

H. R. 2762

To amend the Federal Water Pollution Control Act to improve the protection of the Nation's wetlands and watersheds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

October 29, 1997

Mr. Gilchrest introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to improve the protection of the Nation's wetlands and watersheds, and for other purposes.

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

SECTION 1. SHORT TITLE; REFERENCES; DEFINITIONS.

- (a) Short Title.--This Act may be cited as the "Wetlands and Watershed Management Act of 1997".
- (b) References.--Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).
- (c) Definitions.--In this Act, the following definitions apply:
 - (1) Administrator.--The term "Administrator" means the Administrator of the Environmental Protection Agency.
 - (2) Secretary.--The term "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

SEC. 2. FINDINGS AND PURPOSES.

- (a) Findings.--Congress makes the following findings:
 - (1) Wetlands perform a number of valuable functions needed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including--
 - (A) reducing pollutants (including nutrients, sediment, and toxics) from nonpoint and point sources;
 - (B) storing, conveying, and purifying flood and storm waters;
 - (C) reducing both bank erosion and wave and storm damage to adjacent lands and trapping sediment from upland sources;
 - (D) providing habitat and food sources for a broad range of commercial and recreational fish, shellfish, and migratory wildlife species (including waterfowl and threatened and endangered species); and
 - (E) providing a broad range of recreational values for canoeing, boating, birding, nature study and observation, and hunting and fishing, as appropriate.
 - (2) Original wetlands in the contiguous United States have been reduced by an estimated 50 percent and continue to disappear at a rate of 100,000 to 150,000 acres a year. Many of these original wetlands have also been altered or partially degraded, reducing their ecological value.
 - (3) Wetlands are highly sensitive to changes in water regimes and are, therefore, susceptible to degradation by fills, drainage, excavation, water extractions, and other activities within their

watersheds which affect the quantity, quality, and flow of surface and ground waters. Protection and management of wetlands, therefore, should be integrated with management of water systems on a watershed basis. A watershed protection and management perspective is also needed to understand and reverse the gradual, continued destruction of wetlands that occurs due to cumulative impacts.

(4) Wetlands constitute an estimated 5 percent of the Nation's surface area. Because much of this land is in private ownership, wetlands protection and management strategies must take into consideration private property rights and the need for economic development and growth. This can be best accomplished in the context of a cooperative and coordinated Federal, State, and local strategy for data gathering, planning, management, and restoration with an emphasis on advance planning of wetlands in watershed contexts.

(b) Purposes.--The purposes of this Act are-

(1) to help create a coordinated national wetland management effort with efficient use of scarce Federal, State, and local financial and manpower resources to protect wetland functions and values and reduce natural hazard losses;

(2) to help reverse the trend of wetland loss in a fair, efficient, and cost-effective manner;

(3) to reduce inconsistencies and duplication in Federal, State, and local wetland management efforts and encourage integrated permitting at the Federal, State, and local levels;

(4) to increase technical assistance, cooperative training, and educational opportunities for States, local governments, and private landowners;

(5) to help integrate wetland protection and management with other water resource management programs on a watershed basis such as flood control, storm water management, allocation of water supply, protection of fish and wildlife, and point and nonpoint source pollution control;

(6) to increase regionalization of wetland delineation and management policies within a framework of national policies through advance planning of wetland areas, general permits, and other approaches and the tailoring of policies to ecosystem and land use needs to reflect significant watershed variance in wetland resources;

(7) to address the cumulative loss of wetland resources;

(8) to increase the predictability of planning and regulatory policies for private landowners;

(9) to help achieve no net loss in the remaining wetland base of the United States (and in the long-term a net gain in such wetland base) through watershed-based restoration strategies involving all levels of government;

(10) to restore and create wetlands in order to increase the quality and quantity of the wetland resources and by so doing to restore and maintain the quality and quantity of the waters of the United States; and

(11) to provide mechanisms for State, Federal, and local coordination to better protect wetland resources.

