters of the territorial seas, or the waters of the contiguous zone.

(k) "Pesticides" means demeton, guthion, malathion, mirex, methoxychlor and parathion.

(l) "Preliminary application" means a submission to EPA postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(m) "Primary treatment" means the first stage in wastewater treatment where substantially all floating or settleable solids, are removed by floatation and/or sedimentation.

(n) "Public water supplies" means water distributed from a public water system.

(o) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(p) "Publicly owned treatment works" ("POTW") means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality or intermunicipal or interstate agency.

(q) "Saline estuarine waters" means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(r) "Secondary treatment" means the term as defined in 40 CFR 133.102.

(s) "Shellfish, fish and wildlife" means any biological population or community that might be adversely affected by the applicant's modified discharge.

(t) "Stressed waters" means those receiving environments in which an applicant can demonstrate, to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's discharge.

(u) "Toxic pollutants" means those substances listed in Table 1 of Committee Print No. 95-30 of the Committee on Public Works and Transportation, House of Representatives, and published at 43 FR 4108 (January 31, 1978), as from time to time revised by the Administrator under section 307(a) of the Act.

(v) "Traditional pollutant" means biochemical oxygen demand ("BOD"), suspended solids ("SS") and pH.

(w) "State water quality standards" means applicable State water quality standards which have been:

(1) Approved or left in effect by the Administrator under section (303(a) or 303(c) of the Act; or

(2) Promulgated by the Administrator under section 303(b) or 303(c) of the Act, as of the date of any final application submitted under this Subpart.

(x) "Zone of initial dilution" ("ZID") means the region surrounding or adjacent to the end of the outfall pipe or diffuser ports, as calculated according to instructions in the application format, provided that it may not be larger than allowed by mixing zone restrictions in applicable State water quality standards.

§ 125.59 General.

(a) Basis for application. A final application for modified section 301(h) permit under this Subpart shall be based on either:

(1) A current discharge into ocean waters or saline estuarine waters; or

(2) An improved discharge into ocean waters or saline estuarine waters, Provided, That:

(i) The applicant demonstrates in its final application that such improvements have been thoroughly planned and studied as an alternative to secondary treatment and that it can expeditiously complete or implement such improvements; and

(ii) The applicant submits, as part of its final application, a proposed schedule for (A) the planning, design and staged construction of secondary treatment, and (B) such other improvements which will provide for the maximum amount of planning, design and construction which can be completed by the applicant pending a final decision on its application; and

(iii) The applicant has exercised its best efforts to comply with such schedule pending a final decision on its application.

(b) Prohibitions: No modified section 301(h) permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this Subpart;

(2) Where such issuance would not assure compliance with all applicable requirements of Part 122;

(3) Where the applicant's discharge was not actually flowing into ocean waters or saline estuarine waters as of December 27, 1977;

(4) For a discharge receiving less than primary treatment;

(5) For the discharge of sewage sludge;

(6) For any discharge for which there is as of September 13, 1979 an applicable State or local law, regulation or ordinance requiring secondary treatment of municipal wastewater, unless it can be shown that such law, regulation or ordinance is less stringent than secondary treatment, as defined in 40 CFR 133.102.

(7) Where such issuance would conflict with applicable provisions of other Federal laws, and, to the extent that they do not conflict with requirements of law, applicable provisions of Executive Orders. This includes situations where:

(i) The applicant's modified discharge is located in an area covered by an approved State coastal zone management program, and the applicant fails to provide certification under section 307(c) of the Coastal Zone Management

Act of 1972, as amended, 16 U.S.C. 1458(c), that its discharge complies with such program;

(ii) The issuance of a section 301(h) modified permit would jeopardize the continued existence of an endangered or threatened species listed under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., or would result in the destruction or modification of the habitat of such species; or,

(iii) The applicant's modified discharge is located in a marine or estuarine sanctuary designated by the Secretary of Commerce under the Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 et seq., or the Coastal Zone Management Act, as amended; 16 U.S.C. 1461 et seq., and the Secretary denies certification under either of these Acts;

(8) Where the applicant either did not submit a preliminary application or submits a final application which, on its face, did not demonstrate to the satisfaction of the Administrator that the applicant's modified discharge meets or will meet all the requirements of this Subpart; or,

(9) Where the applicant is currently meeting effluent limitations based on secondary treatment.

(c) Preliminary application. Each applicant for a section 301(h) modified permit under this Subpart must have submitted a preliminary application to EPA, postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(d) Final application. All final section 301(h) applications shall be signed by either a principal executive officer of the POTW or ranking elected official of the municipality. (See also § 122.5(a)(3)).

(1) Contents. Each applicant for a modified permit under this Subpart shall submit a final application to EPA which shall contain:

(i) A signed, completed NPDES Application Standard From A, Parts I,II, and III; and

(ii)A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment; and

(iii) The following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), based on my inquiry of those individuals immediately responsible for obtaining the information. I am convinced that the information is true, accurate and correct. I am aware that there are significant penalities for submitting false information, including the possibility of fine and imprisonment.

(2) Deadline and distribution. The original and two copies of the final application must be submitted to the following no later than September 13, 1979:

(i) 301(h) Review Group, Office of Water Program Operations, 401 M Street S.W. Washington, D.C. 20460 (original):

(ii) The Regional Administrator for the EPA Region in which the applicant is located (one copy); and

(iii) The State or interstate agency (or agencies) authorized to provide certification/concurrence under § 124.21-124.23 (one copy).

(e) Decisions on section 301(h) modifications. (1) The decision to grant or deny a section 301(h) modification of the secondary treatment requirement shall be:

(i) Made by the Administrator, or a person designated by the Administrator,

pursuant to § 124.55; and
(ii) Based on the applicant's demonstration that it has met all the criteria set forth in §§ 125.59-66.

(2) No section 301(h) modified permit shall be issued by the Administrator, or person designated by the Administrator:

(i) Until the appropriate State certification/concurrence is granted or waived pursuant to § 124.24; or

(ii) If the appropriate State denies certification/concurrence pursuant to § 124.24.

(3) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in Part 124; and

(ii) Contain all applicable terms and conditions set forth in Part 122; and

(iii) Contain the special permit terms set forth in § 125.67.

(4) Appeals of any section 301(h) determination shall be governed by the nonadversary initial licensing procedures set forth in Part 124, Subpart I.

(5) At the expiration of the section 201(h) permit, the POTW should be prepared to support the continuation of the modification based on studies and monitoring performed during the life of the permit.

§ 125.60 Existence of and compliance with applicable water quality standards.

(a) Criteria. There must exist a State water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) State water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) State water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the photic-zone; and

(3) State water quality standards for pH.

(b) Application requirements. To enable the Administrator to determine whether the applicant meets the criteria of paragraph (a), the applicant shall demonstrate in Part A Section 9 of its application that:

(1) An applicable State water quality standard(s) exists; and

(2) That the modified discharge will comply with these State water quality standard(s).

§ 125.61. Attainment of maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.

(a) Physical characteristics of discharge. - (1) Criteria. (i) The applicant's modified outfall and diffuser must be well designed, using accepted designs of outfall and diffuser systems, to provide appropriate initial dilution, dispersion and transport of wastewater, considering the volume of the discharge and site-specific physical and environmental conditions;

(ii) The initial dilution achieved by the applicant's modified discharge, as calculated in Part B, section 1 of the Application Format, must be sufficient to meet all applicable State water quality standards at and beyond the boundary of the zone of initial dilution during those conditions defined as critical in Part B, Sections 1-4, of the Application Format;

(iii) Dilution water must be supplied to that zone where entrainment

takes place in an amount equal to the wastewater flow times the dilution factor as calculated in Part B, Section 1 of the Application Format;

(iv) Following initial dilution, the partially diluted wastewater and particulates must be transported and dispersed so as not adversely affect water use areas (including recreational and fishing areas) and areas of biological sensitivity.

(2) Application requirements. To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (a)(1), the applicant shall provide the data on the physical characteristics and hydraulics of the outfall and on the physical oceanographic conditions in the vicinity of the outfall required by Part B, Sections 1-4, of the Application Format.

(b) Impact of discharge on public water supplies - (1) Criteria. (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(ii) The applicant's modified discharge must not:

(A) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or,

(B) Have the effect of requiring treatment over and above what would be necessary in the absence of such discharge in order to comply with local, State, and EPA drinking water standards.

(iii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

(2) ;Application requirements. To enable the Administrator to determine whether an applicant's modified discharge meets the requirements of paragraph (b)(1) of this section, the applicant shall provide the data on the impact of its outfall on existing and potential public water supplies required by the Public Water Supply Impact Assessment, Part B, section 5, of the Application Format.

(c) Biological impact of discharge. - (1) Criteria. (i) A balanced, indigenous population of shellfish, fish and wildlife must exist:

(A) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(B) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(ii) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution;

(iii) In the case of a modified discharge into saline estuarine waters the following additional restrictions are placed on impacts within the zone of initial dilution:

(A) Benthic populations within the zone of initial dilution must not differ substantially from the balanced, indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(B) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(C) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(iv) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which provides for the protection and propagation of fish, shellfish and wildlife.

(2) Application requirements. To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (c)(1) of this section, the applicant shall prepare a Biological Conditions Summary in accordance with the Marine Biological Assessment Part B, section 6, of the Application Format and shall answer all questions contained in the Marine Biological Assessment Questionnaire, part B, Section 7 of the Application Format, based on the summary.

(d) Impact of discharge on recreational activities. - (1) Criteria. (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing and picnicking and sports activities along shorelines and beaches.

(ii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which allows for recreational activities.

(iii) There must be no Federal, State or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(2) Application requirements. To enable the Administrator to determine whether an applicant's modified discharge meets the criteria or paragraph (d)(1) of this section, the applicant shall provide the data on the impact of its discharge on recreational uses required by the Recreation Impact Assessment, Part B, section 8 of the Application Format.

(e) Additional application requirements for application based on improved discharge. If an applicant is applying for a section 301(h) modified permit on the basis of an improved discharge, it must submit in its final application:

(1) Final plans for such improvements in Part A, Section 10 of the Application Format;

(2) Computer modeling or other detailed analyses projecting changes in flow rates, flow patterns, composition, volume or other parameters or characteristics of the applicant's current discharge which are expected to result from such improvements at several milestone dates (including the statutory July 1, 1983 date) reflecting conditions of severe waste loadings;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge;

(4) Where the improved discharge involves outfall relocation, the assessments required by paragraphs (a) through (d) of this section for the relocation site; and,

(5) A detailed analysis of how the improvements planned by the applicant will, when completed and at the milestone(s) identified in paragraph (e)(2) above, eliminate, reduce or otherwise relieve any adverse impacts identified in paragraph (e)(3) of this section and assure compliance with the criteria contained in paragraphs (a) through (d) of this section.

(f) Stressed waters. If an applicant believes that its failure to meet the requirements of paragraphs (a) through (d) of this section is attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant must demonstrate, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.62 Establishment of a monitoring system.

(a) General requirements applicable to all proposed monitoring programs. (1) The applicant must have a biological monitoring program, a program for monitoring compliance with State water quality standards, and a toxics control monitoring program which meet the requirements of paragraphs (a) through (c) of this section;

(2) Each program must include a detailed description of sampling techniques, times, and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used; and,

(3) The applicant must also demonstrate that it has the economic personnel, technical and other resources to implement the proposed programs immediately upon issuance of a section 301(h) modified permit and to carry out the proposed programs for the life of the modified permit.

(4) Each proposed monitoring program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any modified permit and during the term of any modified permit issued.

(b) Biological monitoring program. - (1) Criteria. (i) The biological monitoring program shall provide data adequate to evaluate the impact of the applicant's discharge on marine biota, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and unusual oceanographic and meteorological events) and variability of the discharge anticipated during the life of the permit. It shall be keyed to the nature and volume of the applicant's discharge, the nature of the receiving water, and the nature of the marine life affected or likely to be affected as identified in the Biological Conditions Summary prepared under § 125.61(c)(2).

(ii) For applicants seeking a section 301(h) modified permit based on:

(A) A current discharge, the biological monitoring program shall be designed to demonstrate that the discharge currently complies and will continue to comply throughout the term of the modified permit with the requirements of § 125.61(c)(1).

(B) An improved discharge other than outfall relocation, the biological monitoring program shall be designed to collect baseline data on the current impact of the discharge, to monitor the impact of the discharge as improvements are completed, and, upon completion of all improvement, to demonstrate that the discharge complies with the requirements of § 125.61 (c)(1).

(C) An improved discharge involving outfall relocation, the biological

monitoring shall be conducted at both the current discharge site, until such discharge ceases, and the relocation site. The biological monitoring program at the current discharge site must be designed to measure the impact of the discharge as the toxics control program is implemented and any upgrading of treatment is completed. The biological monitoring program at the relocation site shall be designed to collect baseline data for a minimum of one year, to monitor the impact of the discharge as improvements other than outfall relocation are completed, and, upon completion of all improvements, demonstrate that the discharge complies with the requirements of § 125.61(c)(1).

(iii) The biological monitoring program shall include quarterly seasonal surveys of the structure and function of the macrofaunal benthos and those other biological communities most likely to be affected by the discharge.

(iv) Where the chemical analysis conducted under § 125.64 (a)(1) of this Subpart or any subsequent chemical analysis of the applicant's discharge required to be conducted under paragraph (d) of this section identifies any tixic pollutants or pesticides in the applicant's discharge, the biological program shall include:

(A) In situ bioassays within and immediately beyond the zone of initial dilution and at appropriate reference sites. The bioassays must be conducted with appropriate sensitive marine organisms, and shall be designed to:

(1) Determine the accumulation of each identified toxic pollutant and pesticide in the organisms;

(2) Examine other adverse effects of the discharge on the organisms, including death, growth abnormalities, and physiological stress.

(B) Sampling of sediments within and immediately beyond the boundary of the zone of initial dilution and other areas of solids accumulation (as identified in the physical assessment prepared under § 125.61 (a)(1), and at appropriate reference sites, for accumulation of each identified toxic pollutant and pesticide. If sampling indicates the existence of elevated or increasing levels of such pollutants or pesticides, the biological monitoring program for measuring the impact of such substances on, at a minimum, the macrofaunal benthos.

(v) Where the applicant's discharge may affect the commercial or recreational fisheries, the biomonitoring program shall include periodic assessments of the condition and productivity of fisheries likely to be affected by the discharge.

(2) Application requirements. To enable the Administrator to determine whether an applicant's biomonitoring program meets the criteria of (b)(1), the applicant shall submit a proposed Biological Monitoring Program in Part C, Section 1 of its final application.

(c) Water quality monitoring program. (1) Criteria. (1) The water quality monitoring program shall provide data adequate to evaluate the applicant's compliance with applicable State water quality standards, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and

unusual oceanographic and meteorological events) and variability of the discharge anticipated during the term of the modified permit:

(ii) The water quality monitoring program shall be designed to measure the applicant's compliance with applicable State water quality standards:

(A) As required by State law;

(B) At the boundary of the zone of initial dilution; and

(C) At locations beyond the zone of initial dilution where impacts on marine life, recreational interests or public water supplies may occur.

(2) Application requirements. To enable the Administrator to determine whether an applicant's water quality monitoring program meets the criteria of (c)(1) of this section, the applicant shall submit a proposed Water Quality Monitoring Program in Part C, Section 2 of its final application.

(d) Toxics control monitoring program. (1) Criteria. (i) The toxics control monitoring program shall provide data on the chemical composition of the applicant's discharge, which can be used to:

(A) Measure the effectiveness of the applicant's toxic control program in reducing toxic pollutants and pesticides in its discharge;

(B) Assist in implementing the toxics control program; and,

(C) Guide biological monitoring efforts under paragraph (b)(1)(iv) of this section.

(ii) The toxics control monitoring program shall provide for a chemical analysis of representative wet weather and dry weather discharges for toxic pollutants and pesticides.

(2) Application requirements. To enable the Administrator to determine whether an applicant's toxic control monitoring program meets the criteria of (d)(1) of this section, the applicant shall submit a proposed Toxics Control Monitoring program in Part C, section 3 of its final application.

§ 125.63 Effect of discharge on other point and non-point sources.

(a) Criterion. No modified discharge may result in any additional requirements on any other point or nonpoint source.

(b) Application requirements. To enable the Administrator to determine whether an applicant's modified discharge meets the criterion of paragraph (a) of this section, the applicant shall submit in Part D of its final application, letters from each agency having authority to establish or to advise in the establishment of waste loadings or wasteload allocations for the waters into which the applicant proposes to discharge. These letters shall indicate whether the applicant's proposed discharge will result in any additional treatment, pollution control, or other requirement on any other point or nonpoint source (including combined sewers). The letter(s) shall include the basis for the agency's conclusion.

§ 125.64 Toxics control program.

(a) Chemical analysis. - (1) Criteria. The applicant shall submit at the time of application, a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(k) and (u). Analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute additional chemical analysis data if documentation is provided to show that the composition of the wastewater samples typifies that which occurs during dry and wet weather conditions.

(2) Application requirements. To enable the Administrator to determine whether an applicant meets the criteria of paragraph (a)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(b) Identification of Sources of Toxic Pollutants (1) Criteria. The applicant shall submit at the time of application, an analysis of the sources of toxic pollutants identified in section 125.64 (a)(1). The applicant shall categorize the sources of the toxic pollutants according to industrial and non-industrial types.

The applicant shall include in § 125.64(c) and (d) programs to reduce or remove the identified toxic pollutants from the applicant's discharge.

(2) Application requirements. To enable the Administrator to determine whether an applicant meets the criteria of paragraph (b)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(c) Industrial pretreatment requirements. - (1) Criteria. (i) An applicant which has known or suspected industrial sources of toxic pollutants shall have a pretreatment program capable of enforcing all applicable promulgated pretreatment standards which meets the requirements of 40 CFR 403.8(f) no later than the time the applicant's permit is modified, and which will be implemented no later than eighteen (18) months after issuance of the modified permit;

(ii) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants and so certifies to the Administrator;

(iii) The proposed industrial pretreatment program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the term of any section 301(h) modified permit issued;

(iv) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(2) Application requirements. To enable the Administrator to determine whether an applicant not exempted by paragraph (c)(1)(ii) of this section meets the criteria of paragraph (c)(1), the applicant shall provide in Part E, Section 2 of its final application, a proposed pretreatment program which includes the following:

(i) The evidence required by 40 CFR 403.9(a)(1)-(4);

(ii) An inventory of sources which are subject or may be subject to the pretreatment program. Such sources shall include, but not be limited to, sources in the industrial categories identified in Appendix A, Part 122 of the National Pollutant Discharge Elimination System regulations. The inventory shall include a description of the methodology used to develop the inventory and the process to be used to ensure the inventory is kept accurate and current. At a minimum, the inventory shall include a qualitative description of the type of pollutants contributed by each identified source. In addition, for sources subject to promulgated national categorical pretreatment standards, State or local pretreatment requirements, the inventory shall include a summary of industrial compliance with the quantitative and qualitative information required by 40 CFR Part 403.12(b);

(iii) A schedule of compliance which demonstrates that the program will be implemented as soon as possible but in no event later than eighteen (18) months after issuance of a section 301(h) modified permit. The compliance schedule shall include, at a minimum, the following milestones and shall specify their initiation and completion dates:

(A) Completion of the wastewater characterization of industrial sources inventoried in the final application as required by 40 CFR 403.8(f)(2)(i-iii);

(B) Development of effluent limitations for prohibited pollutants (as defined by 40 CFR 403.5) contributed to the POTW by industrial sources;

(C) Notification of industrial sources of applicable pretreatment standards and sludge management requirements, as required by 40 CFR 403.8(f)(2)(iii);

(D) Design of a compliance monitoring program, as defined by 40 CFR 403.8 (f)(1)(v);

(E) Establishment of financial programs and revenue sources to ensure adequate funding to carry out the pretreatment program;

(F) Acquisition of all qualified personnel necessary to carry out the pretreatment program; and

(G) Submission of a request for pretreatment program approval without conditions (and removal credit approval if desired and eligible) as required by 40 CFR 403.9.

(iv) Provisions, if necessary, for requesting conditional acceptance of the pretreatment program pending the acquisition of funding and/or personnel for limited aspects which do not require immediate implementation, Provided the applicant:

(A) Has the authority, procedures, funding and personnel to fulfill its current enforcement responsibilities for all applicable promulgated pretreatment standards;

(B) Meets the requirements of 40 CFR 403.9(b)(1)-(3);

(C) Submits a schedule of compliance and evidence demonstrating it will have sufficient resources and qualified personnel to carry out the authorities and procedures in 40 CFR 403.8(f) as soon as possible but not later than eighteen (18) months after issuance of a section 301(h) modified permit;

(D) Submits a description of its record to date in enforcing existing applicable national, State and local pretreatment standards; and

(E) Has an approvable schedule of compliance for implementing its pretreatment program.

(d) Nonindustrial source control program. - (1) Criteria. (i) The applicant shall have at the time of application, a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into its treatment works to the extent practicable, which will be implemented no later than eighteen months after issuance of a section 301(h) modified permit.

(ii) Each proposed nonindustrial source control program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301 (h) modified permit and during the life of any such permit issued.

(2) Application requirements. To enable the Administrator to determine whether an applicant's nonindustrial source control program meets the criteria of paragraph (d)(1) of this section, the applicant shall provide in Part E, section 3 of its final application a proposed nonindustrial source control program which includes the following:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants, including:

(A) All nonindustrial sources, or categories of sources, which are introducing toxic pollutants into the applicant's treatment works; and,

(B) The specific toxic pollutants and volumes thereof generated by such sources or categories of sources.

(ii) A schedule of activities to determine practicability of controls, to include:

(A) An analysis of the control technologies available to the applicant, including treatment as well as control, at the sale, use, handling and disposal state;

(B) An assessment of the effectiveness of such control technologies in eliminating or limiting the introduction of toxic pollutants from such source into the applicant's treatment facility; and

(C) An analysis of the legal, technological, socio-economic, and institutional impact of utilizing such control technologies.

(iii) A schedule for the development and implementation of control programs, to the extent practicable, for each nonindustrial source or category of sources identified under paragraphs (b)(1) and (d)(2)(i) of this section. Each such program shall include:

(A) A description of the program;

(B) A method for enforcing the program;

(C) A monitoring program which will measure compliance with the effectiveness of the program; and

(D) A schedule for implementation.

(iv) A schedule for the development and implementation, to the extent practicable, of specific control programs, in addition to the programs for any other non-industrial source or sources identified under paragraph (b)(1) of this section. These

programs shall include;

(A) A program for the development of best management practices to control urban stormwater runoff into combined sewers, including street cleaning, catch basin cleaning, trash pickup in both commericial and residential areas, and runoff controls at construction sites;

(B) A program to eliminate the discharge of waste oil from gas stations, service stations and garages into the applicant's treatment works, including programs to collect such waste oil for recycling or solid waste disposal;

(C) A program to control the introduction of herbicides, fungicides, insecticides and rodenticides into the applicant's treatment facility from residential, commercial and public work activities;

(D) A program for controlling sale, use, and/or disposal of certain household products containing toxic pollutants which, because of disposal practices, are likely to enter the applicant's treatment works (e.g., household paints, cleaning compounds); and

(E) A program to modify building and/or plumbing codes for new construction to limit the introduction of heavy metals from plumbing equipment into the applicant's treatment works.

(v) The schedules of activities shall include an assessment of the applicant's ability to provide the financial, staffing and other resources or arrangements which may be necessary to carry out the schedule of activities listed in paragraph (d)(2) (i) through (iv).

§ 125.65 Increase in effluent volume or amount of pollutants discharge.

(a) Criteria. No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit. The applicant shall provide data indicating that:

(1) There shall be no increase in effluent volume beyond the amount in the applicant's projected five year discharge;

(2) There shall be no increase in the mass loadings of any pollutant(s) for which a modification is requested over and above the amount in the applicant's projected five year discharge; and

(3) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(b) Application requirements. To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a), the applicant shall demonstrate in Part F of its final application, compliance with paragraphs (a)(1) and (2) of this section, and submit a schedule of activities designed to comply with paragraph (a)(3) of this section.

§ 125.66 Utilization of grant funds available under Title II of the Act.

(a) Criteria. (1) Any funds available to the applicant under Title II of the Act shall be used for:

(i) The construction of municipal treatment works necessary to ensure that the applicant's modified discharge will meet the requirements of this subpart; and

(ii) The application of best practicable wastewater treatment technology.

(2) The applicant shall prepare a revised scope of work and estimate of revised costs under any active Step 1,2, or 3 Construction Grant awarded under 40 CFR Part 35, subpart E.

(3) The revised scope of work of any active grant awarded from funds authorized for any fiscal year beginning after September 30, 1978, shall be subject to the requirement to evaluate innovative and alternative technologies in accordance with 40 CFR Part 35, Subpart E.

(4) Any such revised scope of work and costs shall be subject to review and revision by the Administrator; such review shall not constitute approval, obligation, or award of a grant under 40 CFR Part 35.

(b) Application requirements. To enable the Administrator to determine whether an applicant can meet the requirements of paragraph (a) of this section the applicant shall submit as Part G of its final application a funding program which shall contain a proposed modified scope of work and estimate of revised costs for any active Step 1, 2, or 3 Construction Grants awarded under Part 35, Subpart E of this Chapter, which provides the following:

(1) Step 1 Grants. (i) Application of the best practicable wastewater treatment technology (BPWIT);

(ii) Reclamation, recycle, and reuse of water and confined disposal of pollutants;

(iii) Development of a pretreatment program in accordance with the requirements of this part and 40 CFR 403 (see also 40 CFR 35.907);

(iv) An evaluation of flow and waste reduction methods including development of a non-industrial source program as required by § 125.64(d)(3) to reduce or eliminate the discharge of toxic substances to the municipal treatment works; and

(v) An analysis which establishes the cost effective combination of the proposed less-than-secondary treatment system and additional facilities required to provide for full secondary treatment (such additional facilities must be planned in accordance with the requirements of § 35.917 of 40 CFR Part 35, Subpart E).

(2) Step 2 Grants. Development of plans and specification for the proposed less-than-secondary treatment facilities including provision for future addition of facilities to provide for secondary treatment and BPWIT.

(3) Step 3 Grants. Construction of the proposed less-than-secondary facilities including provisions to ensure compatibility with

future additions of facilities to provide for secondary treatment and BPWIT.

§ 125.67 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR § § 122.14 through 122.23, the following:

(a) Effluent limitations which will assure compliance with the requirements of this Subpart:

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.64(c);

(2) Nonindustrial toxics control program required by § 125.64(d);

(3) Any construction required by § 125.66; and

(4) Control of combined sewer overflows required by § 125.65.

(c) Monitoring requirements that include:

(1) Biomonitoring program requirements of § 125.62(b);

(2) Water quality program requirements of § 125.62(c); and

(3) Toxic control monitoring program requirements of § 125.62(d).

(d) Reporting requirements that include:

(1) An annual report to the Enforcement Division Director on the results of the monitoring program required by paragraph (c);

(2) An annual report summarizing industrial compliance with the reporting requirements of 40 CFR 403.12(b). The report shall summarize for each industrial subcategory covered by national pretreatment standards:

(i) The number of sources reporting versus the number of sources inventoried in that subcategory;

(ii) The number of sources not in compliance with the pretreatment standard;

(iii) The number of sources with compliance schedules; and

(iv) What actions are being undertaken to develop compliance schedules for sources currently lacking but requiring a schedule.

(3) A report within 180 days of the final compliance date of a national pretreatment standard, summarizing the number of noncomplying sources in that industrial subcategory and what actions are being taken to bring non-complying sources into compliance (see industry reports required by 40 CFR 403.12(d)).

(4) An annual report on the public notification of noncomplying industries required by 40 CFR 403.8 (f)(2)(vii).

(OMB No. 158-S79003; Expires December 31, 1979)

Application Format for Modification of the Requirements of Secondary Treatment

Introduction

This application format consists of the following seven (7) parts, (A through G), sections and appendices which must be provided by the applicant to constitute a final application:

Part A. General

Section 1. Description of Treatment System.
Section 2. Effluent Limitations.
Section 3. Existing Discharge.
Section 4. State Secondary Treatment Requirements.
Section 5. State Coastal Zone Management Program.
Section 6. Marine and Estuarine Sanctuaries.
Section 7. Endangered or Threatened Species.
Section 8. Other Applicable Federal Requirements.
Section 9. Existence and Compliance with State Water Quality Standards.
Section 10. Improved Discharge Construction.

Part B. Technical Evaluation Information

Section 1. Physical Assessment.
Subsection A - Initial Dilution.
Appendix I. Description of Methods used to compute initial dilution assuming EPA methods were not used.
Appendix II. Oceanographic Data.
Subsection B - Ocean Discharge.
Appendix III. Data on Ocean Discharge.
Subsection C - Saline Estuarine Discharge.
Appendix IV. Data on Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Appendix V. DO demand resulting from disturbance of bottom.
Appendix VI. Description of more critical DO situation.
Section 3. Compliance with pH.
Appendix VII. Other considerations relative to pH.
Section 4. Compliance with Suspended Solids.
Appendix VIII. Compliance with State water quality standards.
Appendix IX. Description of experimental procedure used to compute amount and areal extent of SS accumulation on seabed.
Section 5. Public Water Supply Impact Assessment.
Appendix X. Assessment of Modified Discharge of Public Water Supplies.
Section 6. Marine Biological Assessment.
Appendix XI. Biological Conditions Summary.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.
Appendix XII. Assessment of Modified Discharge on Recreational Activities.

Part C. Description of Monitoring System

Section 1. Biological Monitoring Program.
Appendix XIII. Proposed Biological Monitoring Program.

Section 2. Water Quality Monitoring Program.
Appendix XIV. Proposed Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.
Appendix XV. Proposed Toxics Control Monitoring Program.

Part D. Letter(s) From State Concerning Impact of Modified Discharge on Other Point and Non-Point Sources

Appendix XVI. Letters from State Agencies Concerning Impact on Other Point and Non-Point Sources.

Part E. Toxic Control Program.

Section 1. Chemical Analysis.
Appendix XVII. Chemical Analysis of Toxic Pollutants and Pesticides and Source Identification Analysis.
Section 2. Pretreatment Program.
Appendix XVIII. Proposed Pretreatment Program.
Section 3. Non-Industrial Source Control Program.
Appendix XIX. Proposed Non-Industrial Source Control Program.

Part F. Effluent Volume and Mass Emmissions

Appendix XX. Data on Effluent Volume and Mass Emmissions.
Appendix XXI. Schedule of Activities to Control Combined Sewer Overflows.

Part G. Use of Title II Funds

Appendix XXII. Funding Program for Available Title II Funds.

Each part should be completed by the applicant to the best of its ability. When completed, this application must demonstrate, on its face, that the applicant's modified discharge will meet the requirements of 40 CFR Part 125 and section 301(h) of the Act.

Part A.- General

Section 1. Description of Treatment System

Please provide a detailed description of the treatment system and outfall configuration which you propose to utilize to satisfy the requirements of section 301(h) and 40 CFR Part 125.

If you are applying for a modification on the basis of an improved discharge within the meaning of 40 CFR 125.58, please also provide a detailed description of your current treatment system and outfall configuration.

Section 2. Effluent Limitations

Please identify the final effluent limitations for biochemical oxygen demand, suspended solids and pH on which your application for a modification is based:

Biochemical oxygen demand ________________ mg/l

Suspended solids ____________ mg/l

pH __________________

Section 3. Existing Discharge

Did the publicly owned treatment works for which you are requesting a modification discharge into marine waters on or prior to December 27, 1977?

Yes ___________________ No _________________

If "yes", please provide the start-up date of the facility's discharge, the discharge volume, and the exact location of the discharge.

If "no", please provide an explanation.

Section 4. State Secondary Treatment Requirements

Does your State or locality have a law, regulation or ordinance requiring secondary treatment of municipal wastewater?

Yes _________________ No ________________

If "yes", please attach a copy of such law, regulation or ordinance.

Section 5. State Coastal Zone Management Program

Is your modified discharge located in an area which is included in a State coastal zone management program(s) which has been approved under the Coastal Zone Management Act of 1972, as amended?

Yes _________________ No ____________________

If "yes", attach a certification that your modified discharge will comply with such program(s).

Section 6. Marine and Estuarine Sanctuaries

Is your modified discharge located in a marine or estuarine sanctuary designated under Title III of the Marine, Protection, Research & Sanctuaries Act of 1972, as amended or under the Coastal Zone Management Act of 1972?

Yes _______________ No _______________

If "yes", please attach a certification from the Secretary of the Commerce that the discharge is consistent with Title III and can be carried out within any applicable regulations promulgated thereunder.

Section 7. Endangered or Threatened Species

Please attach sufficient information to demonstrate that your modified discharge will not jeopardize the continued existence of an endangered or threatened species (as determined by the Secretary of the Interior under the Endangered Species Act of 1973, as amended), and will not result in the destruction or modification of the habitat of such species.

To assist EPA in determining whether the discharge of effluent pursuant to a permit issued under section 301(h) may affect a threatened or endangered species or modify the critical habitat of such species, an application must contain the following information:

(1) the names of any threatened or endangered species list in 44 FR 3636 et seq. (January 17, 1979 or subsequently listed species) that inhabit, or obtain nutrients from, waters that will be affected by the proposed discharge;

(2) an indication whether the discharge will affect an area designated as Critical Habitat in 50 CFR Sections 17.95, 19.96 or Part 226;

(3) the applicant's evaluation of whether the proposed discharge may affect threatened or endangered species or modify a Critical Habitat (if a proposed discharge may affect waters inhabited by a threatened or endangered species, or used by such species to obtain nutrients, or if a proposed discharge may affect a Critical Habitat, the applicant's evaluation should contain a detailed analysis of the direct and indirect impacts of such discharge on threatened or endangered species).

Section 8. Other Applicable Federal Requirements

Are you aware of any Federal law, other than the Clean Water Act or the three statutes identified in Sections 5, 6, and 7, or an Executive Order, which is applicable to your discharge?

Yes _______________ No _______________

If "yes", please provide sufficient information to demonstrate that your modified discharge will comply with such law(s) or order(s).

Section 9. Existence and Compliance with State Water Quality Standards

Does a State water quality standard or standards, as defined in section 125.58(w) exist, as required by § 125.60(a) that is applicable to the pollutant or pollutants for which a modified permit is requested?

