

such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1313, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1313, 1316, or 1317 of this title.

(6) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements

Nothing in this section shall be construed to limit the authority of any department or agency

pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees

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

(d) Limitations and monitoring requirements of certification

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

(June 30, 1948, ch. 758, title IV, §401, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 877; amended Pub. L. 95-217, §§61(b), 64, Dec. 27, 1977, 91 Stat. 1598, 1599.)

Editorial Notes

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-217 inserted reference to section 1313 of this title in pars. (1), (3), (4), and (5), struck out par. (6) which provided that no Federal agency be deemed an applicant for purposes of this subsection, and redesignated par. (7) as (6).

§ 1342. National pollutant discharge elimination system

(a) Permits for discharge of pollutants

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either (A) all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343

of this title, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(i)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs

At any time after the promulgation of the guidelines required by subsection (i)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the

interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

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

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

(i) violation of any condition of the permit;

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

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

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

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

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

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

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A)

new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of Federal program upon submission of State program; withdrawal of approval of State program; return of State program to Administrator

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(i)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(i)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) LIMITATIONS ON PARTIAL PERMIT PROGRAM RETURNS AND WITHDRAWALS.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

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

(d) Notification of Administrator

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

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

(4) In any case where, after December 27, 1977, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this chapter.

(e) Waiver of notification requirement

In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) Limitation on permit requirement

(1) Agricultural return flows

The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) Stormwater runoff from oil, gas, and mining operations

The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(3) Silvicultural activities

(A) NPDES PERMIT REQUIREMENTS FOR SILVICULTURAL ACTIVITIES.—The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance.

(B) OTHER REQUIREMENTS.—Nothing in this paragraph exempts a discharge from silvicultural activity from any permitting requirement under section 1344 of this title, existing permitting requirements under section 1342 of this title, or from any other federal law.

(C) The authorization provided in Section¹ 1365(a) of this title does not apply to any non-permitting program established under 1342(p)(6)² of this title for the silviculture activities listed in 1342(l)(3)(A)² of this title, or to any other limitations that might be deemed to apply to the silviculture activities listed in 1342(l)(3)(A)² of this title.

(m) Additional pretreatment of conventional pollutants not required

To the extent a treatment works (as defined in section 1292 of this title) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 1314(a)(4) of this title into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 1317(b)(1) of this title. Nothing in this subsection shall affect the Administrator's authority under sections 1317 and

¹ So in original. Probably should not be capitalized.

² So in original. Probably should be preceded by "section".

1319 of this title, affect State and local authority under sections 1317(b)(4) and 1370 of this title, relieve such treatment works of its obligations to meet requirements established under this chapter, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) Partial permit program

(1) State submission

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

(2) Minimum coverage

A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

(3) Approval of major category partial permit programs

The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

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

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

(4) Approval of major component partial permit programs

The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

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

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) Anti-backsliding

(1) General prohibition

In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 1314(b) of this title subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the pre-

vious permit. In the case of effluent limitations established on the basis of section 1311(b)(1)(C) or section 1313(d) or (e) of this title, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 1313(d)(4) of this title.

(2) Exceptions

A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

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

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 1311(c), 1311(g), 1311(h), 1311(i), 1311(k), 1311(n), or 1326(a) of this title; or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this chapter or for reasons otherwise unrelated to water quality.

(3) Limitations

In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the

permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 1313 of this title applicable to such waters.

(p) Municipal and industrial stormwater discharges

(1) General rule

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

(2) Exceptions

Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before February 4, 1987.

(B) A discharge associated with industrial activity.

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

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

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) Permit requirements

(A) Industrial discharges

Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 1311 of this title.

(B) Municipal discharge

Permits for discharges from municipal storm sewers—

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

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

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) Permit application requirements

(A) Industrial and large municipal discharges

Not later than 2 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall

be filed no later than 3 years after February 4, 1987. Not later than 4 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) Other municipal discharges

Not later than 4 years after February 4, 1987, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after February 4, 1987. Not later than 6 years after February 4, 1987, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) Studies

The Administrator, in consultation with the States, shall conduct a study for the purposes of—

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

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

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) Combined sewer overflows

(1) Requirement for permits, orders, and decrees

Each permit, order, or decree issued pursuant to this chapter after December 21, 2000, for

a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the “CSO control policy”).

