

Public Law 97-440  
97th Congress

An Act

To amend the Federal Water Pollution Control Act to allow modifications of certain effluent limitations relating to biochemical oxygen demand and pH.

Jan. 8, 1983

[H.R. 7159]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 301 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

Federal Water  
Pollution  
Control Act,  
amendment.  
33 USC 1311.  
33 USC 1342.  
33 USC 1343.

“(m)(1) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsections (b)(1)(A) and (b)(2)(E) of this section, and of section 403, with respect to effluent limitations to the extent such limitations relate to biochemical oxygen demand and pH from discharges by an industrial discharger in such State into deep waters of the territorial seas, if the applicant demonstrates and the Administrator finds that—

“(A) the facility for which modification is sought is covered at the time of the enactment of this subsection by National Pollutant Discharge Elimination System permit number CA0005894 or CA0005282;

“(B) the energy and environmental costs of meeting such requirements of subsections (b)(1)(A) and (b)(2)(E) and section 403 exceed by an unreasonable amount the benefits to be obtained, including the objectives of this Act;

“(C) the applicant has established a system for monitoring the impact of such discharges on a representative sample of aquatic biota;

“(D) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

“(E) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

“(F) the discharge is into waters where there is strong tidal movement and other hydrological and geological characteristics which are necessary to allow compliance with this subsection and section 101(a)(2) of this Act;

33 USC 1251.

“(G) the applicant accepts as a condition to the permit a contractual obligation to use funds in the amount required (but not less than \$250,000 per year for ten years) for research and development of water pollution control technology, including but not limited to closed cycle technology;

“(H) the facts and circumstances present a unique situation which, if relief is granted, will not establish a precedent or the relaxation of the requirements of this Act applicable to similarly situated discharges; and

“(I) no owner or operator of a facility comparable to that of the applicant situated in the United States has demonstrated that it would be put at a competitive disadvantage to the

applicant (or the parent company or any subsidiary thereof) as a result of the issuance of a permit under this subsection.

"(2) The effluent limitations established under a permit issued under paragraph (1) shall be sufficient to implement the applicable State water quality standards, to assure the protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, fauna, wildlife, and other aquatic organisms, and to allow recreational activities in and on the water. In setting such limitations, the Administrator shall take into account any seasonal variations and the need for an adequate margin of safety, considering the lack of essential knowledge concerning the relationship between effluent limitations and water quality and the lack of essential knowledge of the effects of discharges on beneficial uses of the receiving waters.

"(3) A permit under this subsection may be issued for a period not to exceed five years, and such a permit may be renewed for one additional period not to exceed five years upon a demonstration by the applicant and a finding by the Administrator at the time of application for any such renewal that the provisions of this subsection are met.

"(4) The Administrator may terminate a permit issued under this subsection if the Administrator determines that there has been a decline in ambient water quality of the receiving waters during the period of the permit even if a direct cause and effect relationship cannot be shown: *Provided*, That if the effluent from a source with a permit issued under this subsection is contributing to a decline in ambient water quality of the receiving waters, the Administrator shall terminate such permit."

Approved January 8, 1983.

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LEGISLATIVE HISTORY—H.R. 7159:

HOUSE REPORT No. 97-868 (Comm. on Public Works and Transportation).

SENATE REPORT No. 97-686 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD, Vol. 128 (1982):

Sept. 29, considered and passed House.

Dec. 19, considered and passed Senate, amended.

Dec. 20, House concurred in Senate amendment.