Yes ________________ No ________________

If "yes", please attach a certification from your State water pollution control agency and a demonstration that the water quality of your modified discharge meets or will meet the appropriate State water quality standard or standards. Include information on the State's mixing zone policy, criteria applied, and dilution or decay studies that were undertaken to demonstrate that the appropriate mixing and effluent concentration limitations were met.

Section 10. Improved Discharge Construction

Are you applying for a section 301(h) modification based on an improved discharge within the meaning of 40 CFR 125.58?

Yes ______________ No ______________

If "yes", please provide the following information:

A. Evidence that such improvements have been thoroughly planned and studied as an alternative to secondary treatment.

B. Evidence that you have the financial and technical resources necessary to complete or implement such improvements expeditiously.

C. A history of your previous efforts to comply with construction schedules in your existing NPDES permit (or an enforcement compliance schedule letter). If you have not met all required dates, please provide an explanation.

D. A proposed schedule for the staged planning, design, and construction of (A) secondary treatment and (B) the improvements which you propose to make to meet the requirements of this part, which will maximize the amount of planning, design, and construction which you can complete pending a final Agency decision on your application.

Part B - Technical Evaluation Information

Table of Contents

Section 1. Physical Assessment.
Subsection A - Initial Dilution.
Subsection B - Ocean Discharge.
Subsection C - Saline Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Section 3. Compliance with pH.
Section 4. Compliance with Suspended Solids.
Section 5. Public Water Supply Impact Assessment.
Section 6. Marine Biological Assessment.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.

General Instructions. In addition to providing the information

required in this format, the applicant must include supplemental information as requested in various Sections of Part A.

Section 1. Physical Assessment

Subsection A. Initial Dilution

1-1. List the characteristics of the outfall diffuser system:

____________________ angle of port orientation(s) from the horizontal, in degrees.

____________________ port diameter(s) in meters to three significant figures, and the contraction coefficient of the orifice(s), if known.

____________________ vertical distance between water surface and outfall port(s) centerline, in meters.

____________________ density of effluent in grams per cubic centimeters at some reference temperature (degrees centigrade).

____________________ number of ports.

____________________ port spacing, meters; also explain in Appendix I the spatial arrangement of ports with respect to each other, and the seabed.

____________________ design flow rate for each port if multiple ports are employed (m^3/sec.).

1-2. Determine the flow rates representing the highest two to three hours during an average day of the seasonal critical periods identified in 1-3:

a. Maximum flow = ______________________ m^3/sec.

b. Expected maximum flow at the end of the permit term = _______________ m^3/sec.

1-3. Provide ambient density gradient lines for the region of the outfall diffuser. Sufficient vertical data points must given to allow an accurate representation by linear segments of the major features of the ambient density structure. Ambient stratification adversely effects initial dilution. The greatest density gradient over the height-of-rise of the plume will result in the lowest dilution period. Data can be evaluated by (1) comparing predictions for various density profiles or (2) predicting the density gradient over the height-of-rise of the plume and then using the greatest value (as explained in the Technical Support Document). Worst case conditions or those at the worst 10 percentile if sufficient data exists should be used. Since initial dilution predictions may be sensitive to the value of the density gradient, data accuracy should be consistent with generally accepted oceanographic practices. Density should be reported to five (5) significant figures. A set of data should be provided for each of the following critical environmental situations:

a. Periods of maximum hydraulic loading from the wastewater treatment facility.

b. Periods of low background water quality due to natural conditions including low DO, excessively high and low turbidity.

c. Periods of exceptional biological activity (e.g., spawning, migration of anadromous or catadramous organisms, etc.)

d. Periods of low net circulation, low effective net flushing,

or low intertidal mixing.

e. Periods of minimum and maximum stratification.

1-4. Compute initial dilution for the flow rates identified in Section 1-2 and each of the critical environmental conditons given in Section 1-3. Currents equal to the lowest ten percentile of those measurements made near the discharge site during these periods may be used in computations.

Dilution is defined as the total volume of a parcel divided by the volume of waste it contains. Initial dilution is the flux-average dilution attained by the plume during its convective ascent through ambient water. Initial dilution may be calculated by the applicant. However, EPA will make calculations based on its own methods.[1] These methods are available upon request. If other methods are used, they, should be described in Appendix I and be in reasonable agreement with EPA calculations.

For the purposes of demonstrating impact on water quality, concentrations of waste constituents expected after initial dilution are:

$C_t = C_a + (C_e - C_a)/Sa$

Where:

C_t = final concentrations, C_e = effluent concentrations, C_a = ambient concentration, and Sa = predicted initial dilution.

1-5. If EPA methods of initial dilution prediction are used, check here. ________________

1-6. Of the initial dilutions listed in 1-4, which is most critical with respect to ambient DO requirements (See 2-7)? Explain in Appendix I.

1-7. Which is most critical for pH (See 3.3)? Explain in Appendix I.

1-8. Which is most critical for SS (See 4.5)? Explain in Appendix I.

1-9. Provide in Appendix II an explanation of how the currents and ambient vertical density stratification in the vicinity of the outfall (using data provided in Appendices III and/or IV) may influence plume shape, trajectory, and seawater entrainment in the plume (or plumes if multiple diffusers are used). Methods cited above for initial dilution may be used. The applicant must demonstrate that coastal circulation processes supply dilution water in the amount of Sa x Q, where Q is the volumetric flux of treated wastewater, using oceanographic data discussed in Appendix II, III, or IV.

1-10. Estimate the boundary of the zone of initial dilution. This zone should bound those dilutions calculated for the flows and conditions described in Section 1-4. Use predicted plume trajectories or vertical height of rise for the critical conditions, whichever is greater, as the radial extent of the zone. Measure this distance horizontally from the discharge point(s) to the boundary of the zone. The maximum vertical height of rise will equal the water depth in most cases and is an acceptable value. The zone will then be a circle with a radius equal to the water depth in the case of a single port, or a rectangle whose width is

[1] Teeter, A.M. and D. J. Baumgartner, Predictions of Initial Mixing for Municipal Ocean Discharges. EPA, Corvallis Environmental Research Laboratory Publication 043, Corvallis, Oregon, August 1978.

equal to twice the depth of the water plus the width of the diffuser, and whose length is equal to twice the depth of the water plus the length of the diffuser. For purposes of compliance monitoring, a regularly shaped boundary (describing a cylinder, cube, etc.) extending vertically from the seabed to the sea surface would be acceptable. List the geometric description of the zone configurations indicating the margin for navigational error as a ± distance.

1-11. List the coordinates of the zone by latitude and longitude.

Subsection B. Ocean Discharge

1-12. If your discharge is into the ocean, provide in Appendix III an oceanographic report including:

a. Profiles with depth, representative of seasonal conditions, shall be provided for temperature, salinity, density and currents. These variables shall be given for the water column inshore of the diffuser (or pipeline end, in the case of no diffuser), over the diffuser (or end), but away from direct effluent effects, offshore of the end, and upstream and downstream of the center of the discharge. Conclusions should be drawn from direct and inferred current measurements as to the fate of material in the far field and as to plume dynamics. Oceanographic atlases or compendia of data may be used, or data may be extrapolated from them if it is shown that they are representative of the outfall area.

b. Depending on applicable water quality standards and monitoring requirements, the following measurements shall be made simultaneously at the same stations as 1-12a, above, and additionally to monitor outfall effluents: BOD, DO, pH, suspended particulates, and light transmittance and turbidity are surrogates for suspended solids and may be substituted where appropriate.

c. An assessment of the environmental effects of direct freshwater runoff from coastal areas is required. Runoff from estuaries may contain substances that affect measurements in the zone occupied by the outfall, hence the outfall may contribute less to the pollution load than would be the case if extraneous sources were not considered. The applicant should document the estuary mass emission rate if this situation occurs.

Subsection C. Saline Estuarine Discharge

1-13. If your discharge is to saline estuarine waters, provide in Appendix IV an oceanographic report describing the following characteristics:

a. Seasonal classification of the estuary in the vicinity of the discharge must be documented, preferably by the scheme devised by Hansen and Rattray.[2] If the Hansen-Rattray method is used, velocity and salinity data shall be presented so as to estimate pollutant flux past the outfall. Residence times of material in the vicinity of the outfall and in the estuary itself should be provided. If the Hansen-Rattray scheme is not used, e.g., if the estuary is classified as "well-mixed," "partially-mixed," etc., data shall be presented

[2] Hansen, D. V. and M. Rattray, Jr., New Dimensions in estuary classification. Limn. Ocean. 11:319-326. 1966.

to support the classification. The same calculations discussed above will be presented.

If deep estuaries, e.g., fiords, are being considered, calculation of residence times throughout the water column will be given. Methods of deriving these estimates and their effect on relative pollutant distribution must be made with reference to the seasonal variation of plume configuration, i.e., plume equilibrium position.

b. In conjunction with 1-13a, the freshwater budget is required to provide estimates of the non-tidal freshwater velocity, at the point of evaluation. Other uses of the freshwater budget are for calculations of flushing rates which require knowledge of tidal prisms and as input to numerical models which are discussed below. Generally, streams are gauged sufficiently above tidal effect so that the freshwater inflow can be estimated. Other estimates of runoff contributions below the gauging station are required.

If gauged stream data are not available for runoff estimates the method of estimating flow must be accompanied by a discussion of assumptions, estimates of errors and potential effect of errors.

c. Historical records of wind, tide height and tidal currents should be synthesized and a correlation made with the dispersion of surface and subsurface materials, and recirculation of material. Particular attention should be given to prevailing wind speed and direction, especially the onshore-alongshore-offshore component (as it affects the shoreward movement of surface materials), and the incidence of such events. Where possible, corrections to time of occurrence, elevations, speeds and directions should be cited with reference to NOAA current and tide table stations.

d. The effects of geographical and geomorphological features on spatial and temporal variations shall be evaluated with narrows and shoaling effects in mind.

e. Spatial and temporal scale-dependent phenomena within the outfall tidal excursion zone are to be evaluated.

f. If numerical models are used to support the modification request, complete documentation and seasonal verification at the point(s) in question must be supplied, as must methods employed to evaluate turbulent, advective, and other terms.

g. If hydraulic models are used to support the modification request, time lapse photographs covering combinations of seasonal runoff and tidal conditions at the point(s) in question should be supplied if available. Documentations of methods employed to simulate wind, density, and velocity profiles will be required.

h. Background data on suspended solids contributions and estimates of deposition and resuspension to the estuary solids balance must be supplied.

Section 2. Compliance With BOD or DO

2-1. If the BOD of your effluent exceeds the BOD criteria described in 40 CFR 133.102(a), complete this section.

2-2. Provide applicable State water quality standards levels in receiving water. You may apply for a BOD modification if a value is entered in 2-2a or 2-2b below.

a. DO criteria ______________________________
b. BOD criteria ______________________________

Complete the appropriate subsection to show compliance with the criteria listed in 2-2a or 2-2b or both is applicable.

Dissolved Oxygen

2-3. Effluent sample point location ______________. DO (mg/l) at sample point ______________________.

The location of effluent concentration measurement should be clearly indicated (i.e., final clarifier overflow, final pump station). If disinfection is employed periodically, samples must be obtained for every comparable situation.

2-4. Travel time from sample point to diffuser ports:

a. Minimum flow ________________________ m^3/sec, time to flow ______________ minutes.

b. Average flow _________________ m^3/sec, time to flow ______________ minutes.

c. Maximum flow _____________ m^3/sec, time to flow __________________ minutes.

d. Expected maximum flow at the end of the permit term ______________ m^3/sec, time to flow ______________ minutes.

Because anaerobic conditions in ocean outfalls may increase demand and adversely alter other chemical parameters, it is necessary to compute travel times at these flows. Applicants should enter the values for the flows indicated and compute the time to flow between the sample point and the diffuser ports.

2-5. Immediate dissolved oxygen demand (15 minutes) of the effluent after anaerobic incubation for times 2-4a through 2-4d, respectively.

a. ________________
b. ________________
c. ________________
d. ________________

The immediate dissolved oxygen demand (IDOD; APHA Standard Methods, 14th ed., except as modified to use representative seawater instead of distilled water for dilution) must be measured after anaerobic incubation at representative temperatures for the time periods computed in 2-4. This value is considered to be a conservative estimate of the oxygen demand exerted by the waste stream in the buoyant plume formed in the sea upon discharge from an ocean outfall. Show the data from which the IDOD's were calculated.

2-6. List background DO concentrations at appropriate depths and indicate possible influence by the ocean outfall for the critical environmental situations listed in question 1-3.

2-7. Compute the influence on ambient DO using the largest IDOD presented in 2-5, the DO concentration presented in 2-6, and the corresponding Sa from question 1-4. Respond to question 1-6. Compute the following equation (all values in mg/l):

$DO_f = DO_a + (DO_e - IDOD - DO_a)/Sa$

where:

DO_f = final dissolved oxygen,
DO_a = background dissolved oxygen,
DO_e = dissolved oxygen of samples at final sampling point in the plant.
IDOD = immediate dissolved oxygen demand, per modified standard methods,
Sa = predicted average initial dilution.

2-8. Do the results of 2-7 meet the criteria for DO presented in 2-2? If not explain.

BOD

2-9. Determine the effluent BOD taken at times corresponding to flows presented in 2-4a, b, c, and d.

a.______________.
b.______________.
c.______________.
d.______________.

2-10. Compute the final BOD following initial dilution using the appropriate flows in 2-4.

a.______________.
b.______________.
c.______________.
d.______________.

2-11. Do the results of 2-10 meet the criteria for BOD presented in 2-2b? If not explain.

2-12. Provide in Appendix V, an analysis showing that BOD exerted after initial dilution will not result in subsequent depletion of DO below applicable standards for DO. Describe the oxygen demand resulting from periodic disturbance of accumulated sediments, and from steady demand of undisturbed sediments, in relation to 2-13.

2-13. The demand of oxygen in the bottom 2 meters of seawater for the critical 3 month period refers to the following data:

a. Ambient DO concentration ____________mg/l.
b. DO criteria ______________.
c. What months of the year are represented? ________________.

2-14. How often are the 2-2a criteria exceeded? ____________.

2-15. Do you believe questions 2-2 through 2-13 adequately represent the most critical evaluation of possible adverse effects that may be associated with the BOD exerted by your discharge? If not, please describe in Appendix VI a more critical situation and demonstrate that your discharge will comply with applicable State water quality standards and not cause environmental damage.

Section 3. Compliance with pH

3-1. Does your effluent pH ever exceed nine or fall below six? If so, explain why and complete this section.

3-2. List the applicable State standard for pH in the vicinity

of the discharge.

3-3. List pH's resulting from mixtures of receiving seawater and effluent according to the lowest initial dilution calculated in 1-4. Respond to question 1-7. Describe the method used in determining pH.

Values must be a time series, as deemed appropriate, based on the above experimental observations. The pH may change as a result of effluent dilution with seawater. Therefore, the applicant should provide results of pH measurement in tabular form (graphs of continuous measurement may be attached). Measurements should be made immediately after mixing and at three more times following mixing as determined by observing the rate of reaction of the waste and seawater.

3-4. Is the pH standard met? How often is the pH standard exceeded? Explain.

3-5. If you have evaluated other considerations regarding pH, please provide a detailed analysis in Appendix VII.

Section 4. Compliance With Suspended Solids

4-1. If the suspended solids of your effluent exceeds the suspended solids criteria described in 40 CFR 133.102(b) complete this section.

4-2. Have you received, or are you in the process of receiving an adjusted suspended solids effluent requirement from EPA by virtue of operating an approved wastewater treatment pond? (See 40 CFR 133.103).

YES ____________________, please explain.
NO ____________________, proceed to next question.

4-3. List the State water quality standard related to suspended solids applicable to the marine waters at the discharge point. Standards for suspended solids, water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids are acceptable.

4-4. Determine the suspended solids content for the following flow conditions:

a. Minimum flow __________ m^3/sec, SS __________ mg/l.
b. Average flow __________ m^3/sec, SS __________ mg/l.
c. Maximum flow __________ m^3/sec, SS __________ mg/l.

4-5. Using the initial dilutions computed in 1-4, the ambient SS concentrations for the critical periods identified in 1-3, and corresponding SS in 4-4, compute the final suspended solids concentrations following initial mixing. Respond to question 1-8.

4-6. Do the final suspended solids concentrations meet the State water quality standard for suspended solids?

YES ______________________ NO ______________
State does not have water quality standard for SS __________.

4-7. If the State does not have a water quality standard for SS, provide as Appendix VIII a detailed discussion of how your outfall discharge meets State water quality standards for water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids. The information should relate to the critical

condition explained in 1-8 and include the results of laboratory testing and field studies.

4-8. Describe in Appendix IX the experimental procedure used to compute the amount and areal extent of seabed accumulation of SS discharge under this modification.

If applicable water quality standards limit settleable solids, the applicant must experimentally determine the amount of settleable solids after appropriate initial mixing and a period of a quiescent settling. The mass of settleable material may be reported per unit volume of discharge or per unit volume of receiving water, whichever relates most directly to the applicable standard.

Water quality standards may limit the actual areal deposition[3] rate of settleable solids as a way to protect benthic communities from significantly altered sedimentary materials. An assessment of the accumulation of settleable solids must be provided in any event, in order to estimate the impact of deposited materials on oxygen levels.

The applicant must also provide an assessment of the long term fate of the sedimentary material within and outside the zone of initial dilution. It is important to assure that periodic sediment resuspension or continual drift of sediment loads will not result in deleterious accumulations in bays, estuaries, beaches, and oceanic topographic depressions. Data from seabed drifter studies, if available should be reported.

4-9. Does the discharge meet the settleable solids standards in all critical cases as identified in 1-3? Data must be provided to substantiate this assessment.

_______________ Yes,

_______________ No applicable standard;

however, the seabed accumulation is computed for use in evaluating oxygen demand at the seabed interface.

Section 5. Public Water Supply Impact Assessment

General Instructions. The applicant must prepare an assessment of the impact of its current discharge on existing and potential sources of public water supplies (Appendix X). As noted in § 125.61 (e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The public water supply impact assessment must include, at a minimum:

5-1. Identification of the exact location of each planned or existing seawater intake which is being or will be used by a desalinization plant producing water for public water supplies and is likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical Assessment, Sections 1-4 of this part.

5-2. If any desalinization plant is identified under paragraph 5-1, a detailed assessment of:

(a) The impact of the applicant's modified discharge on water quality in the vicinity of the intake, considering the effect of

[3] As distinguished from a limit on the concentration of settleable solids in the water column.

tides, winds, currents and other meteorological or hydrological phenomena which affect the transport and dispersion of the applicant's modified discharge; and

(b) If the applicant's modified discharge has any impact on the water quality in the vicinity of the intake, the effect of that impact on the quality of the public water supply ultimately produced, including an analysis of whether it will continue to comply with local, State and EPA drinking water standards, and whether such compliance will require additional treatment.

5-3. An analysis of whether the applicant's modified discharge will comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

Section 6. Marine Biological Assessment

General Instructions: To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of § 125.61(b)(1), the applicant shall answer the Biological Assessment Questionnaire contained in Section 7 of this part of the application form, and shall prepare a Biological Conditions Summary (Appendix XI) that supports the response to the questionnaire. The organization of the Biological Conditions Summary should follow the format of the questionnaire. A section should be prepared for each question and it should include a synthesis of all data relevant to the issue.

The Biological Conditions Summary must examine ecological conditions at a minimum of three sites: within the zone of initial dilution, immediately beyond the boundary of the zone of initial dilution, and at a reference site that is comparable to the discharge site in all physical and chemical parameters except for the presence of ecologically significant human disturbances.

The basic requirements of § 125.61(b)(1) are the absence of extreme biological impacts within the zone of initial dilution, and the presence of a balanced, indigenous population immediately beyond the boundary of the zone. A balanced, indigenous population must also exist at any point beyond the boundary of the zone where impacts from the applicant's modified discharge might reasonably be expected to occur. A balanced, indigenous population will be considered present beyond the boundary of the zone if the applicant can demonstrate that biological conditions there fall within the natural range of variability observed at the reference site.

Section 125.61(b)(1) contains additional biological criteria for modified discharges into saline estuarine waters, for modified discharges into stressed waters, and for improved discharges into stressed waters, and for improved discharges. Applicants who propose a modified discharge into saline estuarine waters must demonstrate in their response to question 7-2 that their modified discharge will not cause substantial difference in benthic populations within and beyond the zone of initial dilution, will not interfere with migratory pathways within the zone, and will not result in the bioaccumulation of pollutants at levels which

exert adverse effects on the biota within the zone.

Applicants who propose a discharge into stressed waters must demonstrate in their response to question 7-12 that their modified discharge will not increase or perpetuate adverse ecological alterations resulting from other sources of pollution.

Applicants who propose an improved discharge must demonstrate in their response to question 7-13 that the improvement will eliminate any adverse biological impacts attributable to their current discharge.

The other portions of the Biological Assessment Questionnaire address major ecological impacts of obvious concern. These include the occurrence of mass mortalities, disease epicenters, and phytoplankton blooms near the applicant's outfall; adverse effects on fisheries and distinctive habitats of limited distribution such as coral reefs and kelp beds; and the bioaccumulation of toxic materials. The questions also address more fundamental ecological characteristics that are likely to indicate a disruption of the natural structure and function of a balanced, indigenous population. These include species composition; patterns of diversity, abundance, and productivity, trophic structure; and the presence of pollution indicators, opportunistic, or nuisance species. Alterations in such ecological parameters may occur in benthic, phytoplankton, zooplankton, demersal, and intertidal assemblages. Sampling guidelines for each of these biological assemblages are cited in the 301(h) Technical Support Document.

The extent of documentation in the Biological Conditions Summary necessary to support the response to the Biological Assessment Questionnaire is dependent on the quality and quantity of the applicant's discharge and the sensitivity of the receiving environment. Because these factors vary greatly among potential 301(h) applicants, EPA has generally avoided specific, universal requirements for biological analyses. Applicants are given the flexibility to provide only those analyses that are warranted in individual cases.

Section 7. Biological Assessment Questionnaire

Is there reason to believe that the applicant's discharge may have caused or will cause:

7-1. Interference with the protection and propogation of a balanced, indigenous population of marine life characteristic of the biogeographic zone in which the outfall is located?
YES__________ NO__________

7-2. Biological communities within the zone of initial dilution to be different from those that would naturally occur in the absence of the outfall? YES__________ NO__________

7-3. Differences in the structure and function of biological communities(e.g., vertical and horizontal stratification, species composition, abundance, diversity, productivity, trophic structure, etc.) beyond the zone of initial dilution from those characteristics of the biogeographic zone in which the outfall is located?
YES__________ NO__________

7-4. Increases in the abundance of any marine plant or animal organism (especially nuisance or toxic species, or phytoplankton whose blooms cause adverse ecological effects) within or beyond the zone of initial dilution not characteristic of the biogeographic zone in which the outfall discharge is located?
YES ________________ NO ________________

7-5. Domination of marine communities within or beyond the zone of initial dilution by pollution resistant species (e.g., slime forming algae or bacteria, fouling, boring, nuisance or opportunistic species of finfish, invertebrates, etc.)?
YES ________________ NO ________________

7-6. A deleterious effect on distinctive habitats of limited distribution such as kelp beds and coral reefs either within or beyond the zone of initial dilution? Yes ________ No ________

7-7. Within or beyond the zone of initial dilution, an increased incidence of disease in marine organisms? YES ________ No ________

7-8. An abnormal body burden of any toxic material in marine organisms collected within or beyond the zone of initial dilution?
YES ________________ NO ________________

7-9. Adverse effects on commercial or recreational fisheries within or beyond the zone of initial dilution? YES ________ NO ________

7-10. Mass mortality of fishes or invertebrates due to a typical growth of marine algae, anoxia or other conditions within or beyond the zone of initial dilution? YES ________ NO ________

7-11. Adverse ecological impacts either within or beyond the zone of initial dilution other than those addressed in the preceding questions? If so, please explain. YES ________ NO ________

The following question must be answered only by applicants who propose a discharge into stressed waters.

7-12. Is there reason to believe that the applicant's discharge has enhanced or will perpetuate adverse ecological alterations resulting from other sources of pollution? If so, please explain.
YES ________________ NO ________________

The following question must be answered only by applicants who propose to improve their discharge in order to qualify for a 301(h) modification.

7-13. Will the proposed improvement eliminate adverse ecological impacts attributable to the applicant's existing discharge? If so, please explain. YES ________ NO ________

Section 8. Recreational Impact Assessment

General Instructions. The applicant must prepare an assessment of the impact of its modified discharge on existing and potential recreational activities (Appendix XII). The term recreational activities includes, but is not limited to, swimming, diving, wading, boating, fishing, and picnicking and sports activities along shorelines and beaches. As noted in § 125.61(e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The recreational impact assessment must include, as a minimum:

8-1. Identification of: (1) all existing or potential recreational activities affected and likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical assessment, Section 1-4 of this part; (2) all existing and potential recreational activities at a reference site(s) of comparable, but unpolluted, environmental conditions; and (3) where the applicant claims that its inability to meet the requirements of § 125.61(d) is due to pollution from sources other than its discharge, all existing and potential recreational activities at a reference site(s) of comparable environmental conditions (including comparable pollution absent the applicant's discharge).

8-2. Within the area of impact, as identified by the applicant's analysis of the transport and dispersion of its discharge contained in the Physical Assessment, a detailed analysis of the following:

(a) The impact of the applicant's discharge on existing or potential recreational fishing, including both finfishing and shellfishing;

(b) State, Federal or local restrictions on the harvesting or human consumption of shellfish or finfish;

(c) State, Federal or local limitations on the concentrations of toxic pollutants, pesticides or other substances in edible fish and shellfish harvested from within the area of impact;

(d) The impact of the applicant's discharge on recreational boating, swimming, wading, and picnicking and sports activities along shorelines and beaches; and

(e) State, Federal or local restrictions on water contact sports or other activities or on the recreational uses of shorelines and beaches.

8-3. An analysis of whether the applicant's discharge will comply with all applicable water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of recreational activities.

Part C - Description of Monitoring System

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Section 1. Biological Monitoring Program.
Section 2. Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.

General Instructions: The applicant must prepare as Part C of the application a description of the proposed monitoring system to meet the criteria of section 125.62 that would be implemented upon receipt of a section 301(h) modified NPDES permit. As noted in section 125.62(b)(ii) applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a monitoring plan for both the existing discharge site and the relocation site as well as control site(s).

The proposed monitoring plan must include proposed programs for monitoring to demonstrate compliance with the toxics control program established to meet the requirements of § 126.64, for monitoring biological impacts of the applicant's discharge(s) on marine biota

to demonstrate compliance with § 125.61, and monitoring of compliance with State water quality standards ar required by § 125.60. Each proposed program must include a detailed description or references of sampling techniques, frequency and locations of sampling, analystical techniques and quality control methods. In addition, applicants must demonstrate that adequate economic, personnel, technical, and other resources are available to implement the proposed programs upon issuance of a modified permit and to carry out the proposed programs for the life of the modified permit.

Section 1. Biological Monitoring Program

The applicant must submit as Appendix XIII a proposed biological monitoring program designed to provide data adequate to evaluate the impact of the applicant's discharge on marine biota. The biological monitoring program should allow for the development and understanding of variations in the marine biota over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the biological monitoring program should be designed so that observed changes in the marine biota can be correlated with the possible influencing factors of the applicant's discharge, including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. The biological monitoring program should be keyed to the marine life affected or likely to be affected, as indicated in the biological conditions summary prepared under § 125.61(c)(2), and should emphasize those parameters most likely to impact the marine biota in the vicinity of the applicant's outfall.

The requirements of § 125.62(b) should lead to the development of a biological monitoring program which consists of:

1. Field surveys of biological communities and populations that permit comparisons with baseline conditions described in the Biological Conditions Summary;

2. An assessment of the condition and productivity of both commercial and recreational fisheries potentially affected by the applicant's discharge; and

3. In situ bioassays and fields surveys to determine bioaccumulation and survival of indicator organisms at various depths within and beyond the zone of initial dilution and at appropriate reference points. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location of sampling and analytical methods, and rationales for the selection of indicator organisms and biological communities used for bioaccumulation studies and various field studies.

Section 2. Water Quality Monitoring Program

The applicant must submit as Appendix XIV a proposed water quality monitoring program designed to provide data adequate to evaluate the applicant's compliance with applicable State water quality standards. The water quality monitoring program should allow for the development and understanding of variations in water

quality over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the water quality monitoring program should be designed so that observed water quality can be correlated with the possible influencing factors of the applicant's discharge including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. Empahsis should be placed on critical environmental periods such as spawning periods for fish and shellfish. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location sampling, and analytical quality control methods.

Section 3. Toxics Control Monitoring Program

The applicant must submit as Appendix XV a proposed toxics control monitoring program designed to demonstrate the effectiveness of the applicant's toxic control program in reducing those toxic pollutants and pesticides identified in the required analysis of its current discharge under § 125.64(a) for the toxic pollutants and pesticides identified in § 125.58(k) and (s). Accordingly, the toxics control monitoring program should provide data on the chemical composition of the applicant's discharge which can be used to:

1. Measure the effectiveness of the applicant's pretreatment and non-industrial source control programs and procedures;
2. Assist in implementing the overall toxics control program efforts; and
3. Guide the biological monitoring program efforts.

The proposed program should include detailed descriptions of or references to sampling techniques, frequency and location of sampling, and analytical and quality control methods. The toxics control monitoring program should provide an understanding of variations over time of both the flow rate and toxic pollutant content of the applicant's discharge; accordingly, the program should be designed to provide data on both wet weather and dry weather flows.

Part D - Letter(s) From State Concerning Impact of Modified Discharge On Other Point and Non-Point Sources

General Instructions: The applicant must submit, as Appendix XVI of the application, letters from appropriate State agencies stating whether the applicant's modified discharge will result in any additional treatment, pollution control, or other requirement on any other point or non-point source. The letter(s) should include a detailed analysis of the facts and other considerations supporting the agency's conclusion, including a thorough analysis of existing and future waste loads and waste load allocations for the waters into which the applicant has discharged and will be discharging, and the effect of granting the proposed section 301(h) modification to other POTWs and other point and non-point source discharges into these waters.

Since waste load allocations are determined by the State, letter(s) should be secured from all State agencies which have any role in setting waste loadings or waste load allocations. These agencies include the

State water pollution control agency, area-wide planning or management agency, coastal zone commission, and possibly other State-level agencies.

Part E - Toxic Control Program

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Section 1. Chemical Analysis.
Section 2. Pretreatment Program.
Section 3. Non-Industrial Source Control Program.

General Instructions: All applicants must submit as Appendix XVII an analysis of the wastewater or effluent from their current discharge, an analysis of known or suspected sources of toxics and pesticides in the wastestream, and proposed industrial pretreatment and non-industrial source control programs designed to address the control of the toxics identified by the chemical analysis. Applicants who can certify that there are no known or suspected industrial sources of the identified toxic pollutants currently or planned that would discharge into the POTW for which a modification is being requested are not required to develop a proposed industrial pretreatment program.

Section 1. Chemical Analysis

All applicants shall submit an analysis of the waste water or effluent from their current discharge for the toxic pollutants and pesticides listed in Table 1 below, and present the results of the analyses in Appendix XVII. All analyses shall be done on a 24-hour composite sample with incremental samples collected hourly. Both dry weather and wet weather flows of the effluent shall be sampled and analyzed. The dry weather flow sample shall be collected no less than 5 days following a rainfall of measureable intensity.

The pesticides and toxic pollutants shall be analyzed using the procedures presented in the document titled "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants" (April, 1977 or later revisions). This document is available at no charge to the applicant. Applicants should notify the person listed under "For Further Information Contact" at the front of the regulation for a copy of the document.

This document references the analytical procedures for measuring pesticides, heavy metals, cyanides and phenols listed in 40 CFR Part 136. Applicants must report data for all detectable pesticides and toxic pollutants, not just those reported to be greater than 10 ug/l, as requested on page thirty of the "Sampling and Analysis" document. Applicants should provide quality control data collected during the analysis of the wastewater samples.

Applicants may substitute or provide additional data on the concentration of priority pollutants concentrations in their discharge for those found in the two composite samples. Information must be provided to demonstrate that the concentrations are those typical of wet and dry weather flows. Where these data are not available, applicants shall provide data on the two samples listed above.

In addition to complying with the requirements of § 125.64(b), the applicant must submit as a part of Appendix XVII an analysis of known or suspected sources of toxics and pesticides identified through the chemical analysis of the waste stream. These sources should be categorized according to their specific industrial and non-industrial origin, where possible.

For the purposes of these regulations, toxic pollutants and pesticides include: (1) those substances identified in Table 1 of Committee Print 95-30 of the House of Representatives Committee on Public Works and Transportation; and (2) those pesticides identified in Quality Criteria for Water, 1976 but not included in Committee Print 95-30. Following is the list of toxic pollutants and pesticides which applicants must include in their toxic control program.

Table 1

Pesticides:
- Mirex
- Guthion
- Methoxychlor
- Parathion
- Demeton
- Malathion

Toxic Pollutants:
- Acenaphthene
- Acrolein
- Acrylonitrile
- Aldrin/Dieldrin
- Antimony and compounds
- Arsenic and compounds
- Asbestos
- Benzene
- Benzidine
- Beryllium and compounds
- Cadmium and compounds
- Carbon Tetrachloride
- Chlordane (technical mixture and metabolites)
- Chlorinated benzenes (other than dichlorobenzenes)
- Chlorinated ethanes (including 1,2 dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
- Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
- Chlorinated naphthalene
- Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
- Chloroform
- 2-chlorophenol
- Chromium and compounds
- Copper and compounds
- Cyanides
- DDT and metabolites
- Dichlorobenzenes (1,2,-1,3-, 1,4-dichlorobenzenes)
- Dichlorobenzidine

Dichloroethylenes (1,1-,and 1,2-dichloroethylene)
2,4-dimethylphenol
Dinitrotoluene
Diphenvlhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis (dichloroisopropyl) ether, bis (chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methlène chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrobenzene
Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCB's)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and idenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds

Section 2. Industrial Pretreatment Program

All applicants shall submit, as Appendix XVIII, a proposed pretreatment program which complies with the requirements of §125.64 (c)(1) and (2) and which is designed to address the control of toxic pollutants identified by the chemical analyses of its current discharge, as required under § 125.64(a), and reported in Appendix XVII, Section 1 of this part of the application format. In lieu of such pretreatment program, applicants may certify, as provided under

§ 125.64(c)(1)(ii), that no known or suspected industrial sources of toxic pollutants currently exist or are planned for construction that would discharge into the POTW for which a modification is being requested. Applicants developing proposed pretreatment programs should assure that all of the criteria and application requirements listed under § 125.64 are thoroughly addressed and that the proposed program can be implemented after issuance of a modified permit.