SEC. 3. DEFINITIONS.

(a) Navigable Waters.--Section 502(7) (33 U.S.C. 1362(7)) is amended by inserting "and wetlands" before the period.

(b) Prior Converted Cropland.--Section 502(7) (33 U.S.C. 1362(7)) is further amended by adding at the end the following: "Areas certified by the Secretary of Agriculture, in consultation with the Administrator, as prior converted cropland are not navigable waters unless cropping has ceased and the area meets the definition of wetland."

(c) Wetlands.--Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(21) The term 'wetlands' means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions."

(d) Other Alteration.--Section 502 (33 U.S.C. 1362) is further amended by adding at the end the following:

"(22) The term 'other alteration' means any activity affecting navigable waters which changes the flow, reach, circulation, hydrologic regime, bottom contour, or configuration of such waters or which changes the type, distribution, or diversity of vegetation, fish, or wildlife that are present in such waters. The term includes draining, dredging, excavation, channelization, flooding, clearing of

vegetation, driving of pilings or placement of other obstructions, and diversion or withdrawal of water.”.

SEC. 4. DELINEATION.

Section 404 (33 U.S.C. 1344) is amended by adding at the end the following:

“(u) Wetlands Delineations Manual.--

“(1) Use of wetlands delineations manual.--The Secretary, the Administrator, and the Secretaries of the Interior, Commerce, and Agriculture shall use the Corps of Engineers Wetlands Delineation Manual (1987) in carrying out this section unless a new manual has been prepared and formally adopted by the Secretary and the Administrator with input from the Secretaries of the Interior, Commerce, and Agriculture and the heads of other relevant departments and agencies and after field testing, hearings, and public comment.

“(2) Contents of new manual.--Any new manual adopted pursuant to this section shall specifically consider the recommendations of the 1995 report of the National Academy of Sciences concerning the characteristics and boundaries of wetlands.

“(3) Training on use of manual.--The Secretary shall develop materials and conduct training courses for consultants, State and local governments, and landowners explaining the use of the Corps of Engineers Wetlands Delineation Manual (1987), including any subsequent revisions, in the delineation of wetland areas.

“(4) Development of supplemental technical criteria and procedures.--The Secretary and the Administrator, in cooperation with the States and the Secretaries of the Interior and Agriculture, may develop supplemental technical criteria and procedures pertaining to wetland hydrology, soils, and vegetation for identification of regional wetland types.”.

SEC. 5. EXPANSION OF SCOPE OF PERMIT PROGRAM.

(a) Prohibition of Activities.--Section 301(a) (33 U.S.C. 1311(a)) is amended by inserting after “the discharge of any pollutant” the following: “or other alteration of navigable waters”.

(b) Certification.--The first sentence of section 401(a)(1) (33 U.S.C. 1341(a)(1)) is amended to read as follows: “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, or other alteration of, navigable waters shall provide the licensing or permitting agency a certification from the State where the discharge or other alteration originates or will originate (or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters where the discharge or other alteration originates or will originate) that the discharge or other alteration will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act and will allow for the protection, achievement, and maintenance of designated uses included in applicable water quality standards.”.

(c) Issuance of Permits.--Section 404(d) (33 U.S.C. 1344(d)) is amended to read as follows:

“(d) Definitions.--In this section, the following definitions apply:

“(1) Discharge of dredged material.--The term ‘discharge of dredged material’ means any addition of dredged material into navigable waters and includes, without limitation, any addition (including redeposit) of dredged material (including excavated material) into such waters which is incidental to any activity (including mechanized landclearing, ditching, channelization, or other excavation) that has or would have the effect of destroying or degrading any area of such waters, including wetlands.”.

“(2) Secretary.--The term ‘Secretary’ means the Secretary of the Army, acting through the Chief of Engineers.”.