(2) Water quality and designated use review guidance

Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) Report

Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

(r) Discharges incidental to the normal operation of recreational vessels

No permit shall be required under this chapter by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

(s) Integrated plans

(1) Definition of integrated plan

In this subsection, the term “integrated plan” means a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(2) In general

The Administrator (or a State, in the case of a permit program approved by the Administrator) shall inform municipalities of the opportunity to develop an integrated plan that may be incorporated into a permit under this section.

(3) Scope

(A) Scope of permit incorporating integrated plan

A permit issued under this section that incorporates an integrated plan may integrate all requirements under this chapter addressed in the integrated plan, including requirements relating to—

- (i) a combined sewer overflow;
- (ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;
- (iii) a municipal stormwater discharge;
- (iv) a municipal wastewater discharge; and
- (v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(B) Inclusions in integrated plan

An integrated plan incorporated into a permit issued under this section may include the implementation of—

- (i) projects, including innovative projects, to reclaim, recycle, or reuse water; and
- (ii) green infrastructure.

(4) Compliance schedules

(A) In general

A permit issued under this section that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the schedule of compliance—

- (i) is authorized by State water quality standards; and
- (ii) meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on January 14, 2019).

(B) Time for compliance

For purposes of subparagraph (A)(ii), the requirement of section 122.47 of title 40, Code of Federal Regulations, for compliance by an applicable statutory deadline under this chapter does not prohibit implementation of an applicable water quality-based effluent limitation over more than 1 permit term.

(C) Review

A schedule of compliance incorporated into a permit issued under this section may be reviewed at the time the permit is renewed to determine whether the schedule should be modified.

(5) Existing authorities retained

(A) Applicable standards

Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this chapter.

(B) Flexibility

Nothing in this subsection reduces or eliminates any flexibility available under this chapter, including the authority of a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 1313(c) of this title.

(6) Clarification of State authority

(A) In general

Nothing in section 1311(b)(1)(C) of this title precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) Transition rule

In any case in which a discharge is subject to a judicial order or consent decree, as of January 14, 2019, resolving an enforcement

action under this chapter, any schedule of compliance issued pursuant to an authorization in a State water quality standard may not revise a schedule of compliance in that order or decree to be less stringent, unless the order or decree is modified by agreement of the parties and the court.

(June 30, 1948, ch. 758, title IV, § 402, as added Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 880; amended Pub. L. 95-217, §§ 33(c), 50, 54(c)(1), 65, 66, Dec. 27, 1977, 91 Stat. 1577, 1588, 1591, 1599, 1600; Pub. L. 100-4, title IV, §§ 401-404(a), 404(c), formerly 404(d), 405, Feb. 4, 1987, 101 Stat. 65-67, 69, renumbered § 404(c), Pub. L. 104-66, title II, § 2021(e)(2), Dec. 21, 1995, 109 Stat. 727; Pub. L. 102-580, title III, § 364, Oct. 31, 1992, 106 Stat. 4862; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 112(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-224; Pub. L. 110-288, § 2, July 29, 2008, 122 Stat. 2650; Pub. L. 113-79, title XII, § 12313, Feb. 7, 2014, 128 Stat. 992; Pub. L. 115-436, § 3(a), Jan. 14, 2019, 132 Stat. 5558.)