Section 3. Non-Industrial Source Control Program

All applicants shall submit as Appendix XIX a proposed non-industrial source control program which complies with the requirements of § 125.64(d)(1) and (2) and is designed to address the control of toxics identified by the chemical analyses of its current discharge as required under § 125.64(a) and reported in Appendix XI, Section 1 of this part of the applications format. Applicants should note that they are not exempt from this requirement by the exemption from developing a proposed pretreatment program under § 125.64(c)(1)(ii).

Part F - Effluent Volume and Mass Emissions

General Instructions: Under § 125.65, the applicant must submit, as Appendix XX, evidence that there shall be no increase in effluent volume or mass loadings of any pollutant(s) for which a modification is requested over and above that amount identified in the applicant's projected five year discharge. Also, where combined sewer overflows contribute in part to pollutant discharges, the applicant must submit as a part of Appendix XXI a schedule of activities designed to minimize existing overflows and prevent increases in the amount of pollutants from this source.

Part G - Use of Title II Funds

General Instructions: The applicant must submit as Appendix XXII a funding program containing a proposed modified scope of work and estimates of revised costs for any funds available to the applicant under Title II of the Clean Water Act in a manner which complies with the requirements of § 125.66(a) and (b). This submittal should cover any active Step 1, 2, or 3 construction grants awarded under 40 CFR Part 35 Subpart E which may be affected by an approval of the applicants request for a 301(h) modified permit.

Subpart H - Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and Scope

Section 316(a) of the Act provides that:

"With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, 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 (sic) 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 on 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."

This Subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 306(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this Subpart:

(a) "Alternative effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this Subpart.

(b) "Representative important species" means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term "balanced, indigenous community" is synonymous with the term "balanced, indigenous population" in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wild-life management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early Screening of Applications for Section 316(a) Variances

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a), the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: biological, hydrographical and meteorological data, physical monitoring data; engineering or diffusion models, laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section and § 124.73 (c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.65), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied at the discretion of the Director.

(Note. - At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to support the continuation of the variance with studies based on the discharger's actual operation experience.)

(125.72(f) amended by 45 FR 33512, May 19, 1980)

§ 125.73 Criteria and Standards for the Determination of Alternative Effluent Limitations Under Section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shallfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c)(1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made: or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish. fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

Subpart I - Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act (Reserved)

Subpart J - Criteria for Extending Compliance Dates Under Section 301(i) of the Act.

§ 125.90 Purpose and Scope.

Under sections 301(i)(1) and (2) of the Act, extensions of the 1977 statutory deadline for compliance with certain treatment

requirements may be granted by the Director through permit issuance or modification. This Subpart establishes criteria for granting these extensions and the method for incorporating these extensions into permits issued under section 402(a) of the Act.

§ 125.91 Definition.

For purposes of this Subpart, "construction" includes any one 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, 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 provided that completion of the facility and attainment of operational level by no later than July 1, 1983, is a reasonable expectation.

§ 125.92 Requests for Permit Modification and Issuance Under Section 301(i)(1) of the Act.

Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations in accordance with the provisions of § 122.53(j). (125.92 amended by 45 FR 33512, May 19, 1980)

§ 125.93 Criteria for Permit Modification and Issuance Under Section 301(i)(1) of the Act.

No request for a permit modification or issuance under section 301(i)(1) shall be granted unless the Director finds that the POTW requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) The issuance of a notice to proceed under a construction contract for any segment of Step 3 project work (or if notice to proceed is not required, the execution of the construction contract) occurred before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW (see initiation of construction as defined in 40 CFR § 35.905 for Step 3); or

(b) Federal financial assistance was not available, or was not available in time for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

§ 125.94 Permit Terms and Conditions Under Section 301(i)(1) of the Act.

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) the shortest reasonable schedule of compliance for achievement of limitations under sections 301(b)(1)(B) and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and on any additional information submitted by the POTW or otherwise available.

(i) When a facility plan has been approved in accordance with 40 CFR 35, Subpart E, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the POTW has not completed Step 1 of the construction grants process in accordance with 40 CFR 35, Subpart E, this schedule shall contain a date certain for the submission of a facility plan (completion of Step 1) upon which date the permit should be set to expire. In this case, in order to assure compliance by the POTW by July 1, 1983 the following requirements must be met:

(A) Certification by the State, based on its one or five year project priority list developed pursuant to 40 CFR 35.915 (c), that funding will be available in time to ensure compliance by July 1, 1983; and

(B) Reporting once a year (if necessary) by the POWT as to its progress in obtaining Federal funding.

(Comment: EPA recognizes that the date for submission of the facility plan may not take into account all the uncertainties of the Step 1 planning process. Because of the uncertainties inherent in the Step 1 planning process, EPA recommends that section 301(i)(1) requests (and permit issuance) for projects that are presently in Step 2 or 3 should be acted on before requests from projects in Step 1. When Federal funding in the form of a Step 2 construction grant award is made available, and the Step 1 permit has expired, the permit is to be reissued containing a date certain schedule derived from the facility plan and coordinated with the State Project Priority List.)

(2) A statement ensuring compliance with requirements under sections 201(b) through (g) of the Act consistent with the terms of the POTWs construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, or other guidance.

(Comment: Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.)

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall

include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more pollutants to be discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301Ii)(1) shall contain any terms and conditions necessary to ensure compliance with 40 CFR 403.

§ 125.95 Requests for Permit Modification or Issuance Under Section 301(i)(2) of the Act.

Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(L)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations in accordance with the provisions of § 122.53(i). (125.95 amended by 45 FR 33512, May 19, 1980)

§ 125.96 Criteria for Permit Modification or Issuance Under Section 301(i)(2) of the Act.

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of sections 301(b)(1)(A) and 301 (b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and;

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977, based upon a discharge into a POTW:

(1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW;

(2) The discharger had a binding contractual obligation before July 1, 1977, (enforceable against the discharger) to discharge into a POTW. Contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

(3) A construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in its efforts to effectuate discharge into the POTW and to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(i) Failure of the discharger to meet the July 1, 1977, deadline was for reasons beyond its control;

(ii) A history of a high degree of commitment to meet the requirements of the Act as minifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(iii) No history of unjustified delay;

(iv) No past serious or intentional violations of the Act; and

(v) All reasonable measures are being taken to expedite compliance.

(Comment: The Director may also consider whether the discharger has operated its facilities competently and responsibly and the extent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.)

(c) The POTW will be in operation and available to the discharger July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983, after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(i) The discharger agrees to discharge its waste to the POTW;

(ii) The POTW agrees to accept and treat that waste by a date certain; and

(iii) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

§ 125.97 Permit Terms and Conditions Under Section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions;

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW.

(b) Achievement of effluent limitations and standards under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act by the same final date in the schedule established in paragraph (a) of this section in the event that the permittee does not discharge its wastes to the POTW by the date established under paragraph (a) of this section.

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control.

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control.

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act.

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1);

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act.

(Comment: The legislative history cites the following example: "(I)f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979, and require compliance within two years, that industry would be required to comply by March 1, 1981,"H. R. Rep. No. 95-830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).)

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

(Comment: The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the Act and § 125.96(e).)

Subpart K - Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

§ 125.100 Purpose and Scope

This subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of sections 301,302, 306, 307, or 403 of the Act, as the case may be.

§ 125.101 Definition.

"Manufacture" means to produce as an intermediate or final product

or by-product.

§ 125.102 Applicability of Best Management Practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including; materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

§ 125.103 Permit Terms and Conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commercial fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best Management Practices Programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this Subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operations, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) The BMP program:

(i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR Part 151, and may incorporate any part of such plans into the BMP program by reference;

(Comment: EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While Subpart K requires only procedural activities and minor construction, the proposed 40 CFR 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with Subpart K, owners or operators should also consider the requirements of proposed 40 CFR 151 which may address many of the same areas of the facility covered by this Subpart.)

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 RCRA) (40 U.S.C. 6901 et seq). Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102;

(A) Statement of Policy;
(B) Spill Control Committee;
(C) Material Inventory
(D) Material Compatibility;
(E) Employee Training;
(F) Reporting and Notification Procedures;
(G) Visual Inspections;

(H) Preventive Maintenance;
(I) Housekeeping; and
(J) Security.

(Comment: Additional technical information on BMP program is contained in a publication entitled "NPDES Best Management Practices Guidance Document." Copies may be obtained by written request to Edward A. Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, D. C. 20460.)

(125.104(c) amended by 45 FR 33512, May 19, 1980)

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this Subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.6). The BMP program shall be subject to the applicable permit issuance requirements of Part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.15 provided that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

(Note. - A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR Part 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.)

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this Subpart shall amend the BMP program in accordance with the provisions of this Subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the

general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

Subpart L - Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act (Reserved)

Subpart M - Ocean Dumping Criteria Under Section 403 of the Act (Reserved)

ENVIRONMENTAL PROTECTION AGENCY
POLICIES AND PROCEDURES FOR CONTINUING PLANNING PROCESS

Subpart A--Scope and Purpose; Definitions

§ 130.1 Scope and purpose.

(a) This part establishes regulations specifying policies, procedures, and other requirements for the continuing planning process for the State pursuant to sections 208 and 303(e) of the Act and for designated areawide agencies pursuant to section 208(b) of the Act. The regulations established in this part and in Part 131 of this Chapter define and implement the requirements for State and areawide planning and implementation pursuant to section 208 of the Act and for carrying out other provisions of the Act. These regulations apply to State and designated areawide planning agencies that are responsible for planning pursuant to section 208 and 303(e) of the Act.

(b) The intent of this part is to unify and integrate the State and areawise water quality management planning and implementation requirements of section 208 and other provisions of the Act.

(c) The broad goals of the continuing planning process are to assure that necessary institutional arrangements and management programs are established to make the implement coordinated decisions designed to achieve water quality goals and standards; to develop a Statewide (State and areawide) water quality assessment, and to establish water quality goals and State water quality standards which take into account overall State and local policies and programs, including those for management of land and other natural resources; and to develop the strategic guidance for preparing the annual State program plan required under section 106 of the Act.

(d) The "continuing planning process" is a time-phased process by which the State, working cooperatively with designated areawide planning agencies:

(1) Develops a water qualtiy management decision-making process involving elected officials of State and local units of government and representatives of State and local executive departments that conduct activities related to water quality management.

(2) Establishes an intergovernmental process which provides for water quality management decisions to be made on an areawide or local basis and for the incorporation of such decisions into a comprehensive and cohesive Statewide program. Through this process, State regulatory programs and activities will be incorporated into the areawide water quality management decision process.

(3) Develops a broad based public participation aimed at both informing and involving the public in the water quality management program.

(4) Prepares and implements water quality management plans, which identify water quality goals and established State water quality standards, define specific programs, priorities and targets for preventing and controlling water pollution in individual approved planning areas and establish policies which guide decision-making over at least a twenty-year span of time (in increments of five years).

(5) Based on the results of the Statewide (State and areawide) planning process, develops the State strategy, be updated annually, which sets the State's major objectives, approach, and priorities for preventing and controlling pollution over a five-year period.

(6) Translates the State strategy into the annual State program plan (required under section 106 of the Act), which establishes the program objectives, identifies the resources committed for the State program each year, and provides a mechanism for reporting progress toward achievement of program objectives.

(7) Periodically reviews and revises water quality standards as required under section 303(c) of the Act.

§ 130.2 Definitions.

As used in this part, the following terms shall have the meanings set forth below.

(a) The term "Act" means the Federal Water Pollution Control Act, as amended; Pub. L. 92-500,86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

(b) The term "EPA" means the United States Environmental Protection Agency.

(c) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(d) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(e) The term "continuing planning process" means the continuing planning process, including any revision thereto, required by sections 208 and 303(e) of the Act for State agencies and section 208(b) of the Act for designated areawide agencies.

(f) The term "water qualtiy management plan" means the plan for managing the water quality, including consideration of the relationship of water quality to land and water resources and uses, on an areawide basis, for each EPA/State approved planning area and for those areas designated pursuant to section 208(a)(2), (3), or (4) of the Act within a State. Preparation, adoption, and implementation of water quality management plans in accordance with regulations under this part and Part 131 of this Chapter shall constitute compliance with State responsibilities under section 208 of the Act.

(g) The term "State planning area" means that area of the State that is not designated pursuant to section 208(a)(2), (3), or (4) of the Act. State planning areas are to be identified in the planning process description that is submitted by the State for approval by the Regional Administrator. Depending upon the requirement being considered, the State planning area may be subdivided into "approved planning areas" that may include the entire State or portions of the State defined by hydrologic, political, or other boundaries.

(h) The term "designated areawide planning area" means all areas designated pursuant to section 208(a)(2), (3), or (4) of the Act and § 130.13.

(i) The term "State planning agency" means that State agency designated pursuant to section 208(a)(6) of the Act and § 130.12(a).

(j) The term "designated areawide planning agency" means that agency designated in accordance with section 208(a)(2), (3), or (4) of the Act.

(k) 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 water, waters of the contiguous zone, or the oceans.

(l) The term "schedule of compliance" means in reference to point and nonpoint sources of pollutants, a sequence of actions or operations leading to compliance with applicable effluent limitations, other limitations, prohibitions, practices, or standards which are contained in a National Pollutant Discharge Elimination System permit or in a State permit or other regulatory program which is legally binding on the owner or operator of the source.

(m) The term "target abatement dates" means:

(1) For point sources, a sequence of actions or control measures which have not yet been formally adopted through the permit process.

(2) For nonpoint sources, a sequence of remedial measures, actions, or operations which have not been formally adopted through implementation of management or regulatory programs established pursuant to approved State water quality management plans, or portions thereof.

(n) The term "National Pollutant Discharge Elimination System" means the national permitting system authorized under section 402 of the Act, including any State permit program which has been approved by the Administrator pursuant to section 402 of the Act.

(o) The term "segment" means a portion of an approved planning area, the surface waters of which have common hydrologic characteristics (or flow regulation patterns); common natural physical, chemical and biological characteristics and processes; and common reactions to external stresses, such as the discharge of pollutants. Segments will be classified as either a water quality segment or an effluent limitation segment as follows:

(1) Water quality segment. Any segment where it is known that water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards even after the application of the effluent limitations required by sections 301(b)(1)(B) and 301(b)(2)(A) of the Act.

(2) Effluent limitation segment. Any segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required by sections 301(b)(1)(B) and 301(b)(2)(A) of the Act.

(p) The term "significant discharge" means any point source discharge for which timely management action must be taken in order to meet the water quality objectives within the period of the operative water quality management plan. The significant nature of the discharge is to be determined by the State, but must include any discharge which is causing or will cause water quality problems.

(q) The term "Best Management Practices" (BMP) means a practice, or combination of practices, that is determined by a State (or designated areawide planning agency) after problem assessment, examination of alternative practices, and appropriate public participation to be the most effective, practicable (including technological, economic, and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

(r) The term "residual wastes" means those solid, liquid, or sludge substances from man's activities in the urban, agricultural, mining, and industrial environment remaining after collection and necessary treatment.

(s) The definitions of the terms contained in Section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires.

Subpart B--General Requirements

§ 130.10 Planning process requirements.

(a) The State and designated areawide planning agencies shall establish a planning process which provides for the establishment of necessary institutional arrangements and management programs to make and implement coordinated decisions designed to achieve water quality goals and standards. The planning process shall include:

(1) Public participation during plan development, review, and adoption in accordance with section 101(e) of the Act and in accordance with Part 105 of this Chapter.

(2) Adequate intergovernmental input in the development and implementation of water quality management plans as described in § 130.17;

(3) The coordination and integration of the water quality management planning in State planning areas and in designated areawide planning areas as described in § 130.33, and coordination of water quality management planning with related Federal, State, interstate, and local comprehensive, functional, and other developmental planning activities, including land use and other natural resources planning activities, as described in § 130.34;

(4) The preparation, adoption, and revision, of water quality management plans for the appropriate areas and waters within the State that fulfill the requirements contained in Part 131 of this Chapter;

(5) The establishment and implementation of regulatory programs identified in approved water quality management plans prepared pursuant to Part 131 of this Chapter;

(b) In addition to the requirements of § 130.10(a), the State agency planning process shall provide for the following:

(1) The development, review and adoption of water quality standards in accordance with § 130.17(a) and with section 303(c)(1) and (2) of the Act;

(2) The development, adoption and implementation of a State-wide policy on antidegradation, consistent with the criteria identified in § 130.17(d);

(3) The review, and certification of plans for designated area-wide planning areas as required pursuant to § 130.33; and

(4) The annual preparation of the State strategy as described in Subpart C of this part.

(c) The description of the State planning process that is to be submitted by the Governor pursuant to § 130.40(b) shall contain, as a minimum, the following:

(1) A description of how each of the requirements specified in § 130.10(a) and (b) will be achieved.

(2) A listing(s) and a map(s) of the State showing proposed State planning areas in which planning is to be conducted by the State pursuant to this part and Part 131 of this Chapter and a listing(s) and a map(s) showing those areawide planning areas that have been designated or are expected to be designated (including a timetable for designation) under section 208(a)(2), (3), or (4) of the Act in which planning is to be conducted by areawide planning agencies pursuant to § 130.13.

(3) A listing(s) and map(s) of the State showing each segment and its classification.

(4) A State/EPA agreement on the level of detail and the schedule of preparation of State water quality management plans as described in § 130.11.

(5) A schedule for review and revision, where necessary, of water quality standards and for development and adoption of a Statewide policy on antidegradation, together with a schedule of milestones which includes proposed dates for public hearings on the revisions and antidegradation policy. The schedule shall provide that the water quality standards and the antidegradation policy will be reviewed and revised in ample time to be used as a basis for 1977-1983 management and regulatory decisions.

(6) The identification of the State planning agency designated pursuant to § 130.12(a).

(7) A listing of the areawide planning agencies that have been designated by the Governor or the identification of areawide planning agencies that will be designated by the Governor (including a timetable for designation) to perform planning in areawide planning areas designated pursuant to section 208(a)(2) or (3) of the Act and § 130.13(b).

(8) A description of the State's management program to oversee water quality management planning conducted by designated areawide planning agencies, including the monitoring of progress and accomplishment of key milestones specified in the areawide planning agency's work plans, and to otherwise assure timely and meaningful State involvement in the areawide planning process.

(9) A listing of the delegations made pursuant to § 130.14(a) to the agency or agencies that will perform the planning under this part and Part 131 of this Chapter.

(10) A listing of proposed representatives on the policy advisory committee(s) established in accordance with § 130.16(c) for each approved planning area.

(11) A statement that legal authorities required at the local and/or State levels to prepare, adopt, and implement State water quality management plans as required by the planning process exist or will be sought.

§ 130.11 Agreement on level of detail and timing of State water quality management plan preparation.

(a) The appropriate level of detail and timing of State water quality management plan preparation for each proposed State planning area will depend on the water quality problems of the area and the water quality decisions to be made, and shall be established by agreement between the State and the Regional Administrator, after appropriate public participation pursuant to § 130.40.

(b) The agreement shall include an indication of those proposed State planning areas, or portions therof, wherein the State, with supporting data, certifies that particular water quality and/or source control problems do not exist or are not likely to develop within the timeframe of the plan and, therefore that certain types of planning and implementation will not be undertaken.

(c) The agreement shall provide a sequence for phasing of planning at the appropriate level of detail and in sufficient time to meet the 1983 national water quality goal specified in section 101(a)(2) of the Act, consistent with the provisions of § 130.17. The agreement should assure the orderly integration of applicable past and present planning efforts (including designated areawide planning) with the planning efforts and needs established in this part and Part 131 of this Chapter. The agreement shall define the State's priorities for the development of State water quality management plans, or portions thereof, pursuant to the process and shall be consistent with projected planning and resources; provided that initial State and areawide water quality management plans shall be completed, adopted, certified, and submitted to the Regional Administrator in accordance with § 130.20 no later than November 1, 1978.

§ 130.12 Designation of State planning agency.

(a) The Governor shall designate, in accordance with § 130.10(c)(6), a State planning agency to be responsible for the conduct and coordination of the required planning under this part and Part 131 of this Chapter.

(b) Although the State planning agency designated pursuant to § 130.12 (a) may delegate portions of its responsibilities to other State, Federal, local, or interstate agencies in accordance with § 130.14, the State planning agency shall assure that each element of the State's approved planning process is achieved.

§ 130.13 Designation of areawide planning areas and agencies.

(a) The Governor(s) shall identify areawide planning areas pursuant to section 208(a)(2) or (3) of the Act which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems A substantial water quality control problem will be deemed to exist when water quality has been or may be degraded to the extent that existing or desired designated water uses are impaired or precluded and when the water quality control problem is complex.

(b) The Governor(s) shall, after consultation with appropriate elected and other officials of local governments having jurisdiction in those areas identified in accordance with § 130.13(a), designate areawide planning areas provided that:

(1) The affected general purpose or other appropriate units of local government within the boundaries of the areawide planning area have in operation a coordinated waste treatment management system, or show their intent, through a demonstrated effort to obtain and submit

resolutions of intent from those governmental units believed to be critical in the planning and implementation of the areawide 208 plan.

(2) The affected units of local government have legal authority to enter into agreements for coordinated wastewater management in compliance with section 208 of the Act.

(3) The water quality problem for the area is not associated with a water pollution control problem for which the State has pre-empted areawide planning pursuant to section 208(b)(4) of the Act.

(c) The Governor(s) shall designate a single representative organization capable of developing effective areawide plans in accordance with section 208 of the Act for each area designated pursuant to § 130.13(b). Each areawide planning agency shall:

(1) Be a representative organization whose membership shall include, but need not be limited to, elected officials of local governments or their designees having jurisdiction in the designated areawide planning area;

(2) Have waste treatment planning jurisdiction in the entire designated areawide planning area;

(3) Have the capability to have the water quality management planning process fully underway no later than one year after approval of the designation;

(4) Have the capability to complete the initial water quality management plan no later than two years after the planning process is in operation; and

(5) Have established procedures for adoption, review, and revision of plans and resolution of major issues, including procedures for public participation in the planning process.

(d) The procedures for designating areawide planning areas and agencies shall be as follows:

(1) Within 60 days after these regulations become effective, the Governor shall:

(i) After communication with chief elected officials of local or regional general purpose units of government in areas not yet designated, identify areas and agencies which he determines to be eligible for designation pursuant to § 130.13(b) and (c).

(ii) Notify the chief elected officials of local or regional general purpose units of governments of those areawide planning areas and agencies he intends to designate pursuant to § 130.12(d)(1)(i) and request their comments and recommendations.

(2) In areas where the chief elected officials feel that the Governor acted inappropriately in his determination of eligible areas

and agencies pursuant to § 130.13(d)(1)(i), such officials may petition the Governor for reconsideration of his determination.

(3) Within 150 days after these regulations become effective and after consideration of recommendations of chief elected officials of local or regional general purpose units of government, the Governor shall:

(i) Hold public meetings or hearings in those areas where he intends to designate and areawide planning area and agency.

(ii) Hold public meetings or hearings in those areas where chief elected officials request designation, but the Governor does not intend to designate.

(iii) Submit his final determination on designations to be made to the Regional Administrator. A record of the public meetings or hearings pursuant to § 130.13(d)(3)(i) and (ii) shall be made available to the Regional Administrator and the public on request.

(4) The designation procedures set forth in § 130.13(d)(1), (2), and (3) may be waived by the Regional Administrator where he determines that the initial designation process required pursuant to section 208(a) of the Act resulted in the designation of all areas and agencies in the State that meet the criteria set forth in § 130.13(b) and (c).

(5) The identification and designation of interstate areas shall be in accordance with the provisions of § 130.13(a) through (d) provided, however, that appropriate interstate agencies shall be consulted, and the designation shall be the joint action of the Governors of all the affected States.

(e) Within 150 days after these regulations become effective, for each areawide planning area and agency to be designated during FY 1976, the Governor shall provide the following information to the Regional Administrator:

(1) An exact description of the boundaries of each area including a statement relating the boundaries of any area to the boundaries of the SMSA(s) contained within or contiguous to the area or, for those areas not within a SMSA, a statement relating the boundaries of the area to the nearest SMSA, and a statement indicating:

(i) Population of the area;

(ii) Nature of the concentration and distribution of industrial activity in the area;

(iii) Degree to which it is anticipated that the area could improve its ability to control water quality problems were it designated as an areawide planning area; and

(iv) Factors responsible for designation of the areawide planning area as described in § 130.13(a).

(2) Identification and supporting analysis of each water quality segment included in each area, as identified pursuant to § 130.10(c)(3).

(3) For each area a copy of the charter of existing regional waste treatment management agencies or formally adopted resolutions, if available, which demonstrate that the general purpose units of local government involved will join together in the planning process to develop and implement a plan which will result in a coordinated waste treatment management system for the area. The resolutions shall also state that all applications for grants for construction of a publicly owned treatment works will be consistent with the approved plan and will be made only by the designated management agency.

(4) For each area, the name, address, and official contact for the agency designated to carry out the planning.

(5) A statement on the factors considered in agency designation as described in § 130.13(c).

(6) A summary of public participation in accordance with the requirements set forth in Part 105 of this Chapter.

(f) For areawide planning areas and agencies to be designated after FY 1976, the information received by § 130.13(e) shall be submitted at a later date to be established by the Administrator.

(g) The Regional Administrator and the Administrator shall review each submission pursuant to § 130.13(e) and (f) to determine compliance with the Act and the criteria set forth in § 130.13(a) through (d).

(h) Upon completion of his review, the Administrator shall publish notice in the FEDERAL REGISTER and shall notify in writing the appropriate Governor(s) of this approval. The effective date of designation is the date of the Administrator's approval of each designation. In the event that the Administrator disapproves any of the designations, he shall specify his reasons with his notice of disapproval.

(i) The appropriate Governor(s) may from time to time designate additional areawide planning areas and agencies. In such cases, approval of the designation shall be at the discretion of the Administrator, taking into account its consistency with the State continuing planning process. The Administrator will also take into account the ability of any such designated areawide planning agency to develop and submit the areawide plan no later than November 1, 1978.

§ 130.14 Delegation of planning responsibilities.

(a) The State planning agency designated pursuant to § 130.12(a) may delegate responsibility, with the approval of the Regional Administrator, to other State, Federal, local, or interstate agencies for the conduct, where appropriate, of any portion of the State's required water quality management planning under this part and Part 131 of this Chapter.

(b) Locally elected officials of major general purpose units of government, and other pertinent local and areawide organizations within the jurisdiction of a proposed local or interstate planning agency, shall be consulted prior to any delegation of planning responsibility to an agency made pursuant to § 130.14(a).

(c) Each delegation of planning responsibility to an agency made pursuant to § 130.14(a) of this section shall include:

(1) The agency's name, address, and name of the director; and

(2) The agency's jurisdiction (geographical coverage and extent of planning responsibilities).

(d) In the event that responsibility for preparation of a portion of a State water quality management plan is delegated pursuant to § 130.14 (a) to an agency other than the State water pollution control agency, evidence from such other agency shall be supplied which shows acceptance of such delegation of planning responsibility and the agency's capability and intent to comply with the time schedules set forth in the planning process and to develop a plan, or portion thereof, consistent with the laws of the respective State, the requirements of this part, Part 131 of this Chapter, and the Act.

(e) The State planning agency may make additional delegations, as set forth in this section, from time to time. Such delegations shall be accomplished by revising the planning process as provided in § 130.43.

§ 130.15 Designation of management agencies.

(a) Upon completion and submission of a water quality management plan, the Governor shall designate Federal, State, interstate, regional, or local agency(ies) appropriate to carry out each of the provision(s) of the water quality management plan(s).

(b) In the event the State or designated areawide planning agency determines that cooperation from a Federal agency(ies) is required to carry out certain provisions of the plan, the State or designated areawide planning agency shall identify such Federal agency and seek cooperation in accordance with § 130.35.

(c) The Governor may designate a specific agency(ies) to begin implementing an approved portion(s) of the water quality management plan(s) prior to completion of the plan(s).

(d) The Regional Administrator shall accept and approve all designated management agency(ies) unless, within 120 days of a designation, he finds that, the agency(ies) does not have adequate authority, including the requirement that statutory and regulatory provisions required to implement the plan be adopted by the date of plan approval by the Regional Administrator, and capability, as required in § 131.11(O)(2) of this Chapter, to accomplish its assigned responsibilities under the plan. The Regional Administrator shall approve, conditionally approve or

disapprove such management agency designations in accordance with the same procedures to be used in approving water quality management plans (see § 131.21 of this Chapter).

(e) The Regional Administrator may withdraw his approval made pursuant to § 130.15(d) in the event that a designated management agency(ies) fails to implement the provision(s) of an approved water quality management plan for which the agency(ies) is assigned responsibility.

§ 130.16 Intergovernmental cooperation and coordination.

(a) The process shall assure that adequate and appropriate areawide and local planning results will be included in the development and implementation of water quality management plans for the State.

(b) Local governments within the State are to be encouraged to utilize existing, or develop, appropriate institutional or other arrangements with local governments in the same State in the development and implementation of water quality management plans, or portions thereof.

(c) The State shall provide a mechanism for meaningful and significant results from local, State, interstate, and Federal units of government. As an element of this mechanism, a policy advisory committee(s) shall be established to adivse the responsible planning or implementing agency during the development and implementation of the plan on broad policy matters, including the fiscal, economic, and social impacts of the plan. Use of existing policy advisory committees is encouraged; however as a minimum, this policy advisory committee shall include a majority membership of representatives of chief elected officials of local units of government.

(d) The policy advisory committee for designated areawide planning areas shall include representatives of the State and public and may include representatives of the U.S. Departments of Agriculture, Army, and the Interior, and such other Federal and local agencies as may be appropriate in the opinion of EAP, the State(s), and the designated areawide planning agency.

(e) The State shall provide for interstate cooperation (and where necessary, in conjunction with an under the direction of appropriate Federal agencies should provide for international cooperation) whenever a plan involves the interests of more than one State. When a water quality management plan or portion of a plan is under development or is being implemented in the State for an area affecting or affected by waters of one or more other States, the State shall cooperate and coordinate with each such other State in the development and implementation of the water quality management plan pertinent to such area. EPA will provide assistance, upon request, to assure the appropriate cooperation and coordination between other States and Federal agencies.

§ 130.17 Water quality standards.

(a) The State shall hold public hearings for the purpose of reviewing water quality standards and shall adopt revisions to water quality standards, as appropriate, at least once every three years and submit such revisions to the appropriate Regional Administrator pursuant to section 303(c) of the Act.

(b) The water quality standards of the State shall:

(1) Protect the public health or welfare, enhance the quality of water and serve the purposes of the Act;

(2) Specify appropriate water uses to be achieved and protected, taking into consideration the use and value of water for public water supplies, propagation of fish, shellfish, and wildlife, recreation purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation; and

(3) Specify appropriate water quality criteria necessary to support those water uses designated pursuant to § 130.17(b)(2).

(c) In reviewing and revising its water quality standards pursuant to § 130.17(a), the State shall adhere the following principles:

(1) The State shall establish water quality standards which will result in the achievement of the national water quality goal specified in section 101(a)(2) of the Act, wherever attainable. In determining whether such standards are attainable for any particular segment, the State should take into consideration environmental, technological, social, economic, and institutional factors.

(2) The State shall maintain those water uses which are currently being attained. Where existing water quality standards specify designated water uses less than those which are presently being achieved, the State shall upgrade its standards to reflect the uses actually being attained.

(3) At a minimum, the State shall maintain those water uses which are currently designated in water quality standards, effective as of the date of these regulations or as subsequently modified in accordance with § 130.17(c)(1) and (2). The State may establish less restrictive uses than those contained in existing water quality standards, however, only where the State can demonstrate that:

(i) The existing designated use is not attainable because of natural background;

(ii) The existing designated use is not attainable because of irretrievable man-induced conditions; or

(iii) Application of effluent limitations for existing sources more stringent than those required pursuant to section 301(b)(2)(A) and (B) of the Act in order to attain the existing designated use would result in substantial and widespread adverse economic and social impact.

(4) The State shall take into consideration the water quality standards of downstream waters and shall assure that its water quality standards provide for the attainment of the water quality standards of downstream waters.

(d) The Regional Administrator shall approve or disapprove any proposed revisions of water quality standards in accordance with the provisions of section 303(c)(2) of the Act.

(e) The State shall develop and adopt a Statewide antidegradation policy and identify the methods for implementing such policy pursuant to § 130.10(b)(2). The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses shall be maintained and protected. No further water quality degradation which would interfere with or become injurious to existing instream water uses is allowable.

(2) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water shall be maintained and protected unless the State chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, to allow lower water quality as a result of necessary and justifiable economic or social development. In no event, however, may degradation of water quality interfere with or become injurious to existing instream water uses. Additionally, no degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance. Further the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and feasible management or regulatory programs pursuant to section 208 of the Act for nonpoint sources, both existing and proposed.

(3) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Act.

Subpart C--Requirements for State Strategy

§ 130.20 State strategy; contents and submission.

(a) Based on current water quality conditions, evaluation of program achievement to date, water quality management plans developed under this part and Part 131 of this Chapter (including basin water quality management plans), and the annual EPA guidance (described in Subpart B of Part 35 of this Chapter), each State shall prepare and update annually a State strategy for preventing and controlling water pollution over a five-year period. The strategy shall contain:

(1) A Statewide assessment of water quality problems and the causes of these problems.

(2) A ranking of each segment based on the Statewide assessment of water quality problems.

(3) An overview of the State's approach to solving its water quality problems identified in paragraph (b)(1) of this section, including a discussion of the extent to which nonpoint sources of pollution will be addressed by the State program.

(4) A year-by-year estimate of the financial resources needed to conduct the program in the State, by major program element (as defined in Subpart B of Part 35 of this Chapter).

(5) A listing of the priorities and scheduling of the State's water quality management plan preparation and implementation, areawide plans, and other appropriate program actions to carry out § 130.20(a)(4).

(6) A brief summary of the State monitoring strategy (described in Appendix A to Subpart B of Part 35 of this Chapter).

(b) The State strategy shall be submitted annually as part of the annual State program submission pursuant to § 35.555 of this Chapter.

Subpart D--Relationship of Planning Process and Other Programs

§ 130.30 Relationship to monitoring and surveillance program.