SEC. 6. PERMITS FOR DISCHARGE OF DREDGED OR FILL MATERIAL.

(a) Permit Monitoring and Tracking.--Section 404 (33 U.S.C. 1344), as amended by section 4 of this Act, is further amended by adding at the end the following:

“(v) Permit Monitoring and Tracking Program.--

“(1) Establishment.--The Secretary and the Administrator shall establish and implement a permit monitoring and tracking program on a watershed basis to monitor the cumulative impact of individual and general permits issued under this section.

“(2) Purpose.--The purpose of the program shall be to determine the impact of permitted activities under this section on the functions of directly and indirectly impacted wetlands and other waters (including protection of water quality, flood storage, and fish and wildlife habitat) and to determine whether such activities are consistent with the national goal of achieving no net loss of the functions and acres of wetlands.

“(3) Reports.--Not later than 2 years after the date of the enactment of this subsection, and biennially thereafter, the Secretary and the Administrator shall transmit to Congress a report on the results of the program established under this subsection.

“(4) Authorization of appropriations.--There is authorized to be appropriated to carry out this subsection \$1,000,000 for each of fiscal years 1999 and 2000.”.

(b) Revocation or Modification of General Permits.--Section 404(e)(2) (33 U.S.C. 1344(e)(2)) is amended--

(1) by striking “may be revoked” and inserting “shall be revoked”;

(2) by striking “environment or” and inserting “environment,”; and

(3) by striking the period at the end and inserting “, or a State or regional entity has failed to adequately monitor or control the individual and cumulative adverse effects of activities authorized by State programmatic general permits.”.

(c) Programmatic General Permits.--Section 404(e) is amended by adding at the end the following:

“(3) Programmatic general permits.--

“(A) In general.--Subject to subparagraph (B), the Secretary, after providing notice and an opportunity for public comment, may issue programmatic general permits on a Statewide basis for the purpose of avoiding unnecessary duplication of regulations by Federal, State, and regional regulatory programs. A programmatic general permit issued under this paragraph must comply with the requirements of paragraph (2).

“(B) Requirements.--

“(i) In general.--The Secretary may issue a programmatic general permit based on a State regulatory program if the general permit includes adequate safeguards to ensure that the State program will have no more than minimal individual and cumulative impacts on the environment and will provide at least the same degree of protection for the environment, including all navigable waters, and for Federal interests, as is provided by this section and by the Federal permitting program pursuant to subsection (a).

“(ii) Safeguards.--Safeguards under clause (i) shall include provisions whereby the Secretary and the Administrator, in coordination with the Secretaries of the Interior and Commerce, as appropriate, shall have an opportunity to--

“(I) review a permit application submitted to the State regulatory agency which, if approved, could result in more than minimal individual or cumulative adverse impacts on the environment;

“(II) attempt to resolve any related environmental concern and protect Federal interests at issue; and

“(III) if such concern is not adequately addressed by the State agency, require the processing of an individual Federal permit under this section for the specific proposed activity.

“(iii) Protection of federal interests.--In carrying out this subparagraph, the Secretary and the Administrator, in coordination with the Secretaries of the Interior and Commerce, as appropriate, shall protect all Federal interests, including national security, navigation, flood control, Federal endangered or threatened species, Federal interests under the Wild and Scenic Rivers Act, special aquatic sites of national importance, and other interests of overriding national importance.

“(C) Consistency with guidelines.--A programmatic general permit shall not be issued under this paragraph unless the State regulatory program is no less protective than and contains comparable procedural opportunities to those provided under guidelines promulgated to implement subsection (b)(1).”.

(d) Grandfather of Existing General Permits.--Section 404(e) is further amended by adding at the end the following:

“(4) Grandfather of existing general permits.--General permits in effect on the day before the date of the enactment of this paragraph shall remain in effect according to the terms of the permit until the

expiration date contained in the permit unless otherwise modified or revoked by the Secretary or held invalid by a court.”.