Editorial Notes

AMENDMENTS

2019—Subsec. (s). Pub. L. 115-436 added subsec. (s).
 2014—Subsec. (l)(3). Pub. L. 113-79 added par. (3).
 2008—Subsec. (r). Pub. L. 110-288 added subsec. (r).
 2000—Subsec. (q). Pub. L. 106-554 added subsec. (q).
 1992—Subsec. (p)(1), (6). Pub. L. 102-580 substituted “October 1, 1994” for “October 1, 1992” in par. (1) and “October 1, 1993” for “October 1, 1992” in par. (6).
 1987—Subsec. (a)(1). Pub. L. 100-4, § 404(c), inserted cl. (A) and (B) designations.
 Subsec. (c)(1). Pub. L. 100-4, § 403(b)(2), substituted “as to those discharges” for “as to those navigable waters”.
 Subsec. (c)(4). Pub. L. 100-4, § 403(b)(1), added par. (4).
 Subsec. (l). Pub. L. 100-4, § 401, inserted “Limitation on permit requirement” as subsec. heading designated existing provisions as par. (1) and inserted par. heading, added par. (2), and aligned pars. (1) and (2).
 Subsecs. (m) to (p). Pub. L. 100-4, §§ 402, 403(a), 404(a), 405, added subsecs. (m) to (p).
 1977—Subsec. (a)(5). Pub. L. 95-217, § 50, substituted “section 1314(i)(2)” for “section 1314(h)(2)”.
 Subsec. (b). Pub. L. 95-217, § 50, substituted in provisions preceding par. (1) “subsection (i)(2) of section 1314” for “subsection (h)(2) of section 1314”.
 Subsec. (b)(8). Pub. L. 95-217, § 54(c)(1), inserted reference to identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 1317(b) of this title into treatment works and programs to assure compliance with pretreatment standards by each source.
 Subsec. (c)(1), (2). Pub. L. 95-217, § 50, substituted “section 1314(i)(2)” for “section 1314(h)(2)”.
 Subsec. (d)(2). Pub. L. 95-217, § 65(b), inserted provision requiring that, whenever the Administrator objects to the issuance of a permit under subsec. (d)(2) of this section, the written objection contain a statement of the reasons for the objection and the effluent limitations and conditions which the permit would include if it were issued by the Administrator.
 Subsec. (d)(4). Pub. L. 95-217, § 65(a), added par. (4).
 Subsec. (e). Pub. L. 95-217, § 50, substituted “subsection (i)(2) of section 1314” for “subsection (h)(2) of section 1314”.
 Subsec. (h). Pub. L. 95-217, § 66, substituted “where no State program is approved or where the Administrator determines pursuant to section 1319(a) of this title that a State with an approved program has not commenced appropriate enforcement action with respect to such permit,” for “where no State program is approved.”

Subsec. (l). Pub. L. 95-217, § 33(c), added subsec. (l).

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

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

PERMIT REQUIREMENTS FOR DISCHARGES FROM CERTAIN VESSELS

Pub. L. 110-299, §§ 1, 2, July 31, 2008, 122 Stat. 2995, as amended by Pub. L. 111-215, § 1, July 30, 2010, 124 Stat. 2347; Pub. L. 112-213, title VII, § 703, Dec. 20, 2012, 126 Stat. 1580; Pub. L. 113-281, title VI, § 602, Dec. 18, 2014, 128 Stat. 3061; Pub. L. 115-100, § 1, Jan. 3, 2018, 131 Stat. 2245, which exempted from permit requirements, for the period from July 31, 2008, through Jan. 19, 2018, discharges incidental to the normal operation of vessels, subject to certain exceptions, was repealed by Pub. L. 115-282, title IX, § 903(a)(2)(A)(ii), Dec. 4, 2018, 132 Stat. 4354.

STORMWATER PERMIT REQUIREMENTS

Pub. L. 102-240, title I, § 1068, Dec. 18, 1991, 105 Stat. 2007, provided that:

“(a) GENERAL RULE.—Notwithstanding the requirements of sections 402(p)(2)(B), (C), and (D) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(B), (C), (D)], permit application deadlines for stormwater discharges associated with industrial activities from facilities that are owned or operated by a municipality shall be established by the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the ‘Administrator’) pursuant to the requirements of this section.

“(b) PERMIT APPLICATIONS.—

“(1) INDIVIDUAL APPLICATIONS.—The Administrator shall require individual permit applications for discharges described in subsection (a) on or before October 1, 1992; except that any municipality that has participated in a timely part I group application for an industrial activity discharging stormwater that is denied such participation in a group application or for which a group application is denied shall not be required to submit an individual application until the 180th day following the date on which the denial is made.

“(2) GROUP APPLICATIONS.—With respect to group applications for permits for discharges described in subsection (a), the Administrator shall require—

“(A) part I applications on or before September 30, 1991, except that any municipality with a population of less than 250,000 shall not be required to submit a part I application before May 18, 1992; and

“(B) part II applications on or before October 1, 1992, except that any municipality with a population of less than 250,000 shall not be required to submit a part II application before May 17, 1993.

“(c) MUNICIPALITIES WITH LESS THAN 100,000 POPULATION.—The Administrator shall not require any municipality with a population of less than 100,000 to apply for or obtain a permit for any stormwater discharge associated with an industrial activity other than an airport, powerplant, or uncontrolled sanitary landfill owned or operated by such municipality before October 1, 1992, unless such permit is required by section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

“(d) UNCONTROLLED SANITARY LANDFILL DEFINED.—For the purposes of this section, the term ‘uncontrolled sanitary landfill’ means a landfill or open dump, whether in operation or closed, that does not meet the

requirements for run-on and run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act [42 U.S.C. 6941 et seq.].