(a) The State shall assure that an appropriate monitoring program will be established in accordance with provisions of Appendix A to Subpart B of Part 35 of this Chapter.

(b) The process shall provide that each water quality management plan shall be based upon the best available monitoring and surveillance data to determine the relationship between instream water quality and sources of pollutants and, where practicable, to determine the relationship between disposal of pollutants on land and groundwater quality.

(c) In areas where a State or designated areawide planning agency determines that a groundwater pollution or contamination problem exists or may exist from the disposal of pollutants on land, or in subsurface excavations, the State or designated areawide planning agency, to support the establishment of controls or procedures to abate such pollution or contamination as identified in § 131.11 (j)-(1) of this Chapter, shall conduct (or the State shall require to be conducted by the disposing person), a monitoring survey or continuing program of monitoring to determine present or potential effects of such disposal, where such disposal is not prohibited. Groundwater monitoring conducted under this paragraph shall be coordinated with groundwater monitoring programs established pursuant to the Safe Drinking Water Act (Pub. L. 93-523).

§ 130.31 Relationship to municipal facilities program.

(a) Before awarding initial grant assistance for any project for any treatment works under section 201(g) of the Act, where an applicable State water quality management plan, or relevant portion thereof, has been approved in accordance with this part and Part 131 of this Chapter, the Regional Administrator shall determine, pursuant to section 208(d) of the Act, that the applicant for such grant is the appropriate designated management agency approved by the Regional Administrator pursuant to § 130.15.

(b) Before approving a Step II or Step III grant for any project for any treatment works under section 201(g) of the Act, the Regional Administrator shall determine, pursuant to § 35.925-2 of this Chapter, that such works are in conformance with any applicable State water quality management plan or relevant portion thereof, approved by the Regional Administrator in accordance with this part and Part 131 of this Chapter.

(c) The Regional Administrator may elect not to approve a grant for any municipal treatment works under section 201(g) of the Act where an incomplete or a disapproved water quality management plan does not provide an adequate assessment of the needs and priorities for the area in which the project is located, consistent with the Act's planning requirements.

(d) The Regional Administrator and the State, through the agreement described in § 130.11, shall assure that planning under this part and Part 131 of this Chapter related to any municipal treatment works is accomplished in a timely manner, consistent with State priorities for construction of such municipal treatment works.

§ 130.32 Relationship to National Pollutant Discharge Elimination System.

(a) State participation in the National Pollutant Discharge Elimination System pursuant to section 402(b) of the Act shall not be approved for any State which does not have a continuing planning process approved by the Regional Administrator pursuant to § 130.41.

(b) Approval of State participation in the National Pollutant Discharge Elimination System pursuant to section 402(b) of the Act may be withdrawn in accordance with the provisions of section 402(c)(3) of the Act and § 124.93 of this Chapter from any State if approval of the continuing planning process is withdrawn pursuant to § 130.42.

(c) No permit under section 402 of the Act shall be issued for any point source which is in conflict with a plan approved by the Regional Administrator in accordance with this part and Part 131 of this Chapter, provided however, that no such permit shall be deemed to be in conflict with any provision of such plan or portion thereof, hereafter approved, which relates specifically to the discharge for which the permit is proposed, unless the State has provided the owner or operator of the discharge and the interested public with notice and the opportunity to appeal such provision.

§ 130.33 Relationship of State and designated areawide planning programs.

(a) The State planning agency designated by the Governor pursuant to § 130.12(a) is responsible for assuring that the requirements of section 208 of the Act, this part, and Part 131 of this Chapter are achieved Statewide.

(b) In order to assure that designated areawide planning agencies achieve the requirements specified in § 130.33(a) in a timely manner and that such agencies conduct planning that is consistent with planning developed by the State, the State planning agency designated pursuant to § 130.12(a) is expected to provide leadership and support to designated areawide planning agencies and to monitor progress of such agencies.

(c) Designated areawide planning under section 208 of the Act shall be incorporated in the water quality management plan for the State. The State planning agency shall provide the review and certification of such designated areawide planning pursuant to § 131.20(f) of this Chapter prior to formal incorporation into the State's water quality management plan.

§ 130.34 Relationship to other local, State, and Federal planning programs.

(a) The process shall assure that State water quality management plans are coordinated, and shall describe the relationship with plans for designated areawide planning areas within the State, with planning required in adjacent States under section 208 of the Act, with affected State, local, and Federal programs, and with other applicable resource and developmental planning including:

(1) State and local land use and development programs.

(2) Activities stemming from applicable Federal resource and developmental programs including:

(i) The Solid Waste Disposal Act, as amended (Pub. L. 91-512).

(ii) The Safe Drinking Water Act (Pub. L. 93-523).

(iii) The Clean Air Act, as amended (Pub. L. 91-604).

(iv) The Coastal Zone Management Act (Pub. L. 92-583).

(v) The Watershed Protection and Flood Protection Act (Pub. L. 83-566).

(vi) The Rural Development Act of 1972 (Pub. L. 92-419).

(vii) The Land and Water Conservation Fund Act, as amended (Pub. L. 88-578).

(viii) The National Historic Preservation Act (Pub. L. 89-665).

(ix) The Fish Restoration Act (Pub. L. 81-681) and the Federal Aid in Wildlife Restoration Act (Pub. L. 75-415).

(x) The Endangered Species Act (Pub. L. 93-205).

(xi) Wastewater Management Urban Studies Programs administered by the U.S. Army Corps of Engineers (Pub. L. 685, 1938, Pub. L. 429, 1913).

(xii) Transportation Planning administered by the Department of Transportation (Pub. L. 87-866, Pub. L. 93-366, Pub. L. 93-503).

(xiii) The Housing and Community Development Act of 1974 (Pub. L. 93-383).

(xiv) Other Federally assisted planning and management programs.

(b) Approved section 201 facilities plans are to be considered detailed portions of the water quality management plan(s) providing in-depth analysis of specific municipal and storm drainage related water quality problems. The State or areawide planning agency is responsible for assuring compatibility of 201 facilities planning with the State or areawide water quality management plan.

(c) In the event that a "Level B" study (as required under section 209 of the Act) is underway or has been completed, the State or designated areawide planning agency shall consider the following outputs of the study, and where appropriate, provide for integration of the outputs with the water quality management plan(s):

(1) Existing and projected future water withdrawals and consumptive demand over a 20-year period.

(2) Facilities and management measures to be undertaken to meet demands on the water supply program.

(3) The effects of the water supply program on water quality.

(4) Impact of authorized water development measures.

(5) Identification of proposed or designated wild and scenic stream reaches.

(6) Watershed management and land treatment measures.

(7) Energy development and production related factors.

(d) In the event that a "Level B" plan has not been initiated, the State or designated areawide planning agency shall identify the appropriate constraints on water quality management which would be brought about by:

(1) Current and projected future (20-year period) water demands.

(2) Designated and desired wild and scenic river segments.

(3) Energy development and production factors.

§ 130.35 Planning requirements for Federal properties, facilities or activities.

(a) Pursuant to section 313 of the Act and Presidential Executive Order Number 11752, Federal properties, facilities or activities are required to be in compliance with State, interstate, and local substantive requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements.

(b) Federal agencies shall cooperate and give support to State or designated areawide planning agencies in the formulation and implementation of water quality management plans relating to Federal properties, facilities or activities and land areas contiguous with Federally-owned lands.

(c) The Regional Administrator shall assist in coordination of substantive planning requirements for Federal properties, facilities or activities between the appropriate State and Federal agency(ies).

(d) Disputes or conflicts between Federal agencies and State, interstate, or local agencies in matters affecting the application of or compliance with an applicable requirement for control and abatement of pollution shall be mediated by EPA. In such cases, if attempted mediation is unsuccessful the matter will be referred to the Office of Management and Budget under provisions of Executive Order 11752.

Subpart E--State Planning Process Adoption, Approval and Revisions Procedures; Separability

§ 130.40 Adoption and submission of State process description.

(a) The description of the State continuing planning process developed pursuant to § 130.10(c) or revisions to the description of the State continuing planning process made pursuant to § 130.43 shall be adopted as the official continuing planning process of the State after appropriate public participation in accordance with section 101(e) of the Act and with Part 105 of this Chapter.

(b) The Governor shall submit the adopted State continuing planning process description to the Regional Administrator for approval. Subsequent revisions to the continuing planning process description, however, shall be submitted as a part of the State program submittal pursuant to § 35.555 of this Chapter.

(c) Submission shall be accomplished by delivering to the Regional Administrator the adopted planning process description, as specified in § 130.10(c) of this part, and a letter from the Governor notifying the Regional Administrator of such action.

§ 130.41 Review and approval of disapproval of State process.

(a) The Regional Administrator shall approve, conditionally approve, or disapprove, the State planning process description submitted pursuant to § 130.40 of this part within 30 days after the date of receipt, as follows:

(1) If the Regional Administrator determines that the State planning process conforms with the requirements of the Act and this part, he shall approve the process and so notify the Governor by letter.

(2) If the Regional Administrator determines that the State planning process fails to conform with the requirements of the Act and this part, he shall either conditionally approve or disapprove the process and so notify the Governor by letter and shall state:

(i) The specific revisions necessary to obtain approval of the process; and

(ii) The time period for resubmission of the revised process or portions thereof.

(b) The Regional Administrator shall not approve any State continuing planning process description which will not result in timely State water quality management plans that conform with the applicable requirements of the Act and Part 131 of this Chapter for all areas within the State.

§ 130.42 Withdrawal of approval of State process.

Substantial failure of any plan or plans prepared pursuant to the approved State planning process to conform with applicable requirements of this part and Part 131 of this Chapter, including gross failure to comply with the schedule for State water quality management plan preparation, may indicate that the planning process by which such plan or plans were developed was deficient and shall be revised. Failure to accomplish necessary revisions of the State planning process may result in withdrawal of approval of part or all of the process.

§ 130.43 Review and revisions of State process.

(a) The State shall review annually its continuing planning process and shall revise the process as may be necessary to assure the development and maintenance of a State strategy and State program for preventing and controlling water pollution, based on current State and areawide water quality management plans which will accomplish national water quality objectives in conformity with the requirements of the Act.

(b) In addition to any other necessary revisions identified by the State or the Regional Administrator, the Governor shall submit, within 150 days after these regulations become effective whatever revisions to the planning process description are necessary to insure conformity with this part.

(c) Subsequent revisions to the planning process description shall be submitted by the State as a part of the State program submittal pursuant to § 35.555 of this Chapter.

§ 130.44 Separability.

If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalide, the application of such provision to other person or circumstance, and the remainder of this part, shall not be affected thereby.

ARMY CORPS OF ENGINEERS PERMIT PROGRAMS REGULATIONS

Part 320-General Regulatory Policies

§ 320.1 Purpose and Scope.

(a) Types of activities regulated. This regulation and the regulations that follow (33 CFR 321-329) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal legislation applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable to the review of all activities that require Department of the Army permits. Parts 321-324 address the various types of activities that require Department of the Army permits, including special policies and procedures applicable to those activities, as follows:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) All other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) All activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(4) Construction of fixed structures and artificial islands on the outer continental shelf (Part 322);

(5) All discharges of dredged or fill material into the waters of the United States (Part 323); and

(6) All activities involving the transportation of dredged material for the purpose of dumping it in ocean waters (Part 324).

(b) Forms of authorization. Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits; letters of permission that are issued following a review of an individual application for a Department of the Army permit; general permits that authorize the performance of a category or categories of activities in a specific geographical region after it is determined that these activities will cause only a minimal individual and cumulative adverse environmental impact; and nationwide permits that authorize the performance of certain specified activities throughout the Nation. The nationwide permits are found in 33 CFR 322.4 and 323.4. If an activity is covered by a general or nationwide permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general or nationwide permit to satisfy the requirements of law.

(c) General Instructions. The procedures for processing all

33 CFR 320 and 322 through 329; 42 FR 37121, July 19, 1977

letters of permission, individual permits, and general permits are contained in 33 CFR 325. However, before reviewing those procedures, a person desiring to perform any activity that requires a Department of the Army permit is advised to review the general and special policies that relate to the particular activity as outlined in this Part 320 and Parts 321 through 324. The terms "navigable waters of the United States" and "waters of the United States" are used frequently throughout these regulations, and it is important that the reader understand the difference from the outset. "Navigable waters of the United States" are defined in 33 CFR 329. These are the traditional waters where permits are required for work or structures pursuant to sections 9 and 10 of the River and Harbor Act of 1899. "Waters of the United States" are defined in 33 CFR 323.2(a). These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to section 404 of the Federal Water Pollution Control Act Amendments of 1972.

§ 320.2 Authorities to Issue Permits

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 USC 401) (herinafter referred to as Section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single State, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof, are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (80 Stat. 941, 49 USC 1155g (6)(A)). See also 33 CFR Part 321. A Department of the Army authorization is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1344). See CFR Part 323.

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 USC 403) (hereinafter referred to as Section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or deposition of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit, general permit, or letter of permission. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands and fixed structures located on the outer

continental shelf by Section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333 (f)). See also 33 CFR Part 322.

(c) Section 11 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads or other works may be extended or deposits made without approval of the Secretary of the Army. By policy stated in 33 CFR 328, effective May 27, 1970, harbor lines are guidelines only for defining the offshore limits of structures and fills insofar as they impact on navigation interests. Permits for work shoreward of those lines must be obtained in accordance with Section 10 and, if applicable, Section 404.

(d) Section 13 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency, and the States under Sections 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500, 86 Stat. 816, 33 U.S.C. 1342 and 1345). See 40 CFR Parts 124 and 125.

(e) Section 14 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 1 of the River and Harbor Act of June 13, 1902 (32 Stat. 371; 33 U.S.C. 565) allows any persons or corporations desiring to improve any navigable river at their own expense and risk to do so upon the approval of the plans and specifications by the Secretary of the Army and the Chief of Engineers. Improvements constructed under this authority, which are primarily in Federal project areas, remain subject to the control and supervision of the Secretary of the Army and the Chief of Engineers.

(g) Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500, 86 Stat. 816, 33 U.S.C. 1344) (hereinafter referred to as Section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. See 33 CFR 323. The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army, published in 40 CFR Part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers may consider the economic impact on navigation of such a prohibition

in reaching his decision. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

(h) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (PL 92-532, 86 Stat. 1052, 33 U.S.C. 1413) (hereinafter referred to as Section 103) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters where it is determined that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities. The selection of disposal sites will be in accordance with criteria, developed by the Administrator of the EPA in consultation with the Secretary of the Army, published in 40 CFR Parts 220-229. However, similar to the EPA Administrator's limiting authority cited in subparagraph (g), above, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. See also 33 CFR Part 324.

§ 320.3 Related Legislation

(a) Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (PL 92-500; 86 Stat. 816, 33 U.S.C. 1341) requires any non-Federal applicant for a Federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain 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 affected waters at the point where the discharge originates or will originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (PL 94-370, 90 Stat. 1013, 16 U.S.C. 1456(c)) requires Federal agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply, to the maximum extent practicable, with an approved State coastal zone management program. It also requires any non-Federal applicant for a Federal license or permit to conduct any activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's

coastal zone management program. See also 15 CFR Part 930.

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (PL 92-532, 86 Stat. 1052, 16 U.S.C. 1432) authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Evironmental Policy Act of 1969 (42 U.S.C. 4321- 4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations * * *". See also 33 CFR Part 325 and 33 CFR 209.410

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, et seq.), the Migratory Marine Game-Fish Act (16 U.S.C. 760c-760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c) and other acts express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal agency that proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency excercising administration over the wildlife resources of the affected State.

(f) The Federal Power Act of 1920 (41 Stat. 1063; 16 U.S.C. 791a et seq.), as amended, authorizes the Federal Power Commission (FPC) to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief

of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the FPC for the inclusion of appropriate provisions in the FPC license rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 et seq. As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the FPC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 et seq. remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping in ocean waters, Section 404 or Section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 et seq.) which amends the Act of June 27, 1960. By this Act, whenever a Federal construction project or Federally licensed project, activity or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project. See also 33 CFR Part 305.

(h) The Interstate Land Sales Full Disclosure Act (15 USC 1701 et seq.) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 USC 1701 (3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires Department of the Army authorization, the Property Report is required by Housing and Urban Development regulation to state whether or not a permit has been applied for, issued, or denied by the Corps of Engineers for the development under Section 10 or Section 404. The Property Report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized by that Agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of Interior or Commerce, as appropriate, to be

critical. See also 50 CFR Part 17.

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all Federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for Section 10, Section 404 and Section 103 permits which must also be issued by the Department of the Army pursuant to the authorities listed in § 320.2. The Secretary of Transportation must obtain the views and recommendations of all Federal agencies having jurisdiction over any aspect of the deepwater port construction and operation prior to issuing a license.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1278 et seq.) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. No department or agency of the United States shall recommend authorizing of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

(m) Section 6(f) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897, 16 USC 460 1-4, et seq.) provides that no

property acquired or developed with assistance from the Land and Water Conservation Fund shall, without the approval of the Secretary of the Interior, be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

§ 320.4 General Policies for Evaluating Permit Applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically applicable to certain types of activities are identified in Parts 321-324 of this chapter.

(a) Public interest review. (1) The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether or authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process (e.g. see 33 CFR 209.400, Guidelines for Assessment of Economic, Social and Environmental Effects of Civil Works Projects). That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fisn and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general citeria will be considered in the evaluation of every application:

(i) the relative extent of the public and private need for the proposed structure or work;

(ii) the desirability of using appropriate alternative locations and methods to accomplish the objective of the proposed structure or work;

(iii) the extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited; and

(iv) the probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated structures or work in the general area.

(b) Effect on wetlands. (1) Wetlands are vital areas that constitute a productive and valuable public resource, the

unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected; and

(vii) Wetlands through natural water filtration processes serve to purify water.

(3) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted to work in wetlands identified as important by subparagraph (2), above, unless the District Engineer concludes, on the basis of the analysis required in paragraph (a), above, that the benefits of the proposed alteration outweigh the damage to the wetlands resource and the proposed alteration is necessary to realize those benefits. In evaluating whether a particular alteration is necessary, the District Engineer shall consider whether the proposed activity is primarily dependent on being located in, or in close proximity to the aquatic environment and whether feasible alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and must provide data on the basis of which the availability of feasible alternative

sites can be evaluated.

(5) In addition to the policies expressed in this subpart the Congressional policy expressed in the Estuary Protection Act, PL 90-454, and State regulatory laws or programs for classification and protection of wetlands will be given great weight.

(c) Fish and wildlife. In accordance with the Fish and Wildlife Coordination Act (§ 320.3(e) above) Corps of Engineers officials will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the State in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their direct and indirect loss and damage due to the activity proposed in a permit application. They will give great weight to these views on fish and wildlife considerations in evaluating the application. The applicant will be urged to modify his proposal to eliminate or mitigate any damage to such resources, and in appropriate cases the permit may be conditioned to accomplish this purpose.

(d) Water quality. Applications for permits for activities which may affect the quality of a water of the United States will be evaluated for compliance with applicable effluent limitations, water quality standards, and management practices during the construction, operation, and maintenance of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the Federal Water Pollution Control Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration. Any permit issued may be conditioned to implement water quality protection measures.

(e) Historic, scenic, and recreational values. (1) Applications for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on the enhancement, preservation, or development of such values. Recognition of those values is often reflected by State, regional, or local land use classifications, or by similar Federal controls or policies. In both cases, action on permit applications should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(2) Specific application of the policy in subparagraph (1) above, applies to:

(i) Rivers named in Section 3 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273 et seq.); those proposed for inclusion as provided by Sections 4 and 5 of the Act, or by later legislation; and wild, scenic, and recreational rivers established by State and local entities;

(ii) Historic, cultural, or archeological sites or practices as provided in the National Historic Preservation Act of 1966 (83 Stat. 852, 42 U.S.C. 4321 et seq.) (see also Executive Order

11593, May 13, 1971, and Statutes there cited). Particular attention should be directed toward any district, site, building, structure, or object listed or eligible for listing in the National Register of Historic Places;

(iii) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks which are published periodically in the FEDERAL REGISTER;

(iv) Sites acquired or developed with the assistance of the Land and Water Conservation Fund (78 Stat. 897, 16 U.S.C. 460, 1-4, et seq.) or the Recreational Demonstrations Projects Act of 1942 (PL 77-594, 56 Stat. 326) and other public parks and recreation areas; and

(v) Any other areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries.

(f) Effect on limits of the territorial sea. Structures or work affecting coastal waters may modify the coast line or base line from which the three mile belt is measured for purposes of the Submerged Lands Act and International Law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore. (The Submerged Lands Act, 67 Stat. 29, U.S. Code Section 1301 (c), and United States vs. California, 381 U.S. 139 (1965), 382 U.S. 448 (1966).) All applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The District Engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C. 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the file of the application. After completion of standard processing procedures, the file will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) Interference with adjacent properties or water resource projects. Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, the District Engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources. A

significant probability of resulting damage to nearby properties can be a basis for denial of an application.

(2) A landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby landowners and to the general public's right of navigation on the water surface. Proposals which create undue interference with access to, or use of, navigable waters will generally not receive favorable consideration.

(3) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized Federal project, the applicant should be apprised in writing of the fact and of the possibility that a Federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the River and Harbor Act of 1899 (see 33 CFR Parts 321 and 322) which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(4) Proposed activities which are in the area of a Federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(h) Activities affecting coastal zones. Applications for Department of the Army permits for activities affecting the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-Federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate State agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-Federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency applicants for Department of the Army permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved State coastal zone management programs.

(i) Activities in marine sanctuaries. Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary

of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary. Authorizations so issued will contain such special conditions as may be required by the Secretary of Commerce in connection with his certification.

(j) Other Federal, state, or local requirements. (1) Processing of an application for a Department of the Army permit normally will proceed concurrently with the processing of other required Federal, State, and/or local authorizations or certification. Where the required Federal, State and/or local certification and/or authorization has been denied, the application for a Department of the Army permit will be denied without prejudice to the right of the applicant to reinstate processing of his application if subsequent approval is received from the appropriate Federal, State and/or local agency. Even if official certification and/or authorization is not required by State or Federal law, but a State, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) Where officially adopted State, regional, or local land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition with the other national factors of the public interest identified in § 320.4(a).

(3) A proposed activity may result in conflicting comments from several agencies within the same State. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, District Engineers will elicit from the Governor an expression of his views and desires concerning the application or, in the alternative, an expression from the Governor as to which State agency represents the official State position in this particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable State determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR Parts 320-324, and the following statutes have been followed and considered: The National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archaeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the Federal Water Pollution Control Act (see § 320.3, above).

(5) If the responsible Federal, State, and/or local agency fails to take definitive action to grant or deny required authorizations or to furnish comments as provided in subparagraph (3) above, within three months of the issuance of the public notice, the District Engineer shall process the application to a conclusion.

(6) Permits will not be issued where certification or authorization of the proposed work is required by Federal, State

and/or local law and that certification or authorization has been denied.

(j) The District Engineer may, in those States with ongoing permit programs for activities regulated by Department of the Army permits, enter into an agreement with the States to jointly process and evaluate Department of the Army and State permit applications. This may include the issuance of joint public notices; the conduct of joint public hearings, if held; and the joint review and analysis of information and comments developed in response to the public notice, public hearing, the environmental assessment and the environmental impact statement (if necessary), the Fish and Wildlife Coordination Act, the Historical and Archaeological Preservation Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and the Federal Water Pollution Control Act. In such cases, applications for Department of the Army permits may be processed concurrently with the processing of the State permit to an independent conclusion and decision by the District Engineer and appropriate State Agency.

(k) Safety of impoundment structures. Unless an adequate inspection program is required by another Federal licensing agency or will be performed by another Federal agency, the District Engineer will condition permits for impoundment structures to require that the permittee operate and maintain the structure properly to insure public safety. The District Engineer may condition such permits to require periodic inspections and to indicate that failure to accomplish actions to assure the public safety will be considered cause to revoke the permit.

(l) Floodplains. Executive Order 11988, dated May 24, 1977, requires each Federal agency, in its conduct of Federal programs that affect land use including the regulation of water resources, to take action to reduce the risk of flood loss; to minimize the impact of floods on human safety, health and welfare; and to restore and preserve the natural and beneficial values served by floodplains. In evaluating whether activities located in a floodplain that require Department of the Army permits are in the public interest, available alternatives to avoid adverse effects from and incompatible development in floodplains shall be considered.

Part 322--Permits for Structures Or Work in or Affecting Navigable Waters of the United States

§ 322.1 General

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the

Department of the Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344; see 33 CFR Part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A Department of the Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast), and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, jetty, permanent mooring structure, power transmission lines, permanently moored floating vessels, piling, aids to navigation, or any other permanent or semi-permanent obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means an individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.5(b).

(e) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320.

(f) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of structures or work in a specified region of the country, when those structures or work are substantially similar in nature and cause only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of activities that it will authorize in accordance with the procedures of this regulation (322.5(b)), 33 CFR Part 325, and a

determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(g) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 322.4 to permit certain structures or work in or affecting navigable waters of the United States throughout the Nation.

§ 322.3 Activities Requiring Permits

(a) General. Department of the Army permits are required under Section 10 for all structures or work in or affecting navigable waters of the United States except for bridges and causeways (see Appendix A) and structures or work licensed under the Federal Power Act of 1920. Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR Part 328) also do not require Section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) above, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the navigable capacity of the water-body. For purposes of a Section 10 permit, a tunnel or other structure under or over a navigable water of the United States is considered to have an impact on the navigable capacity of the waterbody.

(2) Pursuant to Section 154 of the Water Resource Development Act of 1976 (PL 94-587), Department of the Army permits will not be required under Section 10 to construct wharves and piers in any waterbody, located entirely within one State, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce. Section 154 applies only to the construction of a single pier or wharf and not to marinas. Furthermore, Section 154 is not applicable to any pier or wharf that would cause an unacceptable impact on navigation.

(b) Outer continental shelf. Department of the Army permits will also be required for the construction of artificial islands and fixed structures on the outer continental shelf pursuant to Section 4(f) of the Outer Continental Shelf Lands Act (see 33 CFR 320.2(b)).

(c) Activities of Federal agencies. Except as specifically provided in this subparagraph, activities of the type described in (a) and (b), above, done by or on behalf of any Federal agency, other than any work or structures in or affecting navigable waters of the United States that are part of the Civil Works activities of the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and District Engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(1) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy.

§ 322.4 Structures and Work Permitted By This Regulation

The following structures or work are hereby permitted for purposes of Section 10 and do not require separate Department of the Army permits:

(a) The placement of aids to navigation by the U.S. Coast Guard; see § 322.5(e), below;

(b) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized; See § 322.5(g), below;

(c) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or of any currently serviceable structure constructed prior to the requirement for authorization; provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure, and further provided that the structure to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction;

(d) Marine life harvesting devices such as pound nets, crab traps, eel pots, lobster traps, provided there is no interference with navigation;

(e) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures provided there is no interference with navigation;

(f) Survey activities including core sampling; and

(g) Structures or work completed before 18 December 1968 or in waterbodies over which the District Engineer has not asserted jurisdiction provided there is no interference with navigation.

§ 322.5 Special Policies

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. See Appendix B). The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) General. Department of the Army permits will be required for structures or work in or affecting navigable waters of the United States. Certain structures or work specified in § 322.4 are permitted by this regulation. If a structure or work is not permitted by this regulation, an individual or general Section 10 permit will be required.

(b) General Permits. The District Engineer may, after compliance with the other procedures of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires such individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) In addition to the conditions prescribed in Appendix C of 33 CFR Part 325, any general permit issued by the District Engineer shall prescribe the following conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by structures or work that are authorized for a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the cumulative effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, application for any future activities in areas covered by the general permit shall be processed as applications for individual permits.

(c) Non-Federal dredging for navigation. (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging an access channel to dock and berthing facilities or deepening such a channel to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested

Federal, State, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with this regulation. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations will contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained, disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation will also authorize the periodic maintenance dredging of the project. Authority for maintenance dredging will be subject to revalidation at regular intervals to be specified in the permit. Revalidation will be in accordance with the procedures prescribed in 33 CFR 325.6 The permit, however, will require the permittee to give advance notice to the District Engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping in the ocean waters, the procedures in 33 CFR Parts 323 and 324 respectively shall also be followed.

(d) Structures for small boats. As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District Engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(1) Letters transmitting permits for structures for small boats will, where applicable, include the following language: "Notice is hereby given that a possibility exists that the structure permitted may be subject to damage by wave wash from passing vessels. Your attention is invited to special condition ______ of the permit." The appropriate designation of the permit condition placing responsibility on the permittee and not on the United

States for integrity of the structure and safety of boats moored thereto will be inserted.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a Resources Manager are normally subject to permit authorities cited in § 322.3, above, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake Resources Manager's office.

(e) Aids to navigation. The placing of fixed and floating aids to navigation in navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of their control of marking, lighting and standardization of such navigation aids. Applications for permits for installation of aids to navigation will, therefore, be coordinated with the appropriate District Commander, U.S. Coast Guard, and permits for such aids will include a condition to the effect that the permittee will conform to the requirements of the Coast Guard for marking, lighting, etc. Since most fixed and floating aids to navigation will not ordinarily significantly affect environmental values, the usual form of authorization to be used will be a letter of permission (See 33 CFR 325.1(b)).

(f) Outer continental shelf. Artificial islands and fixed structures located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands or structures are to be constructed on lands which are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria.

(g) Canals and other artificial waterways connected to navigable waters of the United States. (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, above, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, condition, or capacity. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of this regulation. For all other canals the exercise of regulatory authority is restricted to those activities which affect the course, condition, or capacity of the navigable waters of the United States. Examples of the

latter may include the length and depth of the canal; the currents, circulation, quality and turbidity of its waters, especially as they affect fish and wildlife values; and modifications or extensions of its configuration.

(2) The proponent of canal work should submit his application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the District Engineer before commencing any form of work. If the connection to navigable waters of the United States has already been made without a permit, the District Engineer will proceed in accordance with 33 CFR Part 326. Where a canal connection is planned, an application for a Section 10 permit should be made at the earliest stage of planning. Where the canal construction has already begun, the District Engineer will, in writing, advise the proponent of the need for a permit to connect the canals to navigable waters of the United States. He will also ask the proponent if he intends to make such a connection and will request the immediate submission of the plans and permit application if it is so intended. The District Engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and that the existence of partially completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(h) Facilities at the borders of the United States. (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural gas to or from a foreign country, must be made to the Federal Power Commission. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (Executive Order 11423, August 16, 1968.)

(5) A Department of the Army permit under Section 10 of the River

and Harbor Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the decision whether to issue the Department of the Army permit will be based primarily on factors of navigation, since the basic existence and operation of the facility will have been examined and permitted as provided by the Executive orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under Section 404 of the Federal Water Pollution Control Act or under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required (See 33 CFR Parts 323, 324).

(i) Power transmission lines. (1) Permits under Section 10 of the River and Harbor Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Federal Power Commission under the Federal Water Power Act of 1920. If an application is received for a permit for lines which are part of a water power project, the applicant will be instructed to submit his application to the Federal Power Commission. If the lines are not part of a water power project, the application will be processed in accordance with the procedures prescribed in this regulation.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

Minimum additonal clearance above clearance required for bridges

Nominal system voltage kilovolt:	Feet[1]
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

[1] Above clearance required for bridges.

(j) Seaplane operations. (1) Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, District Engineer, and other interested parties as to the effects of the proposal on the use of airspace. The District Engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to their recommendations when evaluating the general public interest.

(3) If the seaplane base will serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the District Engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(k) Foreign Trade Zones. The Foreign Trade Zones Act (48 Stat. 998-1003, 19 U.S.C. 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published in 15 CFR Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the District Engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of this regulation. Evaluation by a District Engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

Appendix A--U.S. Coast Guard/Chief of Engineers, Memorandum of Agreement

1. Purpose and Authority

A. The Department of Transportation Act, the Act of October 15, 1966, P.L. 89-670, transferred to and vested in the Secretary of Transportation certain functions, powers and duties previously vested in the Secretary of the Army and the Chief of Engineers. By delegation of authority from the Secretary of Transportation (49 CFR 1.46(c)) the Commandant, U.S. Coast Guard, has been authorized to exercise certain of these functions, powers and duties relating to bridges and causeways conferred by:

(1) The following provision of law relating generally to drawbridge operating regulations: Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499);

(2) The following law relating generally to obstructive bridges:

The Act of June 21, 1940 as amended (The Truman-Hobbs Act) (54 Stat. 497; 33 U.S.C. 511 et seq.);

(3) The following laws and provisions of law to the extent that they relate generally to the location and clearances of bridges and causeways in the navigable waters of the United States:

(a) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401);

(b) The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.); and

(c) The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.) except Sections 502(c) and 503.

B. The Secretary of the Army and The Chief of Engineers continue to be vested with broad and important authorities and responsibilities with respect to navigable waters of the United States, including, but not limited to, jurisdiction over excavation and filling, design flood flows and construction of certain structures in such waters, and the prosecution of waterway improvement projects.

C. The purposes of this agreement are:

(1) To recognize the common and mutual interest of the Chief and Engineers and the Commandant, U.S. Coast Guard, in the orderly and efficient administration of their respective responsibilities under certain Federal statutes to regulate certain activities in navigable waters of the United States;

(2) To clarify the areas of jurisdiction and the responsibilities of the Corps of Engineers and the Coast Guard with respect to:

(a) The alteration of bridges,

(1) In connection with Corps of Engineers waterway improvement projects, and

(2) Under the Truman-Hobbs Act;

(b) The construction, operation and maintenance of bridges and causeways as distinguished from other types of structures over or in navigable waters of the United States;

(c) The closure of waterways and the restriction of passage through or under bridges in connection with their construction, operation, maintenance and removal; and

(d) The selection of an appropriate design flood flow for flood hazard analysis of any proposed water opening.

(3) To provide for coordination and consultation on projects and activities in or affecting the navigable waters of the United States.

In furtherance of the above purposes the undersigned do agree upon the definitions, policies and procedures set forth below.