(e) Activities Not Requiring a Permit.--Section 404(f) (33 U.S.C. 1344(f)) is amended by striking the subsection designation and all that follows through paragraph (1) and inserting the following:

“(f) Activities Not Requiring a Permit.--

“(1) In general.--Except as provided in paragraph (2), activities are exempt from the requirements of this section and are not prohibited by or otherwise subject to regulation under this section or section 301 or 402 of this Act (except effluent standards or prohibitions under section 307 of this Act) if such activities--

“(A) result from normal farming, silviculture, and ranching activities and practices, such as plowing, seeding, cultivating, haying, grazing, minor drainage in connection with such activities, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

“(B) are for the purpose of routine or emergency maintenance of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures;

“(C) are for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches and tile lines (including resloping of drainage ditches for the exclusive purpose of controlling bank erosion);

“(D) are 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) are for the purpose of construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment 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 waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or

“(F) are agricultural activities performed on farmed wetlands, such as haying, grazing, harrowing, discing, maintenance of irrigation water retention basins, or maintenance of existing drainage tile systems.

SEC. 7. COMPENSATORY MITIGATION.

Section 404 (33 U.S.C. 1344), as amended by section 6 of this Act, is further amended by adding at the end the following:

“(w) General Requirements.--

“(1) Mitigation sequence requirements.--Any application for a permit submitted under this section shall be reviewed to ensure that mitigation measures are taken in the following order:

“(A) Measures to avoid any adverse effects on wetlands caused by the proposed activities.

“(B) Measures to minimize any adverse effects that cannot be avoided.

“(C) Measures to compensate for adverse impacts on wetland functions, values, and acreage.

“(2) Standards.--The Secretary, in consultation with the Administrator, shall ensure that compensatory mitigation by a permittee--

“(A) is a specific, enforceable condition of the permit for which it is required;

“(B) will meet defined success criteria; and

“(C) is monitored to ensure compliance with the conditions of the permit and to determine the effectiveness of the mitigation in compensating for the adverse effects for which the mitigation is required.

“(3) Compensatory mitigation defined.--In this subsection, the term ‘compensatory mitigation’ means the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic resources and associated upland habitat for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable steps have been taken to avoid and minimize such impacts. In carrying out this subsection, preference shall be given to in-kind restoration on the same waterbody and within the same local watershed where practicable and environmentally preferable.

“(4) Regulations.--Not later than 90 days after the date of the enactment of this subsection, the Secretary, after providing notice and opportunity for comment, shall issue proposed rules defining the exceptional circumstances in which preservation of wetlands is permissible as a mitigation option for a permittee under this section. The definition of exceptional circumstances shall be limited to circumstances in which the parcel to be preserved is facing a discrete, identifiable threat to its continued existence as a wetland.

SEC. 8. ESTABLISHMENT AND USE OF MITIGATION BANKS.

Section 404 (33 U.S.C. 1344), as amended by section 7 of this Act, is further amended by adding at the end the following:

“(x) Establishment and Use of Mitigation Banks.--

“(1) In general.--Not later than 1 year after the date of the enactment of this subsection, and after providing notice and an opportunity for public review and comment, the Secretary and the Administrator shall issue regulations for the establishment, use, maintenance, and oversight of mitigation banks. The regulations shall be developed in consultation with the Secretary of the Interior (acting through the Director of the United States Fish and Wildlife Service) and the Secretary of Commerce (acting through the Administrator of the National Oceanic and Atmospheric Administration).

“(2) Requirements for bank establishment.--

“(A) Submission of plans.--In order to be eligible to operate a mitigation bank, an applicant shall submit to the Secretary and the Administrator for approval detailed plans for establishment of the bank, including bank goals, bank size, type of wetlands to be restored, created, or enhanced, methods for determining debits and credits, performance standards for determining bank success, ownership of bank lands, description of baseline conditions and geographical extent of bank lands, financial assurances, contingency and remedial actions and responsibilities in case of bank failure, reporting protocols and provisions for long term management, monitoring, and maintenance.