“(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to affect any application or permit requirement, including any deadline, to apply for or obtain a permit for stormwater discharges subject to section 402(p)(2)(A) or (E) of the Federal Water Pollution Control Act [33 U.S.C. 1342(p)(2)(A), (E)].

“(f) REGULATIONS.—The Administrator shall issue final regulations with respect to general permits for stormwater discharges associated with industrial activity on or before February 1, 1992.”

PHOSPHATE FERTILIZER EFFLUENT LIMITATION

Pub. L. 100-4, title III, §306(c), Feb. 4, 1987, 101 Stat. 36, provided that:

“(1) ISSUANCE OF PERMIT.—As soon as possible after the date of the enactment of this Act [Feb. 4, 1987], but not later than 180 days after such date of enactment, the Administrator shall issue permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)] with respect to facilities—

“(A) which were under construction on or before April 8, 1974, and

“(B) for which the Administrator is proposing to revise the applicability of the effluent limitation established under section 301(b) of such Act [33 U.S.C. 1311(b)] for phosphate subcategory of the fertilizer manufacturing point source category to exclude such facilities.

“(2) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section [amending section 1311 of this title and enacting this note] shall be construed—

“(A) to require the Administrator to permit the discharge of gypsum or gypsum waste into the navigable waters,

“(B) to affect the procedures and standards applicable to the Administrator in issuing permits under section 402(a)(1)(B) of the Federal Water Pollution Control Act [33 U.S.C. 1342(a)(1)(B)], and

“(C) to affect the authority of any State to deny or condition certification under section 401 of such Act [33 U.S.C. 1341] with respect to the issuance of permits under section 402(a)(1)(B) of such Act.”

LOG TRANSFER FACILITIES

Pub. L. 100-4, title IV, §407, Feb. 4, 1987, 101 Stat. 74, provided that:

“(a) AGREEMENT.—The Administrator and Secretary of the Army shall enter into an agreement regarding coordination of permitting for log transfer facilities to designate a lead agency and to process permits required under sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344], where both such sections apply, for discharges associated with the construction and operation of log transfer facilities. The Administrator and Secretary are authorized to act in accordance with the terms of such agreement to assure that, to the maximum extent practicable, duplication, needless paperwork and delay in the issuance of permits, and inequitable enforcement between and among facilities in different States, shall be eliminated.

“(b) APPLICATIONS AND PERMITS BEFORE OCTOBER 22, 1985.—Where both of sections 402 and 404 of the Federal Water Pollution Control Act [33 U.S.C. 1342, 1344] apply, log transfer facilities which have received a permit under section 404 of such Act before October 22, 1985, shall not be required to submit a new application for a permit under section 402 of such Act. If the Administrator determines that the terms of a permit issued on or before October 22, 1985, under section 404 of such Act satisfies the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act [33 U.S.C. 1311, 1312, 1316, 1317, 1318, and 1343], a separate application for a permit under section 402 of such Act shall not thereafter be required. In any case where the Administrator demonstrates, after an opportunity for a hearing, that

the terms of a permit issued on or before October 22, 1985, under section 404 of such Act do not satisfy the applicable requirements of sections 301, 302, 306, 307, 308, and 403 of such Act, modifications to the existing permit under section 404 of such Act to incorporate such applicable requirements shall be issued by the Administrator as an alternative to issuance of a separate new permit under section 402 of such Act.

“(c) LOG TRANSFER FACILITY DEFINED.—For the purposes of this section, the term ‘log transfer facility’ means a facility which is constructed in whole or in part in waters of the United States and which is utilized for the purpose of transferring commercially harvested logs to or from a vessel or log raft, including the formation of a log raft.”

ALLOWABLE DELAY IN MODIFYING EXISTING APPROVED STATE PERMIT PROGRAMS TO CONFORM TO 1977 AMENDMENT

Pub. L. 95-217, §54(c)(2), Dec. 27, 1977, 91 Stat. 1591, provided that any State permit program approved under this section before Dec. 27, 1977, which required modification to conform to the amendment made by section 54(c)(1) of Pub. L. 95-217, which amended subsec. (b)(8) of this section, not be required to be modified before the end of the one year period which began on Dec. 27, 1977, unless in order to make the required modification a State must amend or enact a law in which case such modification not be required for such State before the end of the two year period which began on Dec. 27, 1977.

Executive Documents

TRANSFER OF FUNCTIONS

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

§ 1343. Ocean discharge criteria

(a) Issuance of permits

No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

(b) Waiver

The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.