2. Alteration of Bridges in or Across Navigable Waters Within Corps of Engineers Projects

A. The Chief of Engineers agrees to advise and consult with the Commandant on navigation projects contemplated by the Corps of Engineers which require the alteration of bridges across the waterways involved in such projects. The Chief of Engineers also agrees to include in such project proposals the costs of alterations, exclusive of betterments, of all bridges within the limits of the designated project which after consultation with the Commandant

he determines to require alteration to meet the needs of existing and prospective navigation. Under this concept the federal costs would be furnished under the project.

B. The Commandant of the Coast Guard agrees to undertake all actions and assumes all responsibilities essential to the determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters necessary in connection with any navigation project by the Chief of Engineers. Further, the Commandant agrees to conduct all public proceedings necessary thereto and establish guide clearance criteria where needed for the project objectives.

3. Alteration of Bridges Under the Truman-Hobbs Act

The Commandant of the Coast Guard acknowledges and affirms the responsibility of the Coast Guard, under the Truman-Hobbs Act, to program and fund for the alteration of bridges which, as distinct from project related alterations described in paragraph 2 herein, become unreasonable obstructions to navigation as a result of factors or changes in the character of navigation and this agreement shall in no way affect, impair or modify the powers or duties conferred by that Act.

4. Approval, Alteration and Removal of Other Bridges and Causeways

A. General Definitions. For purposes of this Agreement and the administration of the statutes cited in 1.A.(3) above, a "bridge" is any structure over, on or in the navigable waters of the United States which (1) is used for the passage or conveyance of persons, vehicles, commodities and other physical matter and (2) is constructed in such a manner that either the horizontal or vertical clearance, or both, may affect the passage of vessels or boats through or under the structure. This definition includes, but is not limited to, highway bridges, railroad bridges. foot bridges, aqueducts, aerial tramways and conveyors, overhead pipelines similar structures of like function together with their approaches, fenders, pier protection systems, appurtenances and foundations. This definition does not include aerial power transmission lines, tunnels, submerged pipelines and cables, dams, dikes, dredging and filling in, wharves, piers, breakwaters, bulkheads, jetties and similar structures and works (except as they may be integral features of a bridge and used in its construction, maintenance, operation or removal; or except when they are affixed to the bridge and will have an effect on the clearances provided by the bridge) over which jurisdiction remains with the Department of the Army and the Corps of Engineers under Sections 9 and 10 of the Act of March 3, 1899, as amended (33 U.S.C. 401 and 403). A "causeway" is a raised road across water or marshy land, with the water or marshy land on both sides of the road, and which is constructed in or affects navigation, navigable waters and design flood flows.

B. Combined Structures and Appurtenances. For purposes of the Acts cited in 1.A.(3) above, a structure serving more than one

purpose and having characteristics of either a bridge or causeway, as defined in 4.A., and some other structure, shall be considered as a bridge or causeway when the structure in its entirety including its appurtenances and incidental features, has or retains the prodominant characteristics and purpose of a bridge or causeway. A structure shall not be considered a bridge or causeway when its primary and predominant characteristics and purpose are other than those set forth above and it meets the general definitions above only in a narrow technical sense as a result of incidental features. This interpretation is intended to minimize the number of instances which will require an applicant for a single project to secure a permit or series of permits from both the Department of Transportation and the Department of the Army for each separate feature or detail of the project when it serves, incidentally to its primary purpose, more than one purpose and has features of either a bridge or causeway and features of some other structure. However, if parts of the project are separable and can be fairly and reasonably characterized or classified in an engineering sense as separate structures, each such structure will be so treated and considered for approval by the agency having jurisdiction thereover.

C. Alteration of the Character of Bridges and Causeways. The jurisdiction of the Secretary of Transportation and the Coast Guard over bridges and causeways includes authority to approve the removal of such structures when the owners thereof desire to discontinue their use. If the owner of a bridge or causeway discontinues its use and wishes to remove or alter any part thereof in such a manner that it will lose its character as a bridge or causeway, the Coast Guard will normally require removal of the structure from the waterway in its entirety. However, if the owner of a bridge or a causeway wishes to retain it in whole or in part for use other than for operation and maintenance as a bridge or causeway, the proposed structure will be considered as coming within the jurisdiction of the Corps of Engineers. The Coast Guard will refer requests for such uses to the Corps of Engineers for consideration. The Corps of Engineers agrees to advise the Commandant of the receipt of an application for approval of the conversion of a bridge or causeway to another structure and to provide opportunity for comment thereon. If the Corps of Engineers approves the conversion of a bridge or causeway to another structure, no residual jurisdiction over the structure will remain with the Coast Guard. However, if the Corps of Engineers does not approve the proposed conversion, then the structure remains a bridge subject to the jurisdiction of the Coast Guard.

5. Closure of Waterways and Restriction of Passage Through or Under Bridges

Under the statutes cited in Section 1 of this Memorandum of Agreement, the Commandant must approve the clearances to be made available for navigation through or under bridges. It is understood that this duty and authority extends to and may be exercised in connection with the construction, alteration, operation, maintenance and removal of bridges, and includes the power to authorize the temporary restriction of passage through or

under a bridge by use of falsework, piling, floating equipment, closure of draws, or any works or activities which temporarily reduce the navigation clearances and design flood flows, including closure of any or all spans of the bridge. Moreover, under the Ports and Waterways Safety Act of 1972, Public Law 92-340, 86 Stat. 424, the Commandant exercises broad powers in waterways to control vessel traffic in areas he determines to be especially hazardous and to establish safety zones or other measures for limited controls or conditional access and activity when necessary to prevent damage to or the destruction or loss of, any vessel, bridge, or other structure on or in the navigable waters of the United States. Accordingly, in the event that work in connection with the construction, alteration or repair of a bridge or causeway is of such a nature that for the protection of life and property navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, the Coast Guard may close that part of the affected waterway while such work is being performed. However, it is also clear that the Secretary of the Army and the Chief of Engineers have the authority, under Section 4 of the Act of August 18, 1894, as amended, (33 U.S.C. 1) to prescribe rules for the use, administration and navigation of the navigable waters of the United States. In recognition of that authority, and pursuant to Section 102(c) of the Ports and Waterways Safety Act, the Coast Guard will consult with the Corps of Engineers when any significant restriction of passage through or under a bridge is contemplated to be authorized or a waterway is to be temporarily closed.

6. Coordination and Cooperation Procedures

A. District Commanders, Coast Guard Districts, shall send notices of applications for permits for bridge or causeway construction, modification, or removal to the Corps of Engineers Divisions and Districts in which the bridge or causeway is located.

B. District Engineers, Corps of Engineers, shall send notices of applications for permits for other structures or dredge and fill work to local Coast Guard District Commanders.

C. In cases where proposed structures or modifications of structures do not clearly fall within one of the classifications set forth in paragraph 4.A. above, the application will be forwarded with recommendations of the reviewing officers through channels to the Chief of Engineers and the Commandant of the Coast Guard who shall, after mutual consultation, attempt to resolve the questions.

D. If the above procedures fail to produce agreement, the application will be forwarded to the Secretary of the Army and Secretary of Transportation for their determination.

E. The Chief of Engineers and the Commandant, Coast Guard pledge themselves to mutual cooperation and consultation in making available their timely information and data, seeking uniformity and consistency among field offices, and providing timely and adequate review of all matters arising in connection with the administration of their responsibilities governed by the Acts cited herein.

Dated: March 21, 1973 — C. R. Bender
Dated: April 18, 1973 — F. J. Clarke

Appendix B--Delegation of Authority to Issue or Deny Permits for Construction or Other Work Affecting Navigable Waters of the United States

May 24, 1971.

Pursuant to the authority vested in me by the Act of March 3, 1899, c.425, Sections 10 and 14, 30 Stat. 1151, 1152, 33 U.S.C. Sections 403 and 408, and the Act of June 13, 1902, c.1079, Section 1, 32 Stat. 371, 33 U.S.C. Section 565, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work affecting navigable waters of the United States. Except in cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on the public interest. In cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on navigation and national security. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Acts.

The Chief of Engineers and his authorized representatives shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

Stanley R. Resor,
Secretary of the Army.

Part 323--Permits for Discharges of Dredged or Fill Material into Waters of the United States

Appendix A--Delegation of authority.

§ 323.1 General

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344) (hereinafter referred to as Section 404). See 33 CFR 320.2(g). Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401; see 33 CFR 321) and structures or work in or affecting navigable waters of the United States pursuant to 33 U.S.C. 1344.

Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403; see 33 CFR 322). A Department of the Army permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for Department of the Army permits under this Part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "waters of the United States" means:[1]

(1) The territorial seas with respect to the discharge of fill material. (The transportation of dredged material by vessel for the purpose of dumping in the oceans, including the territorial seas, at an ocean dump site approved under 40 CFR 228 is regulated by Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413). See 33 CFR 324. (Discharges of dredged or fill material into the territorial seas are regulated by Section 404.);

(2) Coastal and inland waters, lakes, rivers, and streams that are navigable waters of the United States, including adjacent wetlands;

(3) Tributaries to navigable waters of the United States, including adjacent wetlands (manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition).

(4) Interstate waters and their tributaries, including adjacent wetlands; and

(5) All other waters of the United States not identified in paragraph (1)-(4) above, such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which

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[1] The terminology used by the FWPCA is "navigable waters" which is defined in Section 502(7) of the Act as "waters of the United States including the territorial seas." For purposes of clarity, and to avoid confusion with other Corps of Engineers regulatory programs, the term "waters of the United States" is used throughout this regulation.

could affect interstate commerce.[2]

The landward limit of jurisdiction in tidal waters, in the absence of adjacent wetlands, shall be the high tide line and the landward limit of jurisdiction on all other waters, in the absence of adjacent wetlands, shall be the ordinary high water mark.

(b) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark (mean higher high water mark on the Pacific coast) and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR 329 for a more complete definition of this term.)

(c) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life

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[2] In defining the jurisdiction of the FWPCA as the "waters of the United States," Congress, in the legislative history to the Act, specified that the term "be given the broadest constitutional interpretation unencumbered by agency determinations which would have been made or may be made for administrative purposes." The waters listed in paragraphs (a)(1)-(4) fall within this mandate as discharges into those waterbodies may seriously affect water quality, navigation, and other Federal interests; however, it is also recognized that the Federal government would have the right to regulate the waters of the United States identified in paragraph (a)(5) under this broad Congressional mandate to fulfill the objective of the Act: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). Paragraph (a)(5) incorporates all other waters of the United States that could be regulated under the Federal government's Constitutional powers to regulate and protect interstate commerce, including those for which the connection to interstate commerce may not be readily obvious or where the location or size of the waterbody generally may not require regulation through individual or general permits to achieve the objective of the Act. Discharges of dredged or fill material into waters of the United States identified in paragraph (a)(1)-(4) will generally require individual or general permits unless those discharges occur beyond the headwaters of a river or stream or in natural lakes less than 10 acres in surface area. Discharges into these latter waters and into most of the waters identified in paragraph (a)(5) will be permitted by this regulation, subject to the provisions listed in paragraph 323.4-2(b) unless the District Engineer develops information, on a case-by-case basis, that the concerns for the aquatic environment as expressed in the EPA Guidelines (40 CFR 230) require regulation through an individual or general permit. (See 323.4-4).

in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

(d) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(e) The term "natural lake" means a standing body of open water that occurs in a natural depression fed by one or more streams and from which a stream may flow, that occurs due to the widening or natural blockage of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream.

(f) The term "impoundment" means a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(g) The term "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of the soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(h) The term "high tide line" means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(i) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second.[3] The District Engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means.

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[3] For streams that are dry during long periods of the year, District Engineers, after notifying the Regional Administrator of EPA, may establish the headwater point as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time. The District Engineer shall notify the Regional Administrator of his determination of these headwater points.

(j) The term "primary tributaries" means the main stems of tributaries directly connecting to navigable waters of the United States up to their headwaters, and does not include any additional tributaries extending off of the main stems of these tributaries.

(k) The term " dredged material" means material that is excavated or dredged from waters of the United States.

(l) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Federal Water Pollution Control Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(m) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Federal Water Pollution Control Act Amendments of 1972.

(n) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines, and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(o) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this regulation and 33 CFR 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(p) The term "general permit" means a Department of the Army

authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and that cuase only minimal individual and cumulative adverse environmental impact. A general permit is issued following an evaluation of the proposed category of discharges in accordance with the procedures of this regulation (§ 323.3(c)), 33 CFR Part 325, and a determination that the proposed discharges will be in the public interest pursuant to 33 CFR Part 320.

(g) The term "nationwide permit" means a Department of the Army authorization that has been issued by this regulation in § 323.4 to permit certain discharges of dredged or fill material into waters of the United States throughout the Nation.

§ 323.3 Discharges Requiring Permits.

(a) General. Department of the Army permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in § § 323.4-1, 323.4-2 and 323.4-3 are permitted by this regulation. If a discharge of dredged or fill material is not permitted by this regulation, an individual or general Section 404 permit will be required for the discharge of dredged or fill material into waters of the United States in accordance with the following phased schedule:

(1) Before July 25, 1975, discharges into navigable waters of the United States.

(2) After July 25, 1975, discharges into navigable waters of the United States and adjacent wetlands.

(3) After September 1, 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes, greater than 5 acres in surface area. (See also § 323.4-2 for discharges that are permitted by this regulation.)

(4) After July 1, 1977, discharges into all waters of the United States. (See also § 323.4-2 for discharges that are permitted by this regulation.)

(b) Individual permits. Unless permitted by this regulation (§ § 323.4-1, 323.4-2 and 323.4-3) or authorized by general permits (§ 323.3(c)), the discharge of dredged or fill material into waters of the United States will require an individual Department of the Army permit issued in accordance with the policies in § 320.4 and procedures in 33 CFR Part 325.

(c) General permits. The District Engineer may, after compliance with the other procedures of 33 CFR Part 325, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories will not require individual permit processing by the procedures of 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that the public interest requires individual review.

(1) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(2) The District Engineer shall include appropriate conditions as specified in Appendix C of 33 CFR Part 325 in each general permit and shall prescribe the following additional conditions:

(i) The maximum quantity of material that may be discharged and the maximum area that may be modified by a single or incidental operation (if applicable);

(ii) A description of the category or categories of activities included in the general permit; and

(iii) The type of water(s) into which the activity may occur.

(3) The District Engineer may require reporting procedures.

(4) A general permit may be revoked if it is determined that the effects of the activities authorized by it will have an adverse impact on the public interest provided the procedures of 33 CFR 325.7 are followed. Following revocation, applications for future activities in areas covered by the general permit shall be processed as applications for individual permits.

(d) Activities of Federal agencies. (1) Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, or instrumentality other than the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in the expeditious processing of their applications.

(2) The policy provisions set out in 33 CFR 320.4(j), relating to State or local authorizations, do not apply to discharges of dredged or fill material into waters of the United States undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the appropriate State, interstate and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended, in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 December 73). They are not required, however, to provide certification of compliance with effluent limitations and water-quality standards from State or interstate water pollution control agencies in connection with activities involving discharges into waters of the United States.

(e) Activities licensed under the Federal Power Act of 1920. Any part of a structure or work licensed by the Federal Power Commission that involves the discharge of dredged or fill material

into waters of the United States shall require a Department of the Army authorization under this regulation.

§ 323.4 Discharges Permitted by This Regulation.

(a) General. Discharges of dredged or fill material specified in § § 323.4-1, 323.4-2 and 323.4-3, below, are hereby permitted for purposes of Section 404 without further processing under this regulation (individual applications are not needed), except as provided in § 323.4-4 below. Permits may, however, be required under Section 10 of the River and Harbor Act of 1899 (see 33 CFR 322). Sections 323.4-1, 323.4-2 and 323.4-3 do not obviate the requirement to obtain State or local assent required by law for the activities permitted therein.

(b) Management practices. In addition to the conditions specified in § 323.4-2(b) and 323.4-3(b), the following management practices should be followed, to the maximum extent practicable, in the discharge of dredged or fill material permitted by § § 323.4-2 and 324.4-3 to minimize the adverse effects of these discharges on the aquatic environment:

(1) Discharges of dredged or fill material into waters of the United States should be avoided or minimized through the use of other practical alternatives;

(2) Discharges in spawning areas during spawning seasons should be avoided;

(3) Discharges should not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the waters (unless the primary purpose of the fill is to impound waters);

(4) If the discharge creates an impoundment water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, should be minimized.

(5) Discharges in wetlands areas should be avoided;

(6) Heavy equipment working in wetlands should be placed on mats;

(7) Discharges into breeding and nesting areas for migratory waterfowl should be avoided; and

(8) All temporary fills should be removed in their entirety.

§ 323.4-1 Discharges Prior to Effective Dates of Phasing.

(a) Discharges of dredged or fill material in waters of the United States that occur before the phase-in dates specified in § 323.3(a)(2)-(4) above, are hereby permitted for purposes of Section 404, provided the conditions in paragraph (c) below are met.

(b) Discharges of dredged or fill material of less than 500 cubic yards into waters other than navigable waters of the United States (see 33 CFR 329) thzt are part of an activity that was commenced before July 25, 1975, that were completed by January 25, 1976, and that involve a single and complete development plan are hereby permitted for purposes of Section 404, provided the

conditions in paragraph (c) below are met. The term "commenced" as used herein shall be satisfied if there has been, before July 25, 1975, some discharge of dredged or fill material as a part of the above activity or an entering into of a written contractual obligation to have the dredged or fill material discharged at a designated disposal site by a contractor.

(c) For the purposes of Section 404, the following conditions must have been satisfied for the discharges occurring before the dates specified in paragraph (a) and (b) above:

(1) That the discharge was not located in the proximity of a public water intake;

(2) That the discharge did not contain unacceptable levels of pathogenic organisms in areas used for recreation involving physical contact with the water;

(3) That the discharge did not occur in areas of concentrated shellfish production; and

(4) That the discharge did not destroy or endanger the critical habitat or a threatened or endangered species, as identified under the Endangered Species Act.

§ 323.4-2 Discharges into Certain Waters of the United States.

(a) Discharges of dredged or fill material into the following waters of the United States are hereby permitted for purposes of Section 404, provided the conditions in paragraph (b) below are met:

(1) Non-tidal rivers, streams and their impoundments including adjacent wetlands that are located above the headwaters;

(2) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are fed or drained by a river or stream above the headwaters. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark;

(3) Natural lakes, including their adjacent wetlands, that are less than 10 acres in surface area and that are isolated and not a part of a surface river or stream. In the absence of adjacent wetlands, the surface area of a lake shall be determined at the ordinary high water mark; and

(4) Other non-tidal waters of the United States other than isolated lakes larger than 10 acres (see (3) above) that are not part of a surface tributary system to interstate waters or navigable waters of the United States (see § 323.2(a)(5)).

(b) For purposes of Section 404, the following conditions must be satisfied for any discharge of dredged or fill material in waters described in paragraph (a), above:

(1) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(2) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(3) That the fill created by the discharge will be properly

maintained to prevent erosion and other non-point sources of pollution; and

(4) That the discharge will not occur in a component of the National Wild and Scenic Rivers System or in a component of a State wild and scenic river system.

§ 323.4-3 Specific Categories of Discharges.

(a) The following discharges of dredged or fill material into waters of the United States are hereby permitted for purposes of Section 404, provided the conditions specified in this paragraph and paragraph (b) below are met:

(1) Dredged or fill material placed as backfill or bedding for utility line crossings provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. (The utility line will require a Section 10 permit if in navigable waters of the United States. See 33 CFR Part 322.);

(2) Material discharged for bank stabilization, provided that the bank stabilization activity is less than 500 feet in length, is necessary for erosion prevention, and is limited to less than an average of one cubic yard per running foot along the bank, provided further that no material for bank stabilization is placed in any wetland area, and provided further that no material is placed in any locality or in any manner so as to impair surface water flow into or out of any wetland area. (This activity will require a Section 10 permit if in navigable waters of the United States. See 33 CFR part 322.);

(3) Minor road crossing fills including all attendant features both temporary and permanent that are part of a single and and complete crossing of a non-tidal waterbody, provided that the crossing is culverted or bridged to prevent the restriction of expected high flows and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing will require a permit from the US Coast Guard if located in navigable waters of the United States (see 33 USC 401);

(4) Fill placed incidental to the construction of bridges across tidal waters including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills. Approach fills and causeways are not included in this permit and will require an individual or general Section 404 permit if located in waters of the United States; these fills as well as the bridge itself will also require a permit from the U.S. Coast Guard; and

(5) The repair, rehabilitation or replacement of any previously

authorized, currently serviceable fill, or of any currently serviceable fill, or of any currently serviceable fill discharged prior to the requirement for authorization; provided such repair, rehabilitation or replacement does not result in a deviation from the specifications of the original work, and further provided that the fill to be maintained has not been put to uses different from uses specified for it in any permit authorizing its original construction.

(b) For the purposes of Section 404, the following conditions must be satisfied prior to any discharge of dredged or fill material associated with the activities described above:

(1) That the discharge will not be located in the proximity of a public water supply intake;

(2) That the discharge will not occur in areas of concentrated shellfish production;

(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody;

(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

§ 323.4-4 Discretionary Authority to Require Individual or General Permits.

Notwithstanding the provisions of § § 323.4-1, 323.4-2 and 323.4-3, above, the procedures of this regulation and 33 CFR Part 325, including those pertaining to individual and general permits, shall apply to any discharge(s) of dredged or fill material if the District Engineer determines that the concerns of the aquatic environment, as expressed in the guidelines (see 40 CFR Part 230) indicate the need for such action because of individual and/or cumulative adverse impacts to the affected waters. In such cases, he shall take such steps as are necessary to notify persons who would be affected by such action. If the Regional Administrator, EPA, advises the District Engineer that the concerns for the aquatic environment as expressed in the Section 404(b) Guidelines require assertion of jurisdiction under § 323.4-4, and the District Engineer and Division Engineer disagree, the Office of the Chief of Engineers (DAEN-CWO-N and DAEN-CCH) shall be notified for further coordination and resolution with the Administrator.

§ 323.5 Special Policies and Procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. (See Appendix A.)

The following additional special procedures shall also be applicable to the evaluation of permit applications under this regulation:

(a) EPA Guidelines. Applications for permits for the discharge of dredged or fill material into waters of the United States will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act. (See 40 CFR Part 230.) If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage of the failure to authorize the use of the proposed disposal site will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(b) Coordination with EPA. Prior to actual issuance of permits for the discharge of dredged or fill material in waters of the United States, Corps of Engineers officials will advise appropriate Regional Administrators, EPA, of the intent to issue permits to which EPA has objected, recommended conditions, or for which significant changes are proposed. If the Regional Administrator advises, within fifteen days of the advice of the intent to issue, that he objects to the issuance of the permits, the case will be forwarded to the Chief of Engineers in accordance with 33 CFR 325.11 for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain an analysis of the economic impact on navigation and anchorage that would occur by failing to authorize the use of a proposed disposal site, and whether there are other economically feasible methods or sites available other than those to which the Regional Administrator objects.

Appendix A. - Deletion of Authority to
Issue or Deny Permits for the Discharge
of Dredged or Fill Material into Navigable Waters

March 12, 1973.

Pursuant to the authority vested in me by Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, P.L. 92-500, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the discharge of dredged or filled material into navigable waters at specified disposal sites. The Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed discharge on the public interest. All permits issued shall specify a disposal site for the discharge of the dredged or fill material through the application of guidelines developed by the Administrator of the Environmental Protection Agency and myself. In those cases where these guidelines would prohibit the specification of a disposal site, the Chief of Engineers, in his evaluation of whether the proposed discharge is in the public interest, is authorized also to consider the economic impact on navigation and anchorage which would occur by failing to authorize the use of a proposed disposal

site. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws and any applicable memoranda of understanding between the Secretary of the Army and heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

Kenneth E. BeLieu,
Acting Secretary of the Army.

Part 324--Permits for Ocean Dumping of Dredged Material

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the reveiw of applications for Department of the Army permits to authorize the transportation of dredged material by vessel for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 USC 1413) (hereinafter referred to as Section 103). See 33 CFR 320.2(h). Activities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require Department of the Army permits under Section 10 of the River and Harbor Act of 1899 (33 USC 403) for the dredging in navigable waters of the United States. Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States or ocean waters.

(c) The term "transport" or "transportation" refers to the carriage and related handling of dredged material by a vessel.

§ 324.3 Activities Requiring Permits.

(a) General. Department of the Army permits are required for the transportation of dredged material for the purpose of dumping it in ocean waters.

33 U.S.C. 1413.

(b) Activities of Federal Agencies. (1) The transportation of dredged material for the purpose of dumping in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers are subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Engineers that involve the transportation of dredged material for dumping in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to State or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive State, interstate, and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and related laws in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order 11752, dated 17 Dec. 73.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water-quantity standards from State or interstate water pollution control agencies in connection with activities involving discharges into ocean waters.

§ 324.4 Special Procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 103 permits. (See Appendix A.) The following additional procedures shall also be applicable under this regulation.

(a) Public notice. For all applications for Section 103 permits, the District Engineer will issue a public notice which shall contain, in addition to the information specified in 33 CFR 325.3, the following information:

(1) The location of the proposed disposal site and its physical boundaries;

(2) A statement as to whether the site has been designated for use by the Administrator, EPA, pursuant to Section 102(c) of the Act;

(3) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(4) A brief description of known dredged material discharges at the proposed disposal site;

(5) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content);

(6) An estimate of the length of time during which disposal will continue at the proposed site;

(7) Characteristics and composition of the dredged material; and

(8) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement.

(b) Evaluation. Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, criteria established by the Administrator, EPA, pursuant to Section 102 of the Marine Protection Research and Sanctuaries Act of 1972, as amended, shall be applied including an evaluation of the need for the ocean dumping and including the availability of alternatives to ocean dumping. Where ocean dumping is determined to be necessary, the District Engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to Section 102(c) of the Act. See 40 CFR Parts 220 to 229.

(c) EPA review. If the Regional Administrator, EPA, advises the District Engineer that the proposed dumping will comply with the criteria the District Engineer shall complete his evaluation of the Section 103 application under this regulation and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the District Engineer that the proposed dumping will not comply with the Criteria, the District Engineer will proceed as follows.

(1) The District Engineer shall determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the District Engineer shall evaluate them in accordance with 33 CFR Parts 320, 322, 323, 325 and this regulation, as appropriate.

(2) If the District Engineer makes a determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator of his intent to issue the permit setting forth his reasons for such determination.

(d) EPA objection. If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he still objects to the issuance of the permit, the case will be forwarded to the Chief of Engineers, for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain, in addition to the analysis required by 33 CFR 325.11, an analysis of whether there are other economically feasible methods or sites available to dispose of the dredged material.

(e) Chief of Engineers review. The Chief of Engineers shall evaluate the permit application and make a decision to deny the

permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the Criteria or of the critical site designation in accordance with 40 CFR 225.4.

Appendix A--Delegation of Authority to Issue or Deny Permits for the Transportation of Dredged Material for the Purpose of Dumping It into Ocean Waters

March 12, 1973.

Pursuant to the authority vested in me by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, 86 Stat. 1052, Pub. L. 92-532, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. The Chief of Engineers and his authorized representatives shall, in excercising such authority, evaluate the impact of the proposed dumping on the public interest. No permit shall be issued unless a determination is made that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In making this determination, those criteria for ocean dumping established by the Administrator of the Environmental Protection Agency pursuant to Section 102(a) of the above Act which relate to the effects of the proposed dumping shall be applied. In addition, based upon an evaluation of the potential effect which a permit denial will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Chief of Engineers or his authorized representatives, in evaluating the permit application, shall make an independent determination as to the need for the dumping, other possible methods of disposal, and appropriate locations for the dumping. In considering appropriate disposal sites, recommended sites designated by the Administrator of the Environmental Protection Agency pursuant to Section 102(c) of the above Act will be utilized to the extent feasible. Prior to issuing any permit, the Chief of Engineers or his authorized representatives shall first notify the Administrator of the Environmental Protection Agency or his authorized representative of his intention to do so. In any case in which the Administrator or his authorized representative disagrees with the determination of the Chief of Engineers or his authorized representative as to compliance with the criteria established pursuant to Section 102(a) of the above Act relating to the effects of the dumping or with the restrictions established pursuant to Section 102(c) of the above Act relating to critical areas, the determination of the Administrator or his authorized representative shall prevail. If, in any such case, the Chief of Engineers or his Director of Civil Works finds that, in the

disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with such criteria or restrictions, he shall so certify and request that I seek a waiver from the Administrator of the Environmental Protection Agency of the specific requirements involved. Unless the Administrator of the Environmental Protection Agency grants a waiver, the Chief of Engineers or his authorized representatives shall not issue a permit which does not comply with such criteria and restrictions. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws, and any applicable memoranda of understanding between the Secretary of the Army and the heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

Kenneth E. BeLieu,
Acting Secretary of the Army.

Part 325--Processing of Department Of The Army Permits

§ 325.1 Applications For Permits.

(a) General. The processing procedures of this regulation (Part 325) apply to any form of Department of the Army permit. Special procedures and additional information are contained in Parts 320 through 324. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing Department of the Army permits.

(b) Application form. Any person proposing to undertake any activity requiring Department of the Army authorization as specified in 33 CFR 321-324 must apply for a permit to the District Engineer in charge of the District where the proposed activity is to be performed. Applications for permits must be prepared in accordance with instructions in Engineer Pamphlet 1145-2-1, "A Guide for Applicants," utilizing the prescribed application form (ENG Form 4345). The form and pamphlet may be obtained from the District Engineer having jurisdiction over the waterway in which the proposed activity will be located. Local variations of the application form for purposes of facilitating coordination with State and local agencies may be used.

(c) Content of application. (1) Generally, the application must include a complete description of the proposed activity including necessary drawings, sketches or plans; the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals received

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33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413

or denials already made.

(2) If the activity involves dredging in waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must include the source of the material; a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. (See Part 324 for additional information requirements on ocean dumping applications.) Certification under Section 401 of the Federal Water Pollution Control Act is required for such discharges into waters of the United States.

(4) If the activity includes the construction of a fill or pile or float-supported platform, the project description must include the use and specific structures to be erected on the fill or platform.

(d) Additional information. In addition to the information indicated in subparagraph (c), above, the applicant will be required to furnish such additional information as the District Engineer may deem necessary to assist him in his evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites, as may be necessary for the preparation of the Environmental Assessment or Environmental Impact Statement (see § 325.4).

(e) Signature of application. The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish, upon request, supplemental information in support of the application. In either case, the signature of the applicant will be understood to be an affirmation that he possesses the authority to undertake the activity proposed in his application, except where the lands are under the control of the Corps of Engineers, in which cases the District Engineer will coordinate the transfer of the real estate and the permit action. When the application is submitted by an agent, the application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area.

(f) Fees. Fees are required for permit applications under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and Sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge

for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the work is non-commercial in nature and provides personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. non-commercial) shall be solely the responsibility of the District Engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the applicant is notified by the District Engineer that a public interest review has been completed and that the proposed activity has been determined to be in the public interest. Upon receipt of this notification the applicant will forward a check or money order to the District Engineer, made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require a permit will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions or general permits. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with the applications for permits. This fee structure will be reviewed from time to time.

§ 325.2 Processing of Applications.

(a) Standard procedures. (1) When an application for a permit is received, the District Engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and obtain from the applicant any additional information he deems necessary for further processing.

(2) When all required information has been provided, the District Engineer will issue a public notice as described in § 325.3, below, unless specifically exempted by other provisions of this regulation.

(3) The District Engineer shall consider all comments received in response to the public notice (see § 325.3) in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the official file on the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the District Engineer may seek the advice of that agency. The applicant must be given the opportunity to furnish the District Engineer his proposed resolution or rebuttal to all objections from Government agencies and other substantive adverse comments before final decision will be made on the application.

(4) The District Engineer shall prepare an Environmental Assessment on all applications. The Environmental Assessment shall be dated, signed, and placed in the record and shall include the

expected environmental impacts of the proposal. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Environmental Assessment. In those cases requiring an Environmental Impact Statement (EIS), the draft EIS may serve as the Environmental Assessment. Where an EIS is not prepared, the Environmental Assessment will include a statement that the decision on the application is not a major Federal action significantly affecting the quality of the human environment.

(5) The District Engineer shall also evaluate the proposed application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the District Engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a Findings of Fact on all applications to support his determination. The Findings of Fact shall include the District Engineer's views on the probable effect of the proposed work on the public interest including conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), if applicable, and the conclusions of the District Engineer. The Findings of Fact shall be dated, signed, and included in the record prior to final action on the application. Where the District Engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Findings of Fact. If a permit is warranted, the District Engineer will determine the conditions and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8, the District Engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final Environmental Impact Statement, if prepared, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed in § 325.11. Notice that the application has been forwarded to higher headquarters will be furnished the applicant and to any Federal agency expressing an interest in the application. Such notice shall not divulge the District Engineer's recommendations. In those cases where the application is forwarded for decision in the format prescribed in § 325.11, the report will serve as the Findings of Fact.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason for denial. If the final decision is to issue the permit, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing official who then signs and dates the permit. The permit is not valid until signed by the issuing official. Final action on the permit

application is the signature on the letter notifying the applicant of the denial of his application or signature of the issuing official on the authorizing document.

(8) The District Engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who received any of the public notices listed.

(9) If the applicant fails to respond within 45 days to any request or inquiry of the District Engineer, the District Engineer may advise the applicant by certified letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(b) Procedures for particular types of permit situations.
(1) If the District Engineer determines that water quality certification for the proposed activity is necessary under the provisions of the Federal Water Pollution Control Act, he shall so notify the applicant and obtain from him either the appropriate certification or a copy of his application for such certification. The District Engineer may issue the public notice of the application jointly with the certifying agency if arrangements for such joint notices have been approved by the Division Engineer. When the activity may affect the waters of another State, a copy of the certification will be forwarded to the Regional Administrator of EPA who shall determine if the proposed activity may affect the quality of the waters of any State or States other than the State in which the work is to be performed. If he needs supplemental information in order to make this determination, the Regional Administrator may request it from the District Engineer who shall obtain it from the applicant and forward it to the Regional Administrator. The Regional Administrator shall, within thirty days of receipt of the application, certification and supplemental information, notify the affected State, the District Engineer, and the applicant in the event such a second State may be affected. The second State then has sixty days to advise the District Engineer that it objects to the issuance of the permit on the basis of the effect on the quality of its waters and to request a hearing. No authorization will be granted until required certification has been obtained or has been waived. Waiver is deemed to occur if the certifying agency fails or refuses to act on a request for certification within a reasonable period of time after receipt of such request. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced, the District Engineer will verify that the certifying agency has received a valid request for certification. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the District Engineer require that action on an application be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period

of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date , it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than three months, the District Engineer may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occurred. District Engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(2) If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the District Engineer shall proceed as follows:

(i) If the applicant is a Federal agency, and the application involves a Federal activity in or affecting the coastal zone or a Federal development project in the coastal zone, the District Engineer shall forward a copy of the public notice to the agency of the State responsible for reviewing the consistency of Federal activities. The Federal agency applicant shall be responsible for complying with the Coastal Zone Management Act's directives for ensuring that Federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved coastal zone management programs. (See 15 CFR Part 930.) If the State coastal zone agency objects to the proposed Federal activity on the basis of its inconsistency with the State's approved coastal zone management program, the District Engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the Coastal Zone Management Act for resolving such disagreements.