“(B) Public review and comment.--The Secretary and the Administrator shall make a plan submitted under subparagraph (A) available for public review. The public shall have a minimum of 30 days to review and comment on the plan before the authorization of a mitigation banking instrument.

“(C) Agency coordination in development of banking instrument.--In making a decision to approve an application to establish and operate a mitigation bank, the Secretary and the Administrator shall consult with the Secretaries of the Interior, Commerce, and Agriculture, as appropriate. The Secretary and the Administrator shall also coordinate with the appropriate State, local, and tribal resource agencies and the potential bank sponsors in developing a legally binding banking instrument.

“(D) Approval of mitigation banking instrument.--

Upon approval of the proposed mitigation bank plans required under subparagraph (A) by the Secretary and the Administrator, in consultation with the Secretaries of the Interior, Commerce, and Agriculture, as appropriate, such plans shall be recognized as the legally binding mitigation banking instrument. Approval of a banking instrument by the Secretary and the Administrator shall be required prior to bank development.

“(E) Grandfathering of existing mitigation banks.--Mitigation banks in operation on the day before the date of the enactment of this subsection shall submit to the Secretary and the Administrator, within 180 days of such date of enactment, mitigation bank plans in accordance with the requirements of subparagraph (A), unless a similar plan or instrument was developed in accordance with interagency guidance on wetlands mitigation banking in consultation with the Secretary.

“(3) Use of mitigation banks.--

“(A) Watershed management.--Mitigation banks shall be planned and developed to address specific resource needs of a particular watershed and shall be planned in conjunction with comprehensive watershed management plans developed in accordance with section 321, where applicable.

“(B) Mitigation sequencing.--In accordance with the requirements of this section, all practical and appropriate steps shall be taken to sequentially avoid and minimize impacts to wetlands and other aquatic resources prior to authorization to use a mitigation bank.

“(C) In-kind compensation required.--In the interest of achieving functional replacement, in-kind compensation of wetlands or aquatic resources shall be required, except where out-of-kind mitigation is determined to be environmentally preferable.

“(D) Geographic transport of mitigation bank credits.--In order for the purchase of credits from a mitigation bank to fulfill mitigation requirements associated with a permit issued under this section, the mitigation bank must be located in the same hydrologic cataloguing unit (as established on maps published by the U.S. Geological Survey) as the project or impact site.

“(4) Credit withdrawal.--

“(A) Total number of credits.--The total number of credits to be contained in a single mitigation bank shall be agreed upon and outlined within the banking instrument and may not be increased over the life of the bank.

“(B) Debiting.--Where adequate financial assurances exist and bank success is highly likely, and when all signatories to the banking instrument agree, debiting of up to 20 percent of the total number of projected credits within the bank may be allowed to occur at one time to provide initial capital for the restoration, creation, or enhancement project if--

“(i) appropriate measurements of success are agreed upon by the signatories of the bank instrument;

“(ii) no additional credits may be sold prior to successful establishment of the initial credits; and

“(iii) signatories to the bank instrument are allowed to conduct periodic on-site inspections of bank performance.

“(5) Monitoring, maintenance, and remediation provisions.--The bank instrument shall also include provisions for--

“(A) the types of monitoring, the frequency and duration of monitoring, and requirements for reporting on bank progress to the instrument signatories;

“(B) any regular maintenance which may be required to maintain hydrologic, soil, and hydrophytic vegetation criteria; and

“(C) procedures for identifying and implementing remedial measures at a bank in case of bank failure.

“(6) Financial Assurances.--

“(A) Responsibilities of bank sponsor.--The bank sponsor shall be responsible for meeting all funding requirements reflecting realistic cost estimates for monitoring, maintenance, contingency, and remedial actions throughout the operational life of the bank. The bank sponsor shall also be responsible for providing adequate funding for any long-term maintenance beyond the operational life of the bank which are identified in the banking instrument.