(ii) If the applicant is not a Federal agency and the application involves an activity affecting the coastal zone, the District Engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State coastal zone management program. Upon receipt of the certification, the District Engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the State coastal zone agency and request its concurrence or objection. The District Engineer can issue the public notice of the application jointly with the State agency if arrangements for such joint notices have been approved by the Division Engineer. If the State agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the District Engineer shall not issue the permit until the State concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the

Coastal Zone Management Act or is necessary in the interest of national security. If the State agency fails to concur or object to a certification statement within six months of the State agency's receipt of the certification statement, State agency concurrence with the certification statement shall be conclusively presumed.

(3) If the proposed activity involves any property listed or eligible for listing in the National Register of Historic Places (which is published in its entirety in the FEDERAL REGISTER annually in February with addenda published each month), the District Engineer will proceed in accordance with 33 CFR Part 305.

(4) If the proposed activity consists of the dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the maximum extent feasible. Separate notice, hearing, and Environmental Impact Statement will not be required for activities so included and coordinated; and the public notice issued by the District Engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(a).)

(5) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of structures or artificial islands on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington D. C. 20390: Attention, Code N512 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (fish havens) along the coasts of the United States, to Defense Mapping Agency, Hydrographic Center and National Ocean Survey as in (i), above, and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iii) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(iv) If the activity is listed in subparagraphs (i), (ii), or (iii), above, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(c) Emergency procedures. An "emergency" is a situation which would result in an unacceptable hazard to life or severe loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under required procedures. In such cases the District Engineer will explain the circumstance and recommend

special procedures in writing to the Chief of Engineers, ATTN: DAEN-CWO-N. The Chief of Engineers, upon consultation with the Secretary of the Army or his authorized representative, will instruct the District Engineer as to further processing of the application.

(d) Timing of processing of applications. In view of the extensive coordination with other agencies and the public and the study of all aspects of proposed activities required by the above procedures, applicants must allow adequate time for the processing of their applications. The District Engineer will be guided by the following time limits for the indicated steps in processing permit applications:

(1) Public notice should be issued within fifteen days of receipt of all required information from the applicant, unless joint notice with State agencies is to be used.

(2) The receipt of comments as a result of the public notice should not extend beyond thirty days from the date of the notice. However, if unusual circumstances warrant, the District Engineer may extend the comment period up to a maximum of seventy-five days.

(3) The District Engineer should either send notice of denial to the applicant or issue the draft permit to the applicant for acceptance and signature, or forward the application to higher headquarters within thirty days of one of the following whichever is latest: Closing of the public notice comment period with no objections received; receipt of notice of withdrawal of objections; completion of coordination following receipt of applicant's rebuttal of objections; closing of the record of a public hearing; or expiration of the waiting period following the filing of the final Environmental Impact Statement with CEQ.

§ 325.3 Public Notice.

(a) General. The Public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature of the activity to generate meaningful comments. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name and address of the applicant;

(3) The location of the proposed activity;

(4) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or dumped and means of conveyance. See also 33 CFR 324 for additional information required on ocean dumping public notices;

(5) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the

impacted waterway and depth of water in the area;

(6) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(7) A list of other government authorizations obtained or requested, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(8) A statement concerning a preliminary determination of the need for and/or availability of an Environmental Impact Statement;

(9) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including environmental values; and

(10) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application.

(b) Evaluation factors. A paragraph describing the various factors on which decisions are based during evaluation of a permit application shall be included in every public notice.

(1) Except as provided in paragraph (b)(4) below, the following will be included:

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

(2) If the activity involves the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Federal Water Pollution Control Act (40 CFR Part 230) or of the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 228), as appropriate. See also 33 CFR Part 324.

(3) If the activity includes the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the following statement will also be included in the public notice:

Any person may request, in writing, within the comment period

specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state, with particularity, the reasons for holding a public hearing.

(4) In cases involving construction of fixed structures or artificial islands on Outer Continental Shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(c) Distribution of public notices. (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate State agencies, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, and to any other interested party. If in the judgment of the District Engineer the proposal may result in substantial public interest, the public notice (without drawings) may be published for five consecutive days in the local newspaper, and the applicant shall reimburse the District Engineer for the costs of publication. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representative of the Secretary of the Interior, the Regional Dirdctor of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addresses in appropriate cases as follows:

(i) If the activity involves structures or dredging along the shores of the sea or Great Lakes, to the Coastal Engineering Research Center, Washington, D. C. 20016.

(ii) If the activity involves construction of fixed structures or artificial islands on the Outer Continental Shelf or in the territorial seas, to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, D.C. 20310; the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390, Attention, Code N512; and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(iii) If the activity involves the construction of structures to enhance fish propagation along the Atlantic, Pacific, and Gulf coasts, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iv) If the activity involves the construction of structures

which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity is in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the application. A copy of the public notice with the list of addressees to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the District Engineer may request their comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent or himself, the District Engineer will inform the member of Congress of the final decision.

(d) General permit notices (RCS: DAEN-CWO-52). For purposes of performing a nationwide analysis of the effectiveness of the general permit program, Division offices will submit "Public Notices on General Permits" reports (RCS: DAEN-CWO-52) by COB on the 15th day, following the end of each quarter, to HQDA (DAEN-CWO-N) Washington, D. C. 20314. Said reports will be in the form of a letter listing the public notices published during the previous month to announce proposals or to finalize issuances of general permits; copies of the public notices are to be made inclosures to the reports. Negative reports will be submitted if no general permit actions have taken place in the Division during the reporting period.

§ 325.4 Environmental Impact Statements.

(a) General. Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the President's Council on Environmental Quality a detailed statement on:

(1) The environmental impact of the proposed actions.

(2) Any adverse environmental effects which cannot be avoided should the proposal be implemented.

(3) Alternatives to the proposed action.

(4) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(5) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. The District Engineer must determine whether such an Environmental Impact Statement (EIS) is required in connection

with each permit application.

(b) EIS procedures. In addition to the procedures required by 33 CFR 209.410 (ER 1105-2-507), the following special procedures apply to the processing of permits involving the preparation of an EIS.

(1) The District Engineer, at the earliest practicable time prior to the issuance of the public notice, shall make a preliminary assessment of impacts of the project should it be approved and make a preliminary determination as to whether the quality of the human environment would be significantly affected. This preliminary assessment will normally be based on experience with similar type activities performed in the past. A statement of the District Engineer's preliminary determination shall be included in the public notice. This preliminary determination will be reconsidered as additional information is developed.

(2) If the District Engineer's final determination after consideration of all additional information developed (including responses to the public notice) is that the proposed work will not significantly affect the quality of the human environment. the District Engineer's determination shall be documented, dated, and placed in the record as his Environmental Assessment (see § 325.2(a)(4)).

(3) At such time as the District Engineer believes that a permit may be warranted but that the proposed activity would significantly affect the quality of the human environment, he will require the applicant to furnish any additional information that the District Engineer considers necessary to allow his preparation of an EIS. The applicant should also be advised at this time that there is no assurance that favorable action will ultimately be taken on his application. Additionally, if the District Engineer has previously announced a preliminary determination that no EIS would be required, he shall issue a supplemental public notice to advise the public of the changed determination. If the applicant is unable to furnish certain information considered by the District Engineer to be necessary for the EIS, the District Engineer may, after obtaining written approval from the Division Engineer, charge the applicant pursuant to 31 U.S.C. 483(a) for those extraordinary expenses incurred by the Government in developing the information. All money so collected shall be paid into the Treasury of the United States as miscellaneous receipts. Otherwise the costs of the preparation and distribution of the EIS itself shall be borne by the Federal Government. In those cases when the determination has been made that an EIS will be required, the District Engineer shall consider inviting public comments as to specific factors of concern which should be addressed in the draft EIS. Upon preparation of the draft EIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the draft EIS. A copy of that notice shall be furnished to all recipients of the draft EIS including CEQ. If a public hearing is to be held pursuant to § 325.2(a)(5), the hearing may be held anytime after completion of the draft EIS.

(4) If another agency is the lead agency as defined by the CEQ guidelines (40 CFR 1500.7(b)) the District Engineer will coordinate with that agency to insure that the resulting EIS adequately describes the impact of the activity which is subject to Corps permit authority. That previously prepared EIS will be referenced in the public notice announcing the permit application and a statement included that the effects of the proposed activity on the environment as outlined therein will be carefully considered in the evaluation of the permit application.

(c) Public notice on EIS filing. The 30-day wait period required by the National Environmental Policy Act for issuing a permit for which an EIS has been prepared begins with notation in the Federal Register that the FEIS has been filed with CEQ or on the date of delivery to U.S. Postal Service facilities for mailing of copies of the FEIS to agencies, groups, and individuals on the project mailing list, whichever date is later. In order to notify the interested public of their opportunity to comment on the FEIS, the District Engineer shall issue a public notice when the filing notation has been published in the Federal Register to all parties receiving the original application notice or draft EIS and to all others who have expressed an interest in the application. The public notice should include:

(1) A brief summary of application (applicant, work, date of public notice, date of draft EIS release, date of public hearing, if held);

(2) Opportunity to comment to the District Engineer on the FEIS until the deadline date projected by the 30-day wait period;

(3) A statement that the comments received on the FEIS will be evaluated and considered in arriving at the final decision on the application; and

(4) Information on how interested parties can obtain or have access to the FEIS.

§ 325.5 Forms of Authorization.

(a) General. (1) Department of the Army authorizations under this regulation shall be in the form of an individual permit, general permit, or letter of permission, as appropriate. The basic format shall be ENG form 1721, Department of the Army Permit (Appendix A).

(2) While the general conditions included in ENG Form 1721 are normally applicable to all permits, some may not apply to certain authorizations (e.g., after-the-fact situations where work is completed, or situations in which the permittee is a Federal agency) and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest.

(b) Letters of permission. In those cases subject to Section 10 of the River and Harbor Act of 1899 in which, in the opinion of the District Engineer, the proposed work is minor, will not have significant impact on environmental values, and should encounter no opposition, the District Engineer may omit the

publishing of a public notice and authorize the work by a letter of permission. However, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and State, as required by the Fish and Wildlife Coordination Act. The letter of permission will not be used to authorize the discharge of dredged or fill material into waters of the United States nor the transportation of dredged material for purposes of dumping it in ocean waters. The letter of permission will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority (ie., 33 U.S.C. 403), any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the general conditions from ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) General permits. The District Engineer may, after compliance with the other procedures of this regulation, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories that are authorized by such general permits do not have to be further authorized by the procedures of this regulation unless the District Engineer determines, on a case-by-case basis, that the public interest requires.

(d) Section 9 permits. Permits for structures under Section 9 of the River and Harbor Act of 1899 will be drafted during review procedures at Department of the Army level.

(e) Nationwide permits. Nationwide permits mean Department of the Army authorizations that have been issued by the regulations for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or general permit.

§ 325.6 Duration of Authorizations.

(a) General. Department of the Army authorization may authorize both the work and the resulting use. Authorizations continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) Structures. Authorizations for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the authorization will be of limited duration with a definite expiration date. Except as provided in subparagraph (e), below, permits for the discharge of dredged material in the waters of the United States or for the transportation of dredged material for the purpose of dumping it in ocean waters will be of limited duration with a definite expiration date.

(c) Works. Authorizations for construction work or other activity will specify time limits for accomplishing the work or activity.

The time limits will specify a date by which the work must be started, normally one year from the date of issuance, and a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. An authorization for work or other activity will automatically expire if the permittee fails to request an extension or revalidation.

(d) Extensions of time. Extensions of time may be granted by the District Engineer for authorizations of limited duration, or for the time limitations imposed for starting or completing the work or activity. The permittee must request the extension and explain the basis of the request, which will be granted only if the District Engineer determines that an extension is in the general public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2, including issuance of a public notice, except that such processing is not required where the District Engineer determines that there have been no significant changes in the attandant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(e) Periodic maintenance. If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after his evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, the District Engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of the regulation and 33 CFR Parts 320-324. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a revalidation of that portion of his permit which authorized the maintenance dredging. The request must be made to the District Engineer six months prior to the expiration date, and include full description of the proposed methods of dredging and disposal of dredged materials. The District Engineer will process the request for revalidation in accordance with the standard procedures including the issuance of a public notice describing the authorized work to be maintained and the proposed methods of maintenance.

§ 325.7 Modification, Suspension or Revocation of Authorizations.

(a) General. The District Engineer may reevaluate the circumstance and conditions of a permit either on his own motion or as the result of periodic progress inspection, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the general public interest. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the activity authorized have changed

since the permit was issued, extended or revalidated, and the continuing adequacy of the permit conditions; any significant objections to the activity authorized by the permit which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with Sec. 325.2, and not as modifications under this paragraph.

(b) Modification. The District Engineer, as a result of revaluation of the circumstances and conditions of a permit, may determine that protection of the general public interest requires a modification of the terms or conditions of the permit. In such cases, the District Engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the District Engineer will give the permittee written notice of the modification, which will then become effective on such date as the District Engineer may establish, which in no event shall be less than ten days from its date of issuance. In the event a mutual agreement cannot be reached by the District Engineer and the permittee, the District Engineer will proceed in accordance with subparagraph (c), below, if immediate suspension is warranted. In cases where immediate suspension is not warranted but the District Engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a hearing. The modification will become effective on the date set by the District Engineer which shall be at least ten days after receipt of the notice unless a hearing is requested within that period. If the permittee fails or refuses to comply with the modification, the District Engineer will proceed in accordance with 33 CFR Part 326.

(c) Suspension. The District Engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the general public interest. The District Engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop all previously authorized activities. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may request a hearing within 10 days of receipt of notice of the suspension to present information in this matter. If a hearing is requested the procedures prescribed in 33 CFR 327 will be followed. After the completion of the hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing is requested), the District Engineer will take action to reinstate

the permit, modify the permit, or recommend revocation of the permit in accordance with subparagraph (d), below.

(d) Revocation. Following completion of the suspension procedures in subparagraph (c), above, if revocation of the permit is recommended, the District Engineer will prepare a report of the circumstances and forward it together with the record of the suspension proceedings to DAEN-CWO-N. The Chief of Engineers may, prior to deciding whether or not to revoke the permit, afford the permittee the opportunity to present any additional information not made available to the District Engineer at the time he made the recommendation to revoke the permit including, where appropriate, the means by which he intends to comply with the terms and conditions of the permit. The permittee will be advised in writing of the final decision.

§ 325.8 Authority to Issue or Deny Authorizations.

(a) General. Except as otherwise provided in this regulation, the Secretary of the Army subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for construction or other work in or affecting navigable waters of the United States pursuant to Sections 10 and 14 of the Act of March 3, 1899, and Section 1 of the Act of June 13, 1902. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for the discharge of dredged or fill material in waters of the United States pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 or for the transportation of dredged material for the purpose of dumping it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) District Engineer's authority. District Engineers are authorized to issue in accordance with this regulation permits and letters of permission which are subject to such special conditions as are necessary to protect the public interest in the waters of the United States or ocean waters pursuant to Sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River and Harbor Act of June 13, 1902; Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases in which there are no known substantive objections to the proposed work or activity or in which objections have been resolved to the satisfaction of the District Engineer. Unless otherwise precluded by this regulation, District Engineers may issue permits over an unresolved objection of another Federal agency if that agency indicates to the District Engineer that it does not desire to refer the application to a higher level of

authority for review. It is essential to the legality of a permit that it contain the name of the District Engineer as the issuing officer. However, the permit need not be signed by the District Engineer, in person; but may be signed for and in behalf of him by whoever he designates. District Engineers shall deny permits when required State or local authorization and/or certification has been denied or when a State has objected to a required certification of compliance with its coastal zone management program and the Secretary of Commerce has not reviewed the action and reached a contrary finding. A District Engineer may also deny any permit if he determines that the proposed activity is not in the public interest provided the referral requirements of § 325.8(d) below are not applicable. In such cases the Findings of Fact should be in the general format required for reports under Sec. 325.11 and must conclusively justify a denial decision. All other permit applications including those cases in § 325.7 (c) and (d) below will be referred to Division Engineers. District Engineers are also authorized to add, modify, or delete special conditions in permits, except for those conditions which have been imposed by higher authority, and to suspend permits according to the procedures of § 325.7(c).

(c) Division Engineer's authority. Division Engineers will review, attempt to resolve outstanding matters, and evaluate all permit applications referred by District Engineers. Division Engineers may authorize the issuance or denial of permits pursuant to sections 10 and 14 of the River and Harbor Act of March 3, 1899; Section 1 of the River Harbor Act of June 13, 1902, Section 404 of the Federal Water Pollution Control Act Amendments of 1972; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions to those permits as may be necessary to protect the public interest in waters of the United States or ocean waters in accordance with the policies cited in this regulation. Except as provided in subparagraph (d), below, if the Division Engineer determines that issuance of a permit with or without conditions is in the public interest, but there is continuing objection to the issuance of the permit by another Federal agency, he shall advise the regional representative of that Federal agency of his intent to issue the permit. The Division Engineer shall not proceed with the issuance of a permit if, within 15 days after the date of this notice of intent to issue a permit, an authorized representative of that Federal agency indicates to the Division Engineer in writing that he wishes to bring his concerns to the Departmental level and has Departmental concurrence to do so. In such cases, the proposed permit will be forwarded to higher authority for resolution. Thereafter, a permit will be issued only pursuant to and in accordance with instructions from such higher authority. Every effort should be made to resolve differences at the Division Engineer level before referring the matter to higher authority.

(d) Referral to the Chief of Engineers. Division Engineers will refer to the Chief of Engineers the following cases:

(1) When it is proposed to issue a permit and there are unresolved objections from another Federal agency which must be handled under special procedures specified in statutes or Memoranda of Understanding which thereby preclude final resolution by the Division Engineer;

(2) When the recommended decision is contrary to the stated position of the Governor of the State in which the work is to be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When the Chief of Engineers requests the case be forwarded for decision;

(5) When the proposed activity would affect the baseline used for determination of the limits of the territorial sea; and

(6) When Section 9 of the River and Harbor Act of 1899 authority is involved.

§ 325.9 Supervision and Enforcement.

(a) Inspection and monitoring. District Engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits. Appropriate inspections should be made on timely occasions during performance of the activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Revaluation of permits to assure compliance with its purposes and conditions will be carried out as provided in § 325.7. If there are approved material departures from the authorized plans, the District Engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) Non-compliance. Where the District Engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the District Engineer will issue an immediately effective notice of suspension in accordance with § 325.7(c) and consider initiation of appropriate legal action.

(c) Surveillance. For purposes of inspection of permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the District Engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all activities in waters of the United States which would require permits. The assistance of members of the public and personnel of other interested Federal, State and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance,

the District Engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions perscribed in the authorizations. Furthermore, significant actions taken under § 325.7 will be brought to the attention of those Federal, State and local agencies and other persons who express particular interest in the affected activity. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to section 107(c) of the Marine Protection Act of 1972, as amended.

(d) Inspection expenses. The expenses incurred in connection with the inspection of permitted activity in waters of the United States normally will be paid by the Federal Government in accordance with the provisions of section 6 of the River and Harbor Act of 3 March 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, and after approval by the Division Engineer, the permittee will be required to bear the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United States inspector either directly or through the District Engineer. The inspector will be paid on regular payrolls or service vouchers. The District Engineer will collect the cost from the permittee in accordance with the following:

(1) At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(2) If the District Engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with subparagraph (1), above, he may require the permittee to keep on deposit with the District Engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(3) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permittee, it will be referred to the Division Engineer for approval before it is closed and before any deposits are returned to the permittee.

(e) Bonds. If the permitted activity includes restoration of the waterway to its original condition, or if the issuing official has reason to consider that the permittee might be prevented from

completing work which is necessary to protect the public interest in the waterway, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.10 Publicity.

The District Engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in navigable waters or ocean waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who might require permits in order to implement the plans, he will advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Similarly when the District Engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

§ 325.11 Reports.

The report of a District Engineer on an application for a permit requiring action by the Division Engineer or by the Chief of Engineers will be in a letter form with the application and all pertinent comments, records, photographs, maps, and studies including the final Environmental Impact Statement if prepared, as inclosures. The inclosures for all cases referred to the Chief of Engineers will be in duplicate. If an EIS has been prepared, the report shall not be forwarded until expiration of the 30-day comment period following filing of the final EIS and shall address any comments received on the final EIS. The following items will be included or discussed in the report:

(a) Name of applicant.

(b) Location, character and purpose of proposed activity, including a description of any wetlands involved.

(c) Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction.

(d) Other Federal, State and local authorizations obtained or required and pending.

(e) Date of public notice and public hearings, if held, and summary of objections offered with comments of the District Engineer thereon. The comments should explain the objections and not merely refer to inclosed letters.

(f) Views of State and local authorities.

(g) Views of District Engineer concerning probable effect of the proposed work on:

(1) Navigation, present and prospective.

(2) Harbor lines, if established.

(3) Flood heights, drift and flood damage protection.

(4) Beach erosion or accretion.

(5) Fish and Wildlife.

(6) Water quality.

(7) Aesthetics.
(8) Historic values.
(9) Recreation.
(10) Economy.
(11) Water supply.
(12) Energy needs.
(13) Land use classification and coastal zone management plans.
(h) Other pertinent remarks, such as:
(1) Extent of public and private need.
(2) Appropriate alternatives.
(3) Extent and permanence of beneficial and/or detrimental effects.
(4) Probable impact in relation to cumulative effects created by other activities.
(i) A copy of the environmental assessment or the Environmental Impact Statement. If an EIS is prepared, a summary of comments received on the final EIS together with the District Engineer's response to those comments.
(j) A discussion of conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or the dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), as applicable.
(k) Conclusions.
(l) Recommendations including any proposed special conditions.

Appendix A--Permit Form

Application No. ______________________________
Name of Applicant ______________________________
Effective Date ______________________________
Expiration Date (If applicable) ____________________

DEPARTMENT OF THE ARMY

Permit

Referring to written request dated .... for a permit to:

( ) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

( ) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, Pub. L. 92-500);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; Pub. L. 92-532);..................................
....
....

(Here insert the full name and address of the permittee.)
is hereby authorized by the Secretary of the Army: to ....
....
....
....
....
(Here describe the proposed structure or activity, and its intended use. In the case of an application for a fill permit, describe the structures, if any proposed to be erected on the fill. In the case of an application for the discharge of dredged or fill material into waters of the United States or the transportation for discharge in ocean waters of dredged material, describe the type and quantity of material to be discharged.)
in...
....
....
....
(Here to be named the ocean, river, harbor, or waterway concerned.)
at ....
....
....
....
(Here to be named the nearest well-known locality-preferably a town or city-and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings; give file number or other definite identification marks). Subject to the following conditions:

I. General conditions: (a) That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

(b) That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500; 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.

(c) That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

(d) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

(e) That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

(f) That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

(g) That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

(h) That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

(i) That this permit dies not convey any property rights, either in real estate or material, or any exclusive privileges; and that it dies not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

(j) That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to

comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevent to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

(k) That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

(l) That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

(m) That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

(n) That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

(b) That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

(c) That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

(d) That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

(e) Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit dies not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

Maintenance Dredging

(a) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for---years from the date of issuance of this permit (ten years unless otherwise indicated);

(b) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

Discharges of Dredged or Fill Material Into Waters of the United States

(a) That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;

(b) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(c) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(d) That the discharge will not occur in a component of the

National Wild and Scenic River System or in a component of a State wild and scenic river system.

Dumping of Dredged Material Into
Ocean Waters

(a) That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.

(b) That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

(Permittee)

(Date)

By authority of the Secretary of the Army:

(District Engineer)

(Date)

Transferee hereby agrees to comply with the terms and conditions of this permit.

(Transferee)

(Date)

Appendix B--Memorandum of Understanding
Between the Secretary of the Interior
and the Secretary of the Army

In recognition of the responsibilities of the Secretary of the Army under sections 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationship of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), the Fish and

Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

Policies

1. It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.

2. The Secretary of the Army will seek the advice and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of such waters in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

Procedures For Carrying Out These Policies

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional

(o) That if the activity authorized herein is not started on or before ....day of ...., 19__, (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before ....day of ....,19__, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

(p) That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

(q) That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition S hereof, he must restore the area to a condition satisfactory to the District Engineer.

(r) That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

(s) That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

(t) That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. Special Conditions: Here list conditions relating specifically to the proposed structure or work authorized by this permit. The following Special Conditions will be applicable when appropriate:

Structures In or Affecting Navigable Waters
of the United States

(a) That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

3. The District Engineer will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding, either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Dated: July 13, 1967.

Stewart L. Udall,
Secretary of the Interior.

Dated: July 13, 1967

Stanley Resor,
Secretary of the Army.

Part 326 - ENFORCEMENT

§ 326.1 Purpose

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization.

§ 326.2 Discovery of Unauthorized Activity in Progress

When the District Engineer becomes aware of any unauthorized activity which is still in progress, he shall immediately issue a cease and desist order to all persons responsible for and/or involved in the performance of the activity. If appropriate, the District Engineer may also order interim protective measures to be taken in order to protect the public interest.

§ 326.3 Investigation.

The District Engineer shall commence an immediate investigation of all unauthorized activities brought to his attention to ascertain the facts surrounding the activity. In making this investigation, the District Engineer shall solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director of the National Marine Fisheries Service, and other appropriate Federal, State, and local agencies. He shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in recommending the course of action to be taken. The District Engineer shall evaluate the information and views developed during this investigation in conjunction with the appropriate factors and criteria that pertain to the particular unauthorized activity as cited in 33 CFR Parts 320,321, 322, 323, and 324, and the guidance contained in § 326.4, below. Following this evaluation, the District Engineer shall formulate recommendations as to the appropriate administrative and/or legal action to be taken.

§ 326.4 Legal Action.

(a) District Engineers shall be guided by the following policies in determining whether an unauthorized activity requires appropriate legal action:

(1) Criminal action. Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable permit program.

(2) Civil action. Civil action is considered appropriate when the preliminary evaluation of the unauthorized activity reveals that (i) restoration is in the public interest and

33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

attempts to secure voluntary restoration have failed, or (ii) the unauthorized activity is in the public interest but must be altered or modified by judicial order because attempts to secure voluntary compliance have failed, or (iii) a civil penalty under Section 309 of the FWPCA is warranted.

(b) Preparation of ease. If the District Engineer determines that legal action is appropriate, he shall prepare a litigation report which shall contain an analysis of the data and information obtained during his investigation and a recommendation of appropriate civil and criminal action. In those cases where the analysis of the facts developed during his investigation (when made in conjunction with the appropriate factors and criteria specified in 33 CFR Parts 320, 321, 322, 323, and 324) leads to the preliminary conclusion that removal of the unauthorized activity is in the public interest, the District Engineer shall also recommend restoration of the area to its original or comparable condition.

(c) Referral to local U.S. Attorney, except as provided in subsection (d), District Engineers are authorized to refer the following cases directly to the local U.S. Attorney.

(1) All unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR part 322) for which a criminal fine or penalty under Section 12 of that Act (33 USC 406) is considered appropriate.

(2) All civil actions involving small unauthorized structures, such as piers, which the District Engineer determines are (i) not in the public interest and therefore must be removed, or (ii) are in the public interest but must be altered or modified by judicial order, because attempts to secure voluntary compliance have failed.

(3) All violations of Section 301 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1311) involving the unauthorized discharge of dredged or fill material into the waters of the United States where the District Engineer determines, with the concurrence of the Regional Administrator, that civil and/or criminal action pursuant to Section 309 of the FWPCA is appropriate.

(4) All cases for which a temporary restraining order and/or preliminary injunction is appropriate following noncompliance with a cease and desist order.

Information copies of all letters of referral shall be forwarded to the Chief of Engineers, ATTN: DAEN-CCK, and the Chief Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D. C. 20530.

(d) Referral to Office, Chief of Engineers, District Engineers shall prepare and forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN-CCK, for all other cases not identified in subsection (c) in which civil and/or criminal

action is considered appropriate, including:

(1) All cases involving significant questions of law or fact;

(2) All cases involving discharges of dredged or fill material into waters of the United States that are not interstate waters or navigable waters of the United States, or part of a surface tributary system to these waters;

(3) All cases involving recommendations for substantial or complete restoration;

(4) All cases involving violations of Section 9 of the River and Harbor Act of 1899; and

(5) All cases involving violations of the Marine Protection, Research and Sanctuaries Act of 1972.

(e) If the District Engineer refers a case to the local U.S. Attorney or if criminal and/or civil action is instituted against the responsible person for any unauthorized activity, the District Engineer shall not accept for processing any application for a Department of the Army permit until final disposition of the referral action and/or all judicial proceedings, including the payment of all prescribed penalties and fines and/or completion of all work ordered by the court. Thereafter, the District Engineer may accept an application for a permit; provided, that with respect to any judicial order requiring partial or total restoration of an area, the District Engineer, if so ordered by the court, shall supervise this restoration effort and may allow the responsible persons to apply for a permit for only that portion of the unauthorized activity for which restoration has not been so ordered.

§ 326.5 Processing After-the-Fact Applications.

In those cases in which the District Engineer determines that the unauthorized activity does not warrant legal action, the following procedures shall be followed.

(a) Processing and evaluation of applications for after-the-fact authorizations for activities undertaken without the required Department of the Army permits will in all other respects follow the standard policies and procedures of 33 CFR parts 320-325. Thus, authorization may still be denied in accordance with the policies and procedures of those regulations.

(b) Where after-the-fact authorization in accordance with this paragraph is determined to be in the public interest, the standard permit form for the activity will be used, omitting inappropriate conditions, and including whatever special conditions the District Engineer may deem appropriate to mitigate or prevent undesirable effects which may have occurred or might occur.

(c) Where after-the-fact authorization is not determined to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period

of time for the applicant to complete such actions. The District Engineer, after denial of the permit, will again consider whether civil and/or criminal action is appropriate in accordance with § 326.4.

(d) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the District Engineer determines, after denying the permit application, that legal action is appropriate, the matter will be referred to the Chief of Engineers, ATTN: DAEN-CCK, with recommendations for appropriate action.

Part 327 - Public Hearings

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed Department of the Army permit action or Federal project as defined in § 327.3 below, including those held pursuant to Section 404 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all Divisions and Districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence with will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords to the public the opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein, means the review of an application for a permit pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), Section 404 of the FWPCA (33 U.S.C. 1344), the Outer Continental Shelf Act (43 U.S.C. 1333 (f)), and Section 103 of the MPRSA of 1972, as amended (33 U.S.C. 1413), or the modification or revocation of any Department of the Army permit. (See 33 CFR 325.7.)

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters subject to Section 404 of the FWPCA (33 U.S.C. 1344), or Section 103 of the MPRSA, as amended (33 U.S.C. 1413; and 33 CFR 209.145). (This regulation supersedes all references to public meetings in 33 CFR 209.145.)

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33 U.S.C. 1344; 33 U.S.C. 1413.

§ 327.4 General Policies.

(a) A public hearing will be held in connection with the consideration of a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA, or a Federal project whenever a public hearing will assist in making a decision on such permit application or Federal project. In addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7.)

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a Department of the Army permit application under Section 404 of the FWPCA or Section 103 of the MPRSA or on a Federal project, that a public hearing be held to consider the material matters in issue in the permit application or Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the District Engineer shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 below. Requests for a public hearing under this paragraph shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The District Engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties.

(c) In cases involving the evaluation of a Department of the Army permit application only under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), public hearings will be held upon written request whenever the District Engineer determines that there is sufficient public interest to warrant such action. Among the instances warranting public hearings are general public opposition to a proposed work, Congressional requests or requests from responsible local authorities, or controversial cases involving significant environmental issues.

(d) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(e) In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the interested public.

§ 327.5 Presiding Officer.

(a) The District Engineer, in whose District a matter arises, shall normally serve as the Presiding Officer. When the District Engineer is unable to serve, he may designate the Deputy District Engineer as such Presiding Officer. In any case, he may request the Division Engineer to designate another Presiding Officer. In cases of unusual interest, the Chief of Engineers reserves the power to appoint such person as he deems appropriate to serve as the Presiding Officer.

(b) The Presiding Officer in each case shall establish a hearing file. The hearing file shall include a copy of any permit application or permits and supporting data, any public notices issued in the case, the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The hearing file shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal Adviser.

In each public hearing, the District Counsel or his designee shall serve as legal adviser to the Presiding Officer in ruling upon legal matters and issues that may arise.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, and may be represented by counsel, or by other representatives.

§ 327.8 Conduct of Hearings.

(a) Hearings shall be conducted by the Presiding Officer in an orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing file prior to the time the hearing file is closed to public submissions, and may present proposed findings and recommendations. The Presiding Officer shall afford participants an opportunity for rebuttal.

(b) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(c) Cross-examination of witnesses shall not be permitted.

(d) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate District Engineer.

(e) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the Presiding Officer for reasons of redundancy, be received in evidence and shall constitute a part of the hearing file.

(f) At any hearing, the Presiding Officer shall make an opening statement, outlining the purpose of the hearing and prescribing the general procedures to be followed. The Presiding Officer shall afford participants an opportunity to respond to his opening statement.

(g) The Presiding Officer shall allow a period of 10 days after the close of the public hearing for submission of written comments. After such time has expired, unless such period is extended by the Presiding Officer or the Chief of Engineers for good cause, the hearing file shall be closed to additional public written comments.

(h) In appropriate cases, the District Engineer may participate in joint public hearings with other Federal or State agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or State agency is required to allow cross-examination in its public hearing, the District Engineer may still participate in the joint public hearing but shall not require cross-examination as a part of his participation.

(i) The procedures in subparagraphs (d), (f) and (g) of this Section may be waived by the Presiding Officer in appropriate cases.

§ 327.9 Filing of Transcript of the Public Hearing.

Where the Presiding Officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as Presiding Officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the Presiding Officer and the transcript of the public hearing and evidence submitted there shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Powers of the Presiding Officer.

Presiding Officers shall have the following powers:

(a) To regulate the course of hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under with the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public Notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice shall provide for a

period of not less than 30 days following the date of public notice during which time interested parties may prepare themselves for the hearing, except that, in cases of public necessity, a shorter time may be allowed. Notice shall also be given to all Federal agencies affected by the proposed action, and to State and local agencies having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and published in newspapers of general circulation.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and the location of and availability of the draft Environmental Impact Statement or Environmental Assessment.

Part 328 - Harbor Lines

§ 328.1 Purpose and Scope.

This regulation prescribes the policy, practice and procedures concerning harbor lines and any work in navigable waters of the United States shoreward of such lines.

§ 328.2 Applicability.

This regulation is applicable to all Corps of Engineers activities and installations having Civil Works responsibilities.

§ 328.3 References.

(a) Section 11 of the River and Harbor Act of 1899 (33 U.S.C. 404).

(b) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(c) Public Law 91-190, the National Environmental Policy Act of 1969.

§ 328.4 Definition.

The term "harbor line(s)" is used here in its generic sense. It includes types of harbor lines frequently referred to by other names, including, for example, pierhead lines and bulkhead lines.

§ 328.5 The Purpose of Harbor Lines.

(a) Under previous policies, practices and procedures, riparian owners could erect open pile structures or undertake solid fill construction shoreward of established harbor lines without obtaining a permit under 33 U.S.C. 403. This was a matter of great concern, particularly in cases involving long established harbor lines, since all factors affecting the public interest may not have been taken into account at the time the lines were established. Accordingly, under previous policies, practices and procedures there was the danger that work shoreward of existing harbor lines could be undertaken without appropriate consideration having been given to the impact which such work may have on the environment and without a judgement having been made as to whether or not the work was on balance, in the public interest.

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33 U.S.C. 401 et seq.

(b) In order to assure that the public interest will be considered and protected in all instances, all existing and future harbor lines were declared on 27 May 1970 (33 CFR 209.150) to be guidelines for defining, with respect to the impact on navigation interests alone, the offshore limits of open pile structures (pierhead lines) or fills (bulkhead lines). A permit under 33 U.S.C. 403 is required in each case for any work which is commenced shoreward of existing or future harbor lines after 27 May 1970. Applications for permits for work in navigable waters of the United States shoreward of harbor lines shall be filed and processed in accordance with the provisions of 33 CFR Part 325. No permit is required for work completed or commenced prior to 27 May 1970 in conformance with existing harbor line authority.

§ 328.6 Establishment or Modification of Harbor Lines.

Applications for the establishment of new harbor lines or the modification of existing harbor lines will be processed in a manner similar to applications for permits for work in navigable waters of the United States. Public notice concerning any such application will be sent to all parties known or believed to be interested in the application and a copy of the notice will be posted in post offices or other public places in the area. Public notices, apart from providing information relative to any harbor line application, shall make it clear that harbor lines are guidelines for defining, with respect to the impact on navigation interests alone, the offshore limits of open pile structures or fills and that the establishment of a harbor line carries with it no presumption that individual applications for permits to undertake work shoreward of any harbor line will be granted. Public hearings will be held in connection with applications for the establishment or modification of harbor lines whenever there appears to be sufficient public interest to justify the holding of a public hearing or when responsible Federal, State or local authorities, including Members of the Congress, request that a hearing be held and it is likely that information will be presented at the hearing that will be of assistance in determining whether the harbor line should be established or modified. District Engineers will forward all recommendations concerning the establishment or modification of harbor lines through the appropriate Division Engineer to the Office of the Chief of Engineers, DAEN-CWO-N. No new harbor lines will be established and no existing harbor lines will be modified unless specifically authorized by the Chief of Engineers.

Part 329 - Definition of Navigable Waters of the United States

§ 329.1 Purpose.

This regulation defines the term "navigable waters of the United

33 U.S.C. 401 et seq.

States" as it is used to define authorities of the Corps of Engineers. It also prescribes the policy, practice and procedure to be used in determining the extent of the jurisdiction of the Corps of Engineers and in answering inquiries concerning "navigable waters."

§ 329.2 Applicability.

This regulation is applicable to all Corps of Engineers Districts and Divisions having Civil Works responsibilities.

§ 329.3 General Policies.

Precise definitions of "navigable waters" or "navigability" are ultimately dependent on judicial interpretation, and cannot be made conclusively by administrative agencies. However, the policies and criteria contained in this regulation are in close conformance with the tests used by the Federal Courts and determinations made under this regulation are considered binding in regard to the activities of the Corps of Engineers.

§ 329.4 General Definition.

Navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

§ 329.5 General Scope of Determination.

The several factors which must be examined when making a determination whether a waterbody is a navigable water of the United States are discussed in detail below. Generally, the following conditions must be satisfied:

(a) Past, present, or potential presence of interstate or foreign commerce;

(b) Physical capabilities for use by commerce as in subparagraph (a) above; and

(c) Defined geographic limits of the waterbody.

§ 329.6 Interstate or Foreign Commerce.

(a) Nature of Commerce: type, means, and extent of use. The types of commercial use of a waterway are extremely varied and will depend on the character of the region, its products, and the difficulties or dangers of navigation. It is the waterbody's capability of use by the public for purposes of transportation of commerce which is the determinative factor, and not the time, extent or manner of that use. As discussed in § 329.9 below, it is sufficient to establish the potential for commercial use at any past, present, or future time. Thus, sufficient commerce may be shown by historical use of canoes, bateaux, or other frontier craft, as long as that type of boat was common or well-suited

to the place and period. Similarly, the particular items of commerce may vary widely, depending again on the region and period. The goods involved might be grain, furs, or other commerce of the time. Logs are a common example; transportation of logs has been a substantial and well-recognized commercial use of many navigable waters of the United States. Note, however, that the mere presence of floating logs will not of itself make the river "navigable"; the logs must have been related to a commercial venture. Similarly, the presence of recreational craft may indicate that a waterbody is capable of bearing some forms of commerce, either presently, in the future, or at a past point in time.

(b) Nature of commerce; interstate and intrastate. Interstate commerce may of course be existent on an intrastate voyage which occurs only between places within the same state. It is only necessary that goods may be brought from, or eventually destined to go to, another state. (For purposes of this regulation, the term "interstate commerce" hereinafter includes foreign commerce" as well.)

§ 329.7 Intrastate or Interstate Nature of Waterway

A waterbody may be entirely within a state, yet still be capable of carrying interstate commerce. This is especially clear when it physically connects with a generally acknowledged avenue of interstate commerce, such as the ocean or one of the Great Lakes, and is yet wholly within one state. Nor is it necessary that there be a physically navigable connection across a state boundary. Where a waterbody extends through one or more states, but substantial portions, which are capable of bearing interstate commerce, are located in only one of the states, the entirety of the waterway up to the head (upper limit) of navigation is subject to Federal jurisdiction.

§ 329.8 Improved or Natural Conditions of the Waterbody

Determinations are not limited to the natural or original condition of the waterbody. Navigability may also be found where artificial aids have been or may be used to make the waterbody suitable for use in navigation.

(a) Existing improvements: artificial waterbodies. (1) An artificial channel may often constitute a navigable water of the United States, even though it has been privately developed and maintained, or passes through private property. The test is generally as developed above, that is, whether the waterbody is capable of use to transport interstate commerce. Canals which connect two navigable waters of the United States and which are used for commerce clearly fall within the test, and themselves become navigable. A canal open to navigable waters of the United States on only one end is itself navigable where it in fact supports interstate commerce. A canal or other artificial waterbody that is subject to ebb and flow of the tide is also a navigable water of the United States.

(2) The artificial waterbody may be a major portion of a river or harbor area or merely a minor backwash, slip, or turning area. (See § 329.12(b).)

(3) Private ownership of the lands underlying the waterbody, or of the lands through which it runs, does not preclude a finding of navigability. Ownership does become a controlling factor if a privately constructed and operated canal is not used to transport interstate commerce nor used by the public; it is then not considered to be a navigable water of the United States. However, a private waterbody, even though not itself navigable, may so affect the navigable capacity of nearby waters as to nevertheless be subject to certain regulatory authorities.

(b) Non-existing improvements, past or potential. A waterbody may also be considered navigable depending on the feasibility of use to transport interstate commerce after the construction of whatever "reasonable" improvements may potentially be made. The improvements need not exist, be planned, nor even authorized; it is enough that potentially they could be made. What is a "reasonable" improvement is always a matter of degree; there must be a balance between cost and need at a time when the improvement would be (or would have been) useful. Thus, if an improvement were "reasonable" at a time of past use, the water was therefore navigable in law from that time forward. The changes in engineering practices or the coming of new industries with varying classes of freight may affect the type of the improvement; those which may be entirely reasonable in a thickly populated, highly developed industrial region may have been entirely too costly for the same region in the days of the pioneers. The determination of reasonable improvement is often similar to the cost analyses presently made in Corps of Engineers studies.

§ 329.9 Time at Which Commerce Exists or Determination is Made.

(a) Past use. A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) above) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions. Nor does absence of use because of changed economic conditions affect the legal character of the waterbody. Once having attained the character of "navigable in law," the Federal authority remains in existence, and cannot be abandoned by administrative officers or court action. Nor is mere inattention or ambiguous action by Congress an abandonment of Federal control. However, express statutory declarations by Congress that described portions of a waterbody are nonnavigable, or have been abandoned, are binding upon the Department of the Army. Each statute must be carefully examined, since Congress often reserves the power to amend the Act, or assigns special duties of supervision and control to the Secretary of the Army or Chief of Engineers.

§ 329.10 Existence of Obstructions.

A stream may be navigable despite the existence of falls, rapids, sand bars, bridges, portages, shifting currents, or similar obstructions. Thus, a waterway in its original condition might have had substantial obstructions which were overcome by frontier boats and/or portages, and nevertheless be a "channel" for commerce, even though boats had to be removed from the water in some stretches, or logs be brought around an obstruction by means of artificial chutes. However, the question is ultimately a matter of degree, and it must be recognized that there is some point beyond which navigability could not be established.

§ 329.11 Geographic and Jurisdictional Limits of Rivers and Lakes.

(a) Jursidiction over entire bed. Federal regulatory jurisdiction, and powers of improvement for navigation, extend laterally to the entire water surface and bed of a navigable waterbody, which includes all the land and waters below the ordinary high water mark.

(1) The "ordinary high water mark" on non-tidal rivers is the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(2) Ownership of a river or lake bed or of the lands between high and low water marks will vary according to state law; however, private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.

(b) Upper limit of navigability. The character of a river will, at some point along its length, change from navigable to non-navigable. Very often that point will be at a major fall or rapids, or other place where there is a marked decrease in the navigable capacity of the river. The upper limit will therefore often be the same point traditionally recognized as the head of navigation, but may, under some of the tests described above, be at some point yet further upstream.

§ 329.12 Geographic and Jurisdictional Limits of Oceanic and Tidal Waters.

(a) Ocean and coastal waters. The navigable waters of the United States over which Corps of Engineers regulatory jurisdiction extends include all ocean and coastal waters within a zone three geographic (nautical) miles seaward from the coast line. Wider zones are recognized for special regulatory powers, such as those exercised over the Outer Continental Shelf.

(1) Coast line defined. Generally, where the shore directly

contacts the open sea, the line on the shore reached by the ordinary low tides comprises the coast line from which the distance of three geographic miles is measured. On the Pacific coast the line of mean lower low water is used. The line has significance for both domestic and international law (in which it is termed the "baseline"), and is subject to precise definitions. Special problems arise when offshore rocks, islands, or other bodies exist, and the line may have to be drawn to seaward of such bodies.

(2) Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. However, on the Pacific coast, the line reached by the mean of the higher high waters is used. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.

(b) Bays and estuaries. Regulatory jurisdiction extends to the entire surface and bed of all waterbodies subject to tidal action. Jurisdiction thus extends to the edge (as determined by § 329.12(a)(2) above) of all such waterbodies, even though portions of the waterbody may be extremely shallow, or obstructed by shoals, vegetation, or other barriers. Marshlands and similar areas are thus considered "navigable in law," but only so far as the area is subject to inundation by the mean high waters. The relevant test is therefore the presence of the mean high tidal waters, and not the general test described above, which generally applies to inland rivers and lakes.

§ 329.13 Geographic Limits: Shifting Boundaries.

Permanent changes of the shoreline configuration result in similar alterations of the boundaries of the navigable waters of the United States. Thus, gradual changes which are due to natural causes and are perceptible only over some period of time constitute changes in the bed of a waterbody which also change the shoreline boundaries of the navigable waters of the United States. However, an area will remain "navigable in law," even though no longer covered with water, whenever the change has occurred suddenly, or was caused by artificial forces intended to produce that change. For example, shifting sand bars within a river or estuary remain part of the navigable water of the United States, regardless that they may be dry at a particular point in time.

§ 329.14 Determination of Navigability.

(a) Effect on determination. Although conclusive determinations of navigability can be made only by Federal Courts, those made by Federal agencies are nevertheless accorded substantial weight by the courts. It is therefore necessary that when jurisdictional

questions arise, District personnel carefully investigate those waters which may be subject to Federal regulatory jurisdiction under the guidelines set out above, as the resulting determination may have substantial impact upon a judicial body. Official determinations by an agency made in the past can be revised or reversed as necessary to reflect changed rules or interpretations of the law.

(b) Procedures of determination. A determination whether a waterbody is a navigable water of the United States will be made by the Division Engineer, and will be based on a report of findings prepared at the District level in accordance with the criteria set out in this regulation. Each report of findings will be prepared by the District Engineer, accompanied by an opinion of the District Counsel, and forwarded to the Division Engineer for a final determination. Each report of findings will be based substantially on applicable portions of the format in subparagraph (c) below.

(c) Suggested format of report of findings:

(1) Name of Waterbody..
(2) Tributary to..
(3) Physical characteristics..
(i) Type: (river, bay slough, estuary, etc.)..
(ii) Length..
(iii) Approximate discharge volumes:
Maximum..
Minimum..
Mean..
(iv) Fall per mile..
(v) Extent of tidal influence..
(vi) Range between ordinary high and ordinary low water...........
(vii) Description of improvements to navigation not listed in subparagraph (5) below..
(4) Nature and location of significant obstructions to navigation in portions of the waterbody used or potentially capable of use in interstate commerce..
(5) Authorized projects..
(i) Nature, condition and location of any improvements made under projects authorized by Congress..
(ii) Description of projects authorized but not constructed........
(iii) List of known survey documents or reports describing the waterbody..
(6) Past or present interstate commerce..
(i) General types, extent, and period in time..
(ii) Documentation if necessary..
(7) Potential use for interstate commerce, if applicable..........
(i) If in natural condition..
(ii) If improved..
(8) Nature of jurisdiction known to have been exercised by Federal agencies if any..

(9) State or Federal court decision relating to navigability of the waterbody, if any..
(10) Remarks..
(11) Finding of navigability (with date) and recommendation for determination ....

§ 329.15 Inquiries Regarding Determination.

(a) Findings and determination should be made whenever a question arises regarding the navigability of a waterbody. Where no determination has been made, a report of findings will be prepared and forwarded to the Division Engineer, as described above. Inquiries may be answered by an interim reply which indicates that a final agency determination must be made by the Division Engineer. If a need develops for an emergency determination, District Engineers may act in reliance on a finding prepared as in § 329.14 above. The report of findings should then be forwarded to the Division Engineer on an expedited basis.

(b) Where determination have been made by the Divison Engineer, inquiries regarding the navigability of specific portions of waterbodies covered by these determination may be answered as follows:

This Department, in the administration of the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, has determined that.......(River) (Bay) (Lake, etc.) is a navigable water of the United States from ....to............. Actions which modify or otherwise affect those waters are subject to the jurisdiction of this Department, whether such actions occur within or outside the navigable areas.

(c) Specific inquiries regarding the jurisdiction of the Corps of Engineers can be answered only after a determination whether (1) the waters are navigable waters of the United States or (2) if not navigable, whether the proposed type of activity may nevertheless so affect the navigable waters of the United States that the assertion of regulatory jurisdiction is deemed necessary.

§ 329.16 Use and Maintenance of Lists of Determinations.

(a) Tabulated lists of final determinations of navigability are to be maintained in each District office, and be updated as necessitated by court decisions, jurisdictional inquiries, or other changed conditions.

(b) It should be noted that the lists represent only those waterbodies for which determinations have been made; absence from that list should not be taken as an indication that the waterbody is not navigable.

(c) Deletions from the list are not authorized. If a change in status of a waterbody from navigable to non-navigable is deemed necessary, an updated finding should be forwarded to the Division Engineer; changes are not considered final until a determination has been made by the Division Engineer.

ENVIRONMENTAL PROTECTION AGENCY INTERIM REGULATIONS
ON DISCHARGE OF DREDGED OR FILL MATERIAL
INTO NAVIGABLE WATERS*

Title 40 - Protection of the Environment

CHAPTER 1-ENVIRONMENTAL PROTECTION AGENCY

Part 230-NAVIGABLE WATERS

Discharge of Dredged or Fill Material

§ 230.1 Purpose and Scope

(a) Purpose. The guidelines contained herein have been developed by the Administrator, Environmental Protection Agency in conjunction with the Secretary of the Army pursuant to section 404(b) of the Federal Water Pollution Control Act (33 USC 1344).

(1) These guidelines are required by section 404 of the Act to be applied in the issuance of permits for the discharge of dredged or fill material at specified disposal sites. In the event the District Engineer's application of the guidelines would preclude the discharge of dredged or fill material, the District Engineer in making the decision will also evaluate the economic impact on navigation and anchorage which will occur by failing to utilize the proposed disposal site.

(2) In addition, under section 404(c) of the Act, no discharge of dredged or fill material will occur at a proposed disposal site in a navigable water if the Administrator of EPA determines, after notice and opportunity for a public hearing and consultation with the Secretary of the Army, that such discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

(b) Applicability. These guidelines are applicable to all activities involving the discharge of dredged or fill material in navigable waters. They will be applied by the Corps of Engineers in the review of proposed discharges of dredged or fill material into navigable waters which lie inside the baseline from which the territorial sea is measured or the discharge of fill material into the territorial sea pursuant to the procedures specified in 33 CFR 209.120 and 33 CFR 209.145.

(1) The discharge of dredge material into the territorial sea is governed by the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, and regulations and criteria issued pursuant thereto. (See 33 CFR 209.120, "Permits for Activities in Navigable Waters or Ocean Waters" and 33 CFR 209.145, "Federal Projects Involving the Disposal of Dredged Material in Navigable and Ocean Waters", and 40 CFR 227, "Ocean Dumping Final Regulations and Criteria".)

(2) These guidelines apply in a like manner to all discharges of dredged or fill material into navigable waters proposed to be undertaken by members of the general public and Federal Agencies including those Corps of Engineers operations that will result in such discharges.

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40 CFR 230: 40 FR 41291, September 5, 1975.

§ 230.2 Definitions

For purposes of this subpart 230, the following terms shall have the meanings indicated:

(a) The term "Act" means the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92-500, 33 USC 1251 et seq.).

(b) The defintions set forth in 33 CFR 209.120(d) are incorporated herein by reference. These cover: navigable waters, dredged material, discharge of dredged material, fill material, and discharge of fill material. A copy of these defintions is appended hereto.

(c) The term "Regional Administrator" means the EPA Regional Administrator for the particular EPA Region in which dredged or fill material is proposed to be discharged.

(d) The term "District Engineer" means the District Engineer for the U.S. Army Corps of Engineers District in which dredged or fill material is proposed to be discharged or such other individual as may be designated by the Secretary of the Army to issue or deny permits under section 404 of the Act.

(e) The term "territorial sea" means the belt of the sea measured from the baseline as determined in accordance with the Convention on the Territorial Sea and the Contiguous Zone and extending seaward a distance of three miles.

(f) The term "disposal site" means the location within fixed geographic boundaries in which a discharge of dredged or fill material is proposed or has been undertaken, and includes the volume of water and the substrate over which such water volume lies, where applicable.

(g) The term "constituents" means the chemical substances, the solids, and the organisms associated with dredged or fill material.

§ 230.3 Evaluation Procedures

(a) All proposed discharges of dredged or fill material will be processed and evaluated in accordance with these guidelines and with applicable Corps of Engineers regulations (33 CFR 209.120 and 33 CFR 209.145).

(b) Upon issuance of the public notice required by 33 CFR 209.120 (j) and 209.145(g) the District Engineer shall send a copy of the public notice to the Regional Administrator.

(c) The role of the Regional Administrator shall include consultation with the District Engineer on the interpretation of the guidelines, review and comment to the District Engineer on permit applications, and implementation of section 404(c) in appropriate cases.

(d) The District Engineer shall utilize these guidelines by making an ecological evaluation following the guidance in § 230.4, including technical evaluation where appropriate, in conjunction with the evaluation considerations specified in § 230.5. This evaluation shall be utilized by the District Engineer in making one of the following determinations pursuant to section 404(b)(1) of the Act:

(1) Allowing the proposed discharge with appropriate discharge conditions to minimize unacceptable effects on the aquatic environment;

(2) Denying the proposed discharge when the discharge will have an unacceptable effect on the aquatic environment;

(3) Requesting additional information where necessary to ensure a sound decision.

(e) The District Engineer shall make use of the following approaches where practicable: Short form application procedures as may be subsequently developed by the Chief of Engineers for minor activities with minimal environmental effects; use of general permit procedures (see § 230.6); and advance identification of disposal areas (see § 230.7). Evaluation of the proposed discharge will also be made based on information contained in Environmental Impact Assessments, Environmental Impact Statements if required, Coastal Zone Management Programs, and River Basin Plans.

§ 230.4 General Approaches for Technical Evaluation.

The effects of discharges of dredged or fill material on aquatic organisms and human uses of navigable waters may range from insignificant disruption to irreversible change at the disposal site. Section 230.4-1 describes the types of ecological effects that may result from the discharge of dredged or fill material and technical approaches to evaluate such effects. Ecological impact from dredged or fill material discharges can be divided into two main categories: (a) physical effects; and (b) chemical-biological interactive effects.

§ 230.4-1 Physical and Chemical-Biological Interactive Effects and Approaches for Evaluation.

No single test or approach can be applied in all cases to evaluate the effects of proposed discharges of dredged or fill material. Evaluation of the significance of physical effects often may be made without laboratory tests by examining the character of the dredged or fill material proposed for discharge and the discharge area with particular emphasis on the principles given in § 230.5. The chemical changes in water quality may best be simulated by use of an elutriate test. To the extent permitted by the state of the art, expected effects such as toxicity, stimulation, inhibition or bio-accumulation may be best estimated by appropriate bioassays. Suitability of the proposed disposal sites may be evaluated by the use, where appropriate, of sediment analysis or bioevaluation. In order to avoid unreasonable burdens on applicants in regard to the amounts and types of data to be provided, consideration will be given by the District Engineer to the economic cost of performing the evaulation, the utility of the data to be provided, and the nature and magnitude of any potential environmental effect. EPA in conjunction with the Corps of Engineers will publish a procedures manual that will cover summary and description of tests, defintions, sample collection and preservation, procedures, calculations, and references. Interim guidance to applicants concerning the applicability of specific approaches or procedures will be furnished by the District Engineer.

(a) Physical Effects. Physical effects on the aquatic environment include the potential destruction of wetlands, impairment of the water column, and the covering of benthic communities. Other physical effects include changes in bottom geometry and substrate composition that cause subsequent alterations in water circulation, salinity gradients and the exchange of constituents between sediments and overlying water with subsequent

alterations of biological communities. (See § 230.5 of these guidelines.)

(1) From a national perspective, the degradation or destruction of aquatic resources by filling operations in wetlands is considered the most severe environmental impact covered by these guidelines. Evaluation procedures for determining the environmental effects of fill operations in wetlands are relatively straight forward. The guiding principle should be that destruction of highly productive wetlands may represent an irreversible loss of a valuable aquatic resource. (See 33 CFR 209.120(g)(3) and 230.5 of these guidelines.) Wetlands considered to perform important functions include but are not limited to the following:

(i) Wetlands that serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuary of refuges;

(iii) Wetlands contiguous to areas listed in paragraphs (a)(1) (i) and (ii) of this section, the destruction or alteration of which would affect detrimentally the natural drainage characteristics, sedimentation pattersn, salinity distribution, flushing characteristics, current patterns, or other enviornmental characteristics of the above areas;

(iv) Wetlands that are significant in shielding other areas from wave action, erosion or storm damage. Such wetlands often include barrier beaches, islands, reefs and bars;

(v) Wetlands that serve as valuable storage areas for storm and flood waters; and

(vi) Wetlands that are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected.

(2) Effects on the water column are principally those associated with a reduction in light transmission, aesthetic values, and direct destructive effects on nektonic and planktonic populations. The significance of water column physical effects are not readily predicted by current technical approaches.

(3) The effect on benthos is essentially the covering of benthic communities with a subsequent change in community structure or function. It has been noted that the benthic community often will re-establish, although sometimes of a somewhat different ecological structure. Evaluation of the significance of the effect on the benthic community can be estimated prior to the discharge activity from a knowledge of the hydrodynamics of the disposal site, mode of discharge, volume of materials, particle size distribution and types of dredged or fill material, and from a knowledge of the benthic community.

(b) Chemical-biological interactive effects. Ecological perturbation caused by chemical-biological interactive effects resulting from discharges of dredged or fill material is very difficult to predict. Research performed to date has not clearly demonstrated the extent of chemical-biological interactive effects resulting from contaminants present in the dredged or fill material. The principal concerns of open water discharge of dredged or fill material that contain chemical contaminants are the potential effects on the water column or on benthic communities.

(1) Evaluation of chemical-biological interactive effects. Dredged or fill material may be excluded from the evaluation procedures specified in paragraphs (b)(2) and (3) of this section if any of the conditions specified in paragraphs (b)(1)(i), (ii) or (iii)

of this section are determined to exist, unless the District Engineer, after evaluating and considering any comments received from the Regional Administrator, determines that these approaches and procedures are necessary. The Regional Administrator may require, on a case-by-case basis, testing approaches and procedures by stating what additional information is needed through further analyses and how the results of the analysis will be of value in evaluating potential environmental effects. Dredged or fill material may be excluded from this evaluation, if:

(i) Dredged or fill material is composed predominantly of sand, gravel, or any other naturally occurring sedimentary material with particle sizes larger than silt, characteristic of and generally found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels;

(ii) Dredged or fill material is for beach nourishment or restoration and is composed predominantly of sand, gravel or shell with particle sizes compatible with material on receiving shores; or

(iii) When:

(a) The material proposed for discharge is substantially the same as the substrate at the proposed disposal site; and

(b) The site from which the material proposed for discharge is to be taken is sufficiently removed from sources of pollution to provide reasonable assurance that such material has not been contaminated by such pollution; and

(c) Adequate terms and conditions are imposed on the discharge of dredged or fill material to provide reasonable assurance that the material proposed for discharge will not be moved by currents or otherwise in a manner that is damaging to the environment outside the disposal site.

(2) Water column effects. Sediments normally contain constituents that exist in different chemical forms and are found in various concentrations in several locations within the sediment. The potentially bioavailable fraction of a sediment is dissolved in the sediment interstitial water or in a loosely bound form that is present in the sediment. In order to predict the effect on water quality due to release of contaminants from the sediment to the water column, an elutriate test may be used. The elutriate is the supernatant resulting from the vigorous 30-minute shaking of one part bottom sediment from the dredging site with four parts water (vol./vol.) collected from the dredging site followed by one-hour settling time and appropriate centrifugation and a 0.45u filtration. Major constituents to be analyzed in the elutriate are those deemed critical by the District Engineer, after evaluating and considering any comments received from the Regional Administrator, and considering known sources of discharges in the area and known characteristics of the extraction and disposal sites. Elutriate concentrations should be used in conjunction with the same constituents in disposal site water and other data which describe the volume and rate of the intended discharge, the type of discharge, the hydrodynamic regime at the disposal site, and other available information that aids in the evaluation of impact on water quality (see § 230.5 of these guidelines). The District Engineer may specify bioassays when he determines that such procedures will be of value. In reaching this determination, dilution and dispersion effects subsequent to the discharge at the disposal site will be considered.

(3) Effects on benthos. Evaluation of the significance of chemical-biological interactive effects on benthic organisms resulting from the discharge of dredged or fill material is extremely complex and demands procedures which are at the forefront of the current state of the art. Although research has shown that benthic species can ingest contaminated sediment particles, it has not been determined to what degree the contaminants are disassociated from the sediment and incorporated into benthic body tissues thereby gaining entry to the food web. The District Engineer may use an appropriate benthic bioassay when such procedures will be of value in assessing ecological effect and in establishing discharge conditions.

(c) Procedure for comparison of sites.

(1) When an inventory of the total concentration of chemical constituents deemed critical by the District Engineer would be of value in comparing sediment at the dredging site with sediment at the disposal site, he may require a total sediment chemical analysis. Total sediment analysis is accomplished by concentrated strong acid digestion or solvent extraction for inorganic and organic constituents respectively. Markedly different concentrations of critical constituents between the excavation and disposal sites may aid in making an environmental assessment of the proposed disposal operation.

(2) When an analysis of biological community structure will be of value to assess the potential for adverse environmental impact at the proposed disposal site, a comparison of the biological characteristics between the excavation and disposal sites may be required by the District Engineer. Biological indicator species may be useful in evaluating the existing degree of stress at both sites. Sensitive species representing community components colonizing various substrate types within the sites should be identified as possible bioassay organisms if tests for toxicity are required. Community structure studies are expensive and time consuming, and therefore should be performed only when they will be of value in determining discharge conditions. This is particularly applicable to large quantities of dredged material known to contain adverse quantities of toxic materials. Community studies should include benthic organisms such as microbiota and harvestable shellfish and finfish. Abundance, diversity, and distribution should be documented and correlated with substrate type and other appropriate physical and chemical environmental characteristics.

§ 230.4-2 Water Quality Considerations.

After application of the approaches presented in § 230.4, the District Engineer will compare the concentrations of appropriate constituents to applicable narrative and numerical guidance contained in such water quality standards as are applicable by law. In the event that such discharge would cause a violation of such appropriate and legally applicable standards at the perimeter of the disposal site after consideration of the mixing zone (see § 230.5(e)) discharge shall be prohibited.

§ 230.5 Selection of Disposal Sites and Conditioning of Discharges of Dredged Or Fill Material

(a) General considerations and objectives. In evaluating whether to permit a proposed discharge of dredged or fill material into

navigable waters, consideration shall be given to the need for the proposed activity (see 33CFR 209.120 and 33 CFR 209.145), the availability of alternate sites and methods of disposal that are less damaging to the environment, and such water quality standards as are appropriate and applicable by law. The following objectives shall be considered in making a determination on any proposed discharge:

(1) Avoid any discharge activities that significantly disrupt the chemical, physical and biological integrity of the aquatic ecosystem, of which aquatic biota, the substrate, and the normal fluctuations of water level are integral components;

(2) Avoid discharge activities that significantly disrupt the food chain including alterations or decrease in diversity of plant and animal species;

(3) Avoid discharge activities that inhibit the movement of fauna especially their movement into and out of feeding, spawning, breeding and nursery areas;

(4) Avoid discharge activities that will destroy wetland areas having significant functions in maintenance of water quality;

(5) Recognize that discharge activities might destroy or isolate areas that serve the function of retaining natural high waters or flood waters;

(6) Minimize, where practicable, adverse turbidity levels resulting from the discharge of material;

(7) Minimize discharge activities that will degrade aesthetic, recreational, and economic values;

(8) Avoid degradation of water quality as determined through application of § 230.4, 230.5(c) and (d).

(b) Considerations relating to degradation of water uses at proposed disposal sites.

(1) Municipal water supply intakes. No disposal site may be designated in the proximity of a public water supply intake. The District Engineer and the Regional Administrator will determine the acceptable location of the disposal site in such cases.

(2) Shellfish. (i) Disposal sites for dredged or fill material shall not be designated in areas of concentrated shellfish production. In the case of widely dispersed shellfish populations where it is demonstrated by the applicant that the avoidance of shellfish population areas is impossible the disposal site may be located within such areas, but should be situated so as to cause the least impact on the shellfish population with particular reference to the burial of living forms and maintenance of a suitable substrate.

(ii) Disposal sites should be located to minimize or prevent the possible movement of pollutants by currents or wave action into productive shellfish beds.

(iii) Banks formed by dredged or fill material should be located and oriented to prevent undesirable changes in current patterns, salinity patterns and flushing rates which may affect shellfish.

(iv) The disposal operation should be scheduled to avoid interference with reproductive processes and avoid undue stress to juvenile forms of shellfish.

(3) Fisheries. (i) Significant disruptions of fish spawning and nursery areas should be avoided.

(ii) Dredging and disposal operations should be scheduled to avoid interference with fish spawning cycles and to minimize interference with migration patters and routes.

(iii) Consideration shall be given to preservation of submersed and emergent vegetation.

(4) Wildlife. Disposal sites will be designated so as to minimize the impact on habitat, the food chain, community structures of wildlife, and marine or aquatic sanctuaries.

(5) Recreation activities. In evaluating proposed discharges of dredged or fill material in or near recreational areas, the following factors should be considered:

(i) Reasonable methods should be employed to minimize any increase in amount and duration of turbidity which would reduce the numbers and diversity of fish or cause a significant aesthetically displeasing change in the color, taste, or odor of the water.

(ii) Release of nutrients from dredged or fill material should be minimized in or to prevent eutrophication, the degradation of aesthetic values, and impairment of recreation uses.

(iii) No material that will result in unacceptable levels of pathogenic organisms shall be discharged in areas used for recreation involving physical contact with the water.

(iv) No material shall be discharged which will release oil and grease in harmful quantities as defined in 40 CFR 110.

(6) Threatened and endangered species. No discharge will be allowed that will jeopardize the continued existence of threatened or endangered species or destroy or modify the habitat of those species determined critical in accordance with the Endangered Species Act.

(7) Benthic life. Disposal sites should be areas where benthic life which might be damaged by the discharge is minimal recognizing that enhancement may also occur. Use of existing disposal sites is generally desirable.