“(B) Form of financial assurances.--Financial assurances may be in the form of performance bonds, irrevocable trusts, escrow accounts, casualty insurance, letters of credit, or other sources approved within the bank instrument.

“(C) Phasing out of financial assurances.--

Financial assurances may be phased out or reduced once bank maturity or self sufficiency has been established, as outlined in the bank instrument.

“(7) Methods for determining debits, credits, and fee structures.--

“(A) Methods for determining debits and credits.--

Banking instruments shall include consistent and scientifically sound methods for determining debits and credits.

“(B) Methods for determining fees.--Each bank shall base fee charges for participation in a mitigation bank that reflect the full costs of replacing lost wetlands functions and acreage, including the costs of land acquisition, wetlands establishment, management measures, long-term maintenance, monitoring and protection, potential remediation of project failure, and other relevant factors.

“(8) Definitions.--In this subsection, the following definitions apply:

“(A) Compensatory mitigation.--The term ‘compensatory mitigation’ means the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other

aquatic resources and associated upland habitat for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable steps have been taken to avoid and minimize such impacts.

“(B) Credit.--The term ‘credit’ means a unit of measure representing the attainment of function at a mitigation bank. The measure of function is typically indexed to the number and quality of acres restored, created, or enhanced.

“(C) Debit.--The term ‘debit’ means a unit of measure representing the loss of wetland or aquatic resource function at an impact or project site.

“(D) Mitigation bank.--The term ‘mitigation bank’ means a site where wetlands or other aquatic resources have been restored, created, enhanced, or, in exceptional circumstances, preserved by 1 or more public or private parties expressly for the purpose of providing compensatory mitigation credits to offset authorized impacts to similar resources.

“(E) Mitigation banking instrument.--The term ‘mitigation banking instrument’ means a legally binding agreement between a bank sponsor, the Secretary, the Administrator, and the heads of other appropriate Federal, State, tribal, and local resource agencies outlining the objectives and administration of the bank, including detailed physical and legal characteristics of the bank and how the bank will be established and operated.

“(F) Mitigation sequencing.--The term ‘mitigation sequencing’ means sequentially avoiding impacts, minimizing impacts, and compensating for unavoidable impacts made to navigable waters, including wetlands.”.

SEC. 9. COMPREHENSIVE WATERSHED PLANNING AND MANAGEMENT.

(a) Statement of Congressional Policy.--Section 101 (33 U.S.C. 1251) is amended by adding at the end the following:

“(h) Water Quality.--It is the policy of Congress to encourage the development and implementation of comprehensive watershed management to maintain and enhance water quality, to protect and conserve wetland resources, and to further the purposes of this Act by--

“(1) increasing public participation in selecting measures to maintain and enhance water quality;

“(2) coordinating the water quality programs of this Act with other programs to restore and protect natural resources;

“(3) identifying for specific watersheds long-term social, economic, and natural resource objectives consistent with the goals of this Act and the water quality necessary to support those objectives; and

“(4) provide assistance to States that formulate and implement comprehensive management plans to improve water quality and protect natural resources.”.

(b) Wetlands and Watershed Management Plans.--Title III (33 U.S.C. 1311 et seq.) is amended by adding at the end the following:

“SEC. 321. WETLANDS AND WATERSHED MANAGEMENT PLANS.

“(a) Management Entity.--An approved management entity of a State shall determine the management entity responsible for developing and implementing a plan for each wetlands and watershed management unit designated under this section. The management entity may be an agency of State government, a local government agency, a substate or interstate regional planning organization, a conservation district or other natural resource management district, or other public entity that has adequate powers and resources to carry out the responsibilities authorized by this section in a comprehensive manner.

“(b) Approval.--Each designation of a wetlands and watershed management