(8) Wetlands. (i) Discharge of dredged material in wetlands may be permitted only when it can be demonstrated that the site selected is the least environmentally damaging alternative; provided, however, that the wetlands disposal site may be permitted if the applicant is able to demonstrate that other alternatives are not practicable and that the wetlands disposal will not have an unacceptable adverse impact on the aquatic resources. Where the discharge is part of an approved Federal program which will protect or enhance the value of the wetlands to the ecosystem, the site may be permitted.

(ii) Discharge of fill material in wetlands shall not be permitted unless the applicant clearly demonstrates the following:

(a) the activity associated with the fill must have direct access or proximity to, or be located in, the water resources in order to fulfill its basic purpose, or that other site or construction alternatives are not practicable; and

(b) that the proposed fill and the activity associated with it will not cause a permanent unacceptable disruption to the beneficial water quality uses of the affected aquatic ecosystem, or that the discharge is part of an approved Federal program which will protect or enhance the value of the wetlands to the ecosystem.

(9) Submersed Vegetation. Disposal sites shall be located to minimize the impact on submersed grassflats (for example Thalassia and Zostera beds) and other areas containing submersed

vegetation of significant biological productivity.

(10) Size of disposal site. The specified disposal site shall be confined to the smallest practicable area consistent with the type of dispersion determined to be appropriate by the application of these guidelines. Although the impact of the particular discharge may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the water resource and interferes with the productivity and water quality processes of existing environmental systems. Thus, the particular disposal site will be evaluated with the recognition that it is part of a complete and interrelated ecosystem. The District Engineer may undertake reviews of particular areas in response to new applications, and in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the State Conservationist of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agencies, including the State Director of an approved Coastal Zone Management Program, to assess the cumulative effect of activities in such areas;

(c) The following may also be considered in determining the site and disposal conditions to minimize the possibility of harmful effects:

(1) Appropriate scientific literature, such as the National Water Quality Criteria developed by the Administrator, pursuant to section 304 (a)(1) of the Act;

(2) Alternatives to open water disposal such as upland or confined disposal;

(3) Disposal sites where physical environmental characteristics are most amenable to the type of dispersion desired;

(4) Disposal seaward of the baseline of the territorial sea;

(5) Covering contaminated dredged material with cleaner material;

(6) Conditions to minimize the effect of runoff from confined areas on the aquatic environment; and

(7) The Regional Administrator may specify appropriate monitoring conditions in proximity of disposal sites where necessary to control and minimize water quality degradation, pursuant to Section 308 of the Act.

(d) Contaminated fill material restrictions. The discharge of fill material originating from a land source shall not be allowed when the District Engineer determines that the material contains unacceptable quantities, concentrations or forms of the constituents deemed critical by the District Engineer or the Regional Administrator for the proposed disposal site, unless such material is effectively confined to prevent the discharge, leaching, or erosion of the material outside the confined area. Appropriate approaches in 230.4 may be used in making this determination.

(e) Mixing zone determination. The mixing zone shall be the smallest practicable mixing zone within each specified disposal site, consistent with the objectives of these guidelines, in which desired concentrations of constituents must be achieved.

The District Engineer and the Regional Administrator shall consider the following factors in determining the acceptability of a proposed mixing zone:

(1) Surface area, shape and volume of the discharge site;

(2) Current velocity, direction and consistency at the discharge site;

(3) Degree of turbulence;

(4) Stratification attributable to causes which include without limitation salinity, obstructions, and specific gravity;

(5) Any on-site studies or mathematical models which have been developed with respect to mixing patterns at the discharge site; and

(6) Such other factors prevailing at the discharge site that affect rates and patterns of mixing.

§ 230.6 General or Categorical Permits

(a) The District Engineer upon compliance with the procedures of 33 CFR 209.120 may issue a general permit for a clearly described category of discharge activities if he determines that the category meets the following conditions:

(1) The activities included in the category are substantially similar in nature; and

(2) The activities included in the category have substantially similar impact on water quality and the aquatic system, and the adverse impact on water quality and the aquatic system is minimal for each discharge activity; and

(3) The cumulative impact of the total number of activities predicted to occur during the period authorized by the permit, is expected to have only minimal adverse effect on water quality and the aquatic system.

(b) The District Engineer, may condition general permits to require dischargers to submit the following information at least 45 days prior to commencement of the discharge of dredged or fill material:

(1) The name and address of the discharger.

(2) The location of the contemplated activity including the name and general description of the receiving waters, including wetlands, and the size of the area to be filled.

(3) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills.

(4) A description of the type, composition, and quantity of materials to be discharged and means of conveyance.

(5) A copy of other Federal, State, and local government authorizations obtained including a State water-quality certification under Section 401 of the Federal Water Pollution Control Act and, where applicable, a certification of compliance with an approved State Coastal Zone Management Program pursuant to Section 307(c)(3) of the Coastal Zone Management Act.

(c) If reporting is required the District Engineer shall record the individual disposal site as authorized and authorization will occur automatically 30 days after receipt of notification unless the applicant is otherwise notified by the District Engineer.

(d) A general permit may be revoked completely or partially by the District Engineer independently or on the advice of the Regional Administrator, if he determines that the discharges of dredged or fill material authorized by it or the cumulative effects thereof will have an adverse impact on water quality and the aquatic system. Following revocation, any discharges of dredged

or fill material in areas formerly covered by the general permit shall be processed as individual permits under this regulation.

§ 230.7 Advanced Identification of Dredged Material Disposal Areas.

(a) The District Engineer and the Regional Administrator, after consultation with the affected State or States, may at their discretion and consistent with the guidelines, identify areas which will be considered as:

(1) Possible future disposal sites; or

(2) Areas which will not be available for disposal site specification.

(b) The identification of any area as a possible future disposal site shall not be deemed to constitute a permit for the discharge of dredged or fill material within such areas, but may be used in evaluating individual or general permit applications.

(c) A record of areas so identified shall be maintained at the offices of the District Engineer and the Regional Administrator.

(d) To provide the basis for advanced identification of disposal areas and of areas not available for disposal, the Regional Administrator and the District Engineer should assess waterbodies to determine those areas which are of critical ecological concern, those which are of environmental concern, and nonsensitive areas. To facilitate this analysis, they should assemble water resource management data including such data as may be available from the other Federal and State agencies listed in § 230.5(b)(10) and information from approved Coastal Zone Management Programs and River Basin Plans.

§ 230.8 Revision

The provisions of these guidelines will be periodically reviewed by the Administrator in conjunction with the Secretary of the Army pursuant to section 404(b) (1) of the Act. The guidelines may not be modified without approval of the Secretary of the Army and the Administrator. Any proposed revisions, or notice that a review has been completed and no revisions are proposed, will be published in the FEDERAL REGISTER within three years of the date of this initial promulgation or earlier as determined by research results and affirmed by the Administrator in conjunction with the Secretary of the Army.

APPENDIX A

Definitions from 33 CFR 209.120, "Permits for Work in Navigable Waters or Ocean Waters"

(1) "Navigable waters of the United States." The term, "navigable waters of the United States," is administratively defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate commerce landward to their ordinary high water mark and up to the head of navigation as determined by the Chief of Engineers, and also waters that are subject to the ebb and flow of the tide shoreward to their mean high water mark (mean higher high water mark on the Pacific Coast). See 33 CFR 209.260 (ER 1165-2-302) for a more definitive explanation of this term.

(2) "Navigable waters". (i) The term, "navigable waters," as used herein for purposes of Section 404 of the Federal Water Pollution Control Act, is administratively defined to mean waters of the United States including the territorial seas with respect to the disposal of fill material and excluding the territorial sea with respect to the disposal of dredged material and shall include the following waters:

(a) Coastal waters that are navigable waters of the United States subject to the ebb and flow of the tide, shoreward to their mean high water mark (mean higher high water mark on the Pacific coast);

(b) All coastal wetlands, mudflats, swamps, and similar areas that are contiguous or adjacent to other navigable waters. "Coastal wetlands" includes marshes and shallows and means those areas periodically inundated by saline or brackish waters and that are normally characterized by the prevalence of salt or brackish water vegetation capable of growth and reproduction;

(c) Rivers, lakes, streams, and artificial water bodies that are navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(d) All artificially created channels and canals used for recreational or other navigational purposes that are connected to other navigable waters, landward to their ordinary high water mark;

(e) All tributaries of navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(f) Interstate waters landward to their ordinary high water mark and up to their headwaters;

(g) Intrastate lakes, rivers and streams landward to their ordinary high water mark and up to their headwaters that are utilized:

(1) By interstate travelers for water-related recreational purposes;

(2) For the removal of fish that are sold in interstate commerce;

(3) For industrial purposes by industries in interstate commerce; or

(4) In the production of agricultural commodities sold or transported in interstate commerce;

(h) Freshwater wetlands including marshes, shallows, swamps and, similar areas that are contiguous or adjacent to other navigable waters and that support freshwater vegetation. "Freshwater wetlands" means those areas that are periodically inundated and that are normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction; and

(i) Those other waters which the District Engineer determines necessitate regulation for the protection of water quality as expressed in the guidelines (40 CFR 230). For example, in the case of intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters identified in paragraphs (a)-(h) a decision on jurisdiction shall be made by the District Engineer.

(ii) The following additional terms are defined as follows:

(a) "Ordinary high water mark" with respect to inland fresh water

means the line on the shore established by analysis of all daily high waters. It is established as that point on the shore that is inundated 25% of the time and is derived by a flow-duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as shelving, change in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area;

(b) "Mean high water mark" with respect to ocean and coastal waters means the line on the shore established by the average of all high tides (all higher high tides on the Pacific Coast). It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark may be used, such as physical markings or comparison of the area in question with an area having similar physical characteristics for which tidal data are already available;

(c) "Lakes" means natural bodies of water greater than five acres in surface area and all bodies of standing water created by the impounding of navigable waters identified in paragraphs (a)-(h), above. Stock watering ponds and settling basins that are not created by such impoundments are not included;

(d) "Headwaters" means the point on the stream above which the flow is normally less than 5 cubic feet per second; provided, however, the volume of flow, point and nonpoint source discharge characteristics of the watershed, and other factors that may impact on the water quality of waters of the United States will be considered in determining this upstream limit; and

(e) "Primary tributaries" means the main stems of tributaries directly connecting to navigable waters of the United States up to their headwaters and does not include any additional tributaries extending off of the main stems of these tributaries.

(3) "Ocean waters". The term "ocean waters," as defined in the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532), 86 Stat. 1052), means those waters of the open seas lying seaward of the base line from which the territorial sea is measured as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(4) "Dredged material". The term "dredged material" means material that is excavated or dredged from navigable waters. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(5) "Discharge of dredged material". The term "discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into navigable waters. The term includes, without limitation, the addition of dredged material to a specified disposal site located in navigable waters and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into navigable

waters resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act even though the extraction of such material may require a permit from the Corps of Engineers under section 10 of the River and Harbor Act of 1899.

(6) "Fill material." The term "fill material" means any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose. "Fill material" does not include the following:

(i) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

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

(iii) Additions to these categories of activities that are not "fill" will be considered periodically and these regulations amended accordingly.

(7) "Discharge of fill material." The term "discharge of fill material" means the addition of fill material into navigable waters for the purpose of creating fastlands, elevations of land beneath navigable waters, or for impoundments of water. The term generally includes, without limitation, the following activities in a navigable water: placement of fill that is necessary to the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands, property protection and/or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; and artificial reefs.

SAFE DRINKING WATER ACT*

Part A - Definitions

Sec. 1401. For purposes of this title:

(1) The term 'primary drinking water regulation' means a regulation which -

(A) applies to public water systems;

(B) specifies contaminants which, in the judgement of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either -

(i) a maximum contaminant level, if, in the judgement of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgement of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

(2) The term 'secondary drinking water regulation' means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

(3) The term 'maximum contaminant level means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) The term 'public water system' means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pre-

*PL 93-523; Enacted by Congress December 3, 1974; Signed by the President December 17, 1974; Amended by PL 95-190, November 16, 1977; PL 96-63, September 6, 1979.

treatment storage facilities not under such control which are used primarily in connection with such system.

(5) The term 'supplier of water' means any person who owns or operates a public water system.

(6) The term 'contaminant' means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

(8) The term 'Agency' means the Environmental Protection Agency.

(9) The term 'Council' means the National Drinking Water Advisory Council established under section 1446.

(10) The term 'municipality' means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law.

(11) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

(12) The term 'person' means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State municipality, or Federal agency).

Part B - Public Water Systems Coverage

Sec. 1411. Subject to sections 1415 and 1416, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system -

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

National Drinking Water Regulations

Sec. 1412. (a)(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date on enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.

(b)(1)(A) Within 10 days of the date the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the -

(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin on safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which specify a maximum contaminant level or require the use of treatment techniques for each contaminant for which a recommended maximum contaminant level is established or which is listed in a rule under paragraph (1)(B). The maximum contaminant level specified in a revised national primary drinking water regulation for a contaminant shall be as close to the recommended maximum contaminant level established under paragraph (1)(B) for such contaminant as is feasible. A required treatment technique for a contaminant for which a recommended maximum contaminant level has been established under paragraph (1) (B) shall reduce such contaminant to a level which is as close to the recommended maximum contaminant level for such contaminant as is feasible. A required treatment technique for a contaminant which is listed under paragraph (1)(B) shall require treatment necessary in the Administrator's judgment to prevent known or anticipated adverse effects on the health of persons to the extent feasible. For purposes of this paragraph, the term

'feasible' means feasible with the use of the best technology, treatment techniques, and other means, which the Administrator finds are generally available (taking cost into consideration).

(4) Revised national primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years.

(5) Revised national primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

(6) No national primary drinking water regulations may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(c) The Administrator shall publish proposed national secondary drinking water regulations within 270 days after the date of enactment of this title. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations under this section shall be prescribed in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e)(1) The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (or with another independent scientific organization if appropriate arrangements cannot be made with such Academy) to conduct a study to determine (A) the maximum contaminant levels which should be recommended under subsection (b)(2) in order to protect the health of persons from any known or anticipated adverse effects, and (B) the existence of any contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

(2) The result of the study shall be reported to Congress no later then 2 years after the date of enactment of this title, and revisions thereof reflecting new information which has become available since the most recent previous report shall be reported to the Congress each two years thereafter. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions

for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research; (G) periodic assessments and evaluations of unregulated contaminants which may require continuous monitoring or regulation.

(3) In developing its proposals for recommended maximum contaminant levels under paragraph (2)(D) the National Academy of Sciences (or other organization preparing the report) shall evaluate and explain (separately and in composite) the impact of the following considerations:

(A) The existence of groups or individuals in the population which are more susceptible to adverse effects than the normal healthy adult.

(B) The exposure to contaminants in other media than drinking water (including exposures in food, in the ambient air, and in occupational settings) and the resulting body burden of contaminants.

(C) Synergistic effects resulting from exposure to or interaction by two or more contaminants.

(D) The contaminant exposure and body burden levels which alter physiological function or structure in a manner reasonably suspected of increasing the risk of illness.

(4) In making the study under this subsection, the National Academy of Sciences (or other organization) shall collect and correlate (A) morbidity and mortality data and (B) monitored data on the quality of drinking water. Any conclusions based on such correlation shall be included in the report of the study.

(5) Neither the report of the study under this subsection nor any draft of such report shall be submitted to the Office of Management and Budget or to any other Federal agency (other than the Enviornmental Protection Agency) prior to its submission to Congress.

(6) Of the funds authorized to be appropriated to the Administrator by this title, such amounts as may be required shall be available to carry out the study and to make the report directed by paragraph (2) of this subsection.

State Primary Enforcement Responsibility

Sec. 1413. (a) For purposes of this title, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b)) that such State -

(1) has adopted drinking water regulations which (A) in the case of the period beginning on the date the national interim primary drinking water regulations are promulgated under section 1412 and ending on the date such regulations take effect are no less stringent than such regulations, and (B) in the case of the period after such effective date are no less stringent than the interim and revised national primary drinking water regulations in effect under such section;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

(b)(1) The Administrator shall, by regulation (proposed within 180 days of the date of the enactment of this title), prescribe the manner in which a State may apply to the Administrator for a determinations that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this title when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

Failure By State To Assure Enforcement Of Drinking Water Regulations

Sec. 1414. (a)(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 1413(a)) than any public water system -

(i) for which a variance under section 1415 or an exemption under section 1416 is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(ii) for which a variance under section 1415 or an exemption under section 1416 is in effect, does not comply with any schedule, or other requirement imposed pursuant thereto,

he shall so notify the State and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

(B) If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of the notice given pursuant to subparagraph (A), he shall give public notice of such finding and request the State to report within fifteen days from the date of such public notice as to the steps being taken to bring the system into compliance (including reasons for anticipated steps to be taken to bring the system into compliance and for any failure to take steps to bring the system into compliance). If -

(i) such failure to comply extends beyond the sixtieth day after the date of the notice giver pursuant to subparagraph (A); and

(ii) (a) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence; or

(b) the State submits such report within such period but the Administrator, after considering the report, determines that the State abused its discretion in carrying out primary enforcement responsibility for public water systems by both -

(I) failing to implement by such sixtieth day adequate procedures to bring the system into compliance by the earliest feasible time, and

(II) failing to assure by such day the provision through alternative means of safe drinking water by the earliest feasible time; the Administrator may commence a civil action under subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State -

(A) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is not in effect, does not comply with any national primary drinking water regulation in effect under section 1412, or

(B) for which a variance under section 1415(a)(2) or an exemption under section 1416(f) is in effect, does not comply with any

schedule or other requirement imposed pursuant thereto, he may commence a civil action under subsection (b).

(b) The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 1415 or 1416 if -

(1) authorized under paragraph (1) or (2) of subsection (a), or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a willful violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $5,000 for each day in which such violation occurs.

(c) Each owner or operator of a public water system shall give notice to the persons served by it -

(1) of any failure on the part of the public water system to -

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 1445(a), and

(2) if the public water system is subject to a variance granted under section 1415 (a)(1)(A) or 1415 (a)(2) for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 1416, of -

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe form, manner, and frequency for giving notice under this subsection. Notice under the first sentence of this subsection shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months, such notice shall be included in at least one water bill of the system every 3 months, and if a public water system

issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. The Administrator may also require the owner or operator of a public water system to give notice to the persons served by it of contaminant levels of any unregulated contaminant required to be monitored under section 1445(a). Any person who willfully violates this subsection or regulations issued under this subsection shall be fined not more than $5,000.

(d) Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water requaltions have been promulgated, one or more public water systems in a State do not comply with secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

(f) If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical or other experts, Federal, State, or public officials, representatives of such public water system, persons served by such system, and other interested persons on -

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

Variances

Sec. 1415. (a) Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration). Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe within one year of the date the variance is granted, a schedule for -

(i) compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required. Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of a national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance propcsed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given prusuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted

by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall -

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement, which the Administrator shall rescind the application of his finding to that variance or schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) is conditioned may be enforced under section 1414 as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) If an application for a variance under subsection (a) is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) For purposes of this section, the term 'treatment technique requirement' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401 (1)(C)(ii))each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412(b)(3).

Exemptions

Sec. 1416. (a) A State which has primary enforcement responsibility

may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that -

(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique treatment.

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, and

(3) the granting of the exemption will not result in an unreasonable risk to health.

(b)(1) If a State grants a public water system an exemption under subsection (a), the State shall prescribe, within one year of the date the exemption is granted, a schedule for -

(A) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A Schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B)) -

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the interim national primary drinking water regulations promulgated under section 1412 (a), not later than January 1, 1981; and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, not later than seven years after the date such requirement takes effect.

(B) Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall -

(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1983; and

(ii) in the case of a schedule prescribed for an exemption granted

with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.

(3) Each public water system's exemption granted by a State under subsection (a) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 1414 as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under subsection (d)(2) or the schedule is revised by the Administrator under such subsection.

(c) Each State which grants an exemption under subsection (a) shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) before the exemption may be granted) and document the need for the exemption.

(d)(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with finding responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) or failed to prescribe schedules in accordance with subsection (b), the Administrator shall notify the State of his finding. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall -

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on a notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) For purposes of this section, the term 'treatment technique requirement' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 1401 (1)(C)(ii))each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirement of section 1412 (b)(3).

(f) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same manner and conditions as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

Part C - Protection of Underground
Sources of Drinking Water
Regulations for State Programs

Sec. 1421. (a)(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after the date of enactment of this title. Within 180 days after

publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

((2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5, United States Code (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b)(1) Regulations under subsection (a) for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2). Such regulations shall require that a State program, in order to be approved under section 1422 -

(A) shall prohibit, effective three years after the date of the enactment of this title, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 1447 (b), to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede -

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number of States.

(ii) For the purpose of this subparagraph, a regulation prescribed

by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not endangered by any underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

(c)(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) temporary permits for underground injection which may be effective until the expiration of four years after the date of enactment of this title, if -

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injectionwells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i)),but after reasonable notice and public hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after the date of enactment of this title, if the State finds, on the record of such hearing -

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) For purposes or this part:

(1) The term 'underground injection' means the subsurface emplacement of fluids by well injection.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water

regulation or may otherwise adversely affect the health of persons.

State Primary Enforcement Responsibility

Sec. 1422. (a) Within 180 days after the date of enactment of this title, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b)(1)(A) Each State listed under subsection (a) shall within 270 days after the date of promulgation of any regulation under section 1421 (or, if later, within 270 days after such State is first listed under subsection (a)) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State -

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 1421; and

(ii) will keep such records and make such report with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 1421 revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) shall submit (in such form and manner as the Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2), if the Administrator determines under subsection (b)(3), that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A), or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1), the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State

meeting the requirements of section 1421(b). Such program may not include requirements which interfere with or impede -

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) For purposes of this title, the term 'applicable underground injection control program' with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b), or (2) which has been prescribed by the Administrator under subsection (c).

Failure of State to Assure Enforcement of Program

Sec. 1423. (a)(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 1422 (b)(3)) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If the Administrator finds such failure to comply extends beyond the thirtieth day after the date of such notice, he shall give public notice of such finding and request the State to report within 15 days after the date of such public notice as to the steps being taken to bring such person into compliance with such requirement (including reasons for anticipated steps tc be taken to bring such person into compliance with such requirement and for any failure to take steps to bring such person into compliance with such requirement). If -

(A) such failure to comply extends beyond the sixtieth day after the date of the notice given pursuant to the first sentence of this paragraph, and

(B) (i) the State fails to submit the report requested by the Administrator within the time period prescribed by the preceding sentence, or

(ii) the State submits such report within such period but the Administrator, after considering the report, determines that by failing to take necessary steps to bring such person into compliance by such sixtieth day the State abused its discretion in carrying out primary enforcement responsibility for underground water sources,

the Administrator may commence a civil action under subsection (b)(1).

(2) Whenever the Administrator finds during a period during which a State does not have primary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, he may commence a civil action under subsection (b)(1).

(b)(1) When authorized by subsection (a), the Administrator may bring a civil action under this paragraph in the appropriate United States district court to require compliance with any requirement of an applicable underground injection control program. The court may enter such judgment as protection of public health may require, including, in the case of an action brought against a person who violates an applicable requirement of an underground injection control program and who is located in a State which has primary enforcement responsibility for underground water sources, the imposition of a civil penalty of not to exceed $5,000 for each day such person violates such requirement after the expiration of 60 days after receiving notice under subsection (a)(1).

(2) Any person who violates any requirement of an applicable underground injection control program to which he is subject during any period for which the State does not have primary enforcement responsibility for underground water sources (A) shall be subject to a civil penalty of not more than $5,000 for each day of such violation, or (B) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (B), be fined not more than $10,000 for each day of such violation.

(c) Nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this title.

Interim Regulation of Underground Injections

Sec. 1424. (a)(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b). The Administrator may so designate an area within a State if he finds that the area has one acquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b)(1) During the period beginning on the date an area is designated under subsection (a) and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by

regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) only if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Any person who operates a new underground injection well in violation of subsection (b)(1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by.clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b), he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) For purposes of this section, the term 'new underground injection well' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before the date of the enactment of this title.

(e) If the Administrator determines, on his own initiative or upon petition, that an area has an acquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such acquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the acquifer.

Part D - Emergency Powers
Emergency Powers

Sec. 1431. (a) Notwithstanding any other provision of this title, the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons,

and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day in which such violation occurs or failure to comply continues.

Part E - General Provisions

Assurance of Availability of Adequate Supplies of Chemicals Necessary For Treatment of Water

Sec. 1441. (a) If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a 'certification of need') that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b)(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued)

that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after -

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application, the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c)(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary in the certification of need issued for such person. Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider -

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f), any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1), that such delay or failure was caused solely by compliance with such order.

(e)(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1), he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

(f) No certification of need or order issued under this section may remain in effect -

(1) for more than one year, or

(2) after September 30, 1982, whichever occurs first.

(1441 (f)(2) amended by PL 96-63, September 6, 1979)

Research, Technical Assistance, Information
Training of Personnel

Sec. 1442. (a)(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water, including -

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the

establishment and administration of public water system supervision programs (as defined in section 1443 (c)(1)).

(B) The administrator is authorized to provide technical assistanct and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subparagraph shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency sitaution and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subparagraph as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subparagraph.

(3)(A) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 1412.

(B) Not later than eighteen months after the date of enactment of this subparagraph, the Administrator shall submit a report to Congress which identifies and analyzes -

(i) the anticipated costs of compliance with interim and revised national primary drinking water regulations and the anticipated costs to States and units of local governments in implementing such regulations;

(ii) alternative methods of (including alternative treatment techniques for) compliance with such regulations;

(iii) methods of paying the costs of compliance by public water systems with national primary drinking water regulations, including user charges, State or local taxes or subsidies, Federal grants (including planning or construction grants, or both), loans, and loan guarantees, and other methods of assisting in paying the costs of such compliance;

(iv) the advantages and disadvantages of each of the methods referred to in clauses (ii) and (iii);

(v) the sources of revenue presently available (and projected to be available) to public water systems to meet current and future expenses; and

(vi) the costs of drinking water paid by residential and industrial consumers in a sample of large, medium, and small public water systems and of individually owned wells, and the reasons for any differences in such costs.

The report required by this subparagraph shall identify and analyze the items required in clauses (i) through (v) separately with respect to public water systems serving small communities. The report required by this subparagraph shall include such recommendations as the Administrator deems appropriate.

(4) The Administrator shall conduct a survey and study of -

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply any public water systems, and

(B) means of control of such waste disposal. Not later than one year after the date of enactment of this title, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after the date of enactment of this title, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(11) The Administrator shall carry out a study of polychlorinated biphenyl contamination of casual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(b) In carrying out this title, the Administrator is authorized to -

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this title;

(3) make grants to, and enter into contracts with, any public

agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed -

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this title (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 1443(C))).

(c) Not later than eitgteen months after the date of enactment of this subsection, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data compiled by the National Water Commission and others shall be utilized to the extent possible.

(d) The Administrator shall -

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to education institutions for traineeships) for the purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(e) There are authorized to be appropriated to carry out the provisions of this section other than subsection (a)(2)(B) and provisions relating to research $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; $35,000,000 for the fiscal year ending June 30, 1977; $17,000,000 for each of the fiscal years 1978 and 1979; $21,405,000 for the fiscal year ending September 30, 1980; $30,000,000 for the fiscal year ending September 30, 1981; and $35,000,000 for the fiscal year ending September 30, 1982. There are authorized to appropriated to carry out (a)(2)(B) $8,000,000 for each of the fiscal years 1973 through 1982.
(1442(e) amended by PL 96-63, September 6, 1979)

Grants for State Programs

Sec. 1443 (a)(1) For allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State -

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State.

No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): Provided, That the Administrator may, by regulation, reduce such percentage in accordance with the criteria specified in this paragraph: And provided further, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. To the extent the applicable appropriation permits, the allotment of a State for any fiscal year shall not be less than $50,000.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator -

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State

assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amoungs were originally allotted may be removed from the original allotment and realloted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section -

(A) within 90 days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made, whichever is later.

(7) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979; $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982.
(1443(a)(7) amended by PL 96-63, September 6, 1979)

(b)(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State -

(A) has established or will establish within two years from the date of such grant an underground water source protection, and

(B) will, within such two years, assume primary enforcement responsibility for underground water sources within the State.
No grant may be made to a State under paragraph (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintaines primary enforcement responsibility for underground water sources within the State.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, an underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June, 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979,$47,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982.
(1443 (b)(5) amended by PL 95-63, September 6, 1979)

(c) For purposes of this section:

(1) The term 'public water system supervision program' means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 1415 and 1416) which are no less stringent than the national primary drinking water regulations under section 1412, and for keeping records and making reports required by section 1413 (a)(3).

(2) The term 'underground water source protection program' means a program for the adoption and enforcement of a program which meets the requirements of regulations under section 1421 and for keeping records and making reports required by section 1422 (b)(1)(A)(ii).

Special Study and Demonstration Project
Grants; Guaranteed Loans

Sec. 1444. (a) The Administrator may make grants to any person for the purposes of -
(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or imporoved method, approach, or technology for providing a dependable safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water. Following limitations:

(1) Grants under this section shall not exceed 66 2/3 per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) For the purpose of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to meet national primary drinking water regulations (including interim regulations) prescribed under section 1412. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by

subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteeed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

Records and Inspections

Sec. 1445. (a) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 1412 or to an applicable underground injection control program (as defined in section 1422 (c)),who is or may be subject to the permit requirement of section 1424 or to an order issued under section 1441, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this title, in determining whether such person has acted or is acting in compliance with this title, in administering any program of financial assistance under this title in evaluating the health risks of unregulated contaminants, or in advising the public of such risks.

(b)(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 1412 (B) an applicable underground injection control program or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a), or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this title, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection(a) or which are pertinent to any financial assistance under this title.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice

under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Whoever fails or refuses to comply with any requirement of subsection (a) or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) may be fined not more than $5,000.

(d)(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this title or to committees of the Congress, or when relevant in any proceeding under this title, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term 'information required under this section' means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) For purposes of this section, (1) the term 'grantee' means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this title, and (2) the term 'person' includes a Federal agency.

National Drinking Water Advisory Council

Sec. 1446. (a)(1) There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that -

(1) any member appointed 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

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after the date of enactment of this title, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.
The members of the Council shall be eligible for reappointment.

(b) The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this title.

(c) Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council 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 of the United States Code.

(d) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

Federal Agencies

Sec. 1447. (a) Each Federal agency (1) having jurisdiction over any federally owned or maintained public water system or (2) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 1421 (d) (2) shall be subject to, and comply with, all Federal, State, and local requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water and respecting any underground injection program in the same manner, and to the same extent, as any nongovernmental entity. 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 or sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply, not withstanding any immunity of such agencies, under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty under this title with respect to any act or omission within the scope of his official duties.

(b) The Administrator shall waive compliance with subsection (a) upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this title. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the

request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

(c)(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this Act, the term 'Federal agency' shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

Judicial Review

Sec. 1448. (a) A petition for review of -

(1) action of the Administrator in promulgating any national primary drinking water regulation under section 1412,

any regulation under section 1413(b)(1), any regulation under section 1414(c), any regulation for State underground injection control programs under section 1421, or any general regulation for the administration of this title may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and

(2) action of the Administrator in promulgating any other regulation under this title, issuing any order under this title, or making any determination under this title may be filed only in the United States court of appeals for the appropriate circuit.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(b) The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 1415 or 141 **or** (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this title 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 to 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.

Citizen's Civil Action

Sec. 1449. (a) Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf -

(1) against any person (including (A) the United States, and (B) 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 any requirement prescribed by or under this title, or

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

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this title which occurred within the 27-month period beginning on the first day of the month in which this title is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this title or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) No civil action may be commenced -

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this title -

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

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section, the Administrator or the Attorney General, if not a party may intervene as a matter of right.

No person may commence a civil action under subsection 1415 or 1416 for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(d) The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an 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) 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 requirement prescribed by or under this title or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from -

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction, against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this title, except as provided in section 1448. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 1447.

General Provisions

Sec. 1450. (a) (1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this title.

(2) The Administrator may delegate any of his functions under this title (other than prescribing regulations) to any officer or employee of the Agency.

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

(c) Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this title.

(d) (1) The Administrator may make payments of grants under this title (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term 'nonprofit agency or institution' means an agency or institution no part of the net earnings of

which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a-276a(5)). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(f) The Adminstrator shall request the Attorney General to appear and represent him in any civil action instituted under this title to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) The provisions of this title shall not be construed as affecting any authority of the Administrator under part G of title III of this Act.

(h) Not later than April 1 of each year; the Administrator shall submit to the Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a report respecting the activities of the Agency under this title and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual anticipated cost to public water systems in each State of compliance with the requirements of this title. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i)(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has -

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this title. "(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(6) Paragraph (1) shall not apply with respect to any employee who,

acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this title.

(b) Section 2(f) of the Public Health Service Act is amended by inserting "(1)" after "except that" and by inserting before the semicolon at the end thereof the following:", and (2) as used in title XIV such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands".

Rural Water Survey

Sec. 3 (a) The Administrator of the Environmental Protection Agency shall (after consultation with the Secretary of Agriculture and the several States) enter into arrangements with public or private entities as may be appropriate to conduct a survey of the quantity, quality, and availability of rural drinking water supplies. Such survey shall include, but not be limited to, the consideration of the number of residents in each rural area -

(1) presently being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system;

(2) presently having limited or otherwise inadequate access to drinking water;

(3) who, due to the absence of inadequacy of a drinking water supply system, are exposed to an increased health hazard; and

(4) who have experienced incidents of chronic or acute illness, which may be attributed to the absence or inadequacy of a drinking water supply system.

(b) Such survey shall be completed within eighteen months of the date of enactment of this Act and a final report thereon submitted, not later than six months after the completion of such survey, to the President and to the Congress. Such report shall include recommendations for improving rural water supplies.

(c) There are authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending June 30, 1975; $2,000,000 for the fiscal year ending June 30, 1976; $1,000,000 for the fiscal year ending June 30, 1977; and $1,000,000 for each of fiscal years 1978 and 1979.

Bottled Drinking Water

Sec. 4 Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding after section 409 the following new section:

Bottled Drinking Water Standards

Sec. 410. Whenever the Administrator of the Environmental Protection Agency prescribes interim or revised national primary drinking water regulations under section 1412 of the Public Health Service Act, the Secretary shall consult with the Administrator and within 180 days after the promulgation of such drinking water regulations either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the Federal Register his reasons for not making such amendments.

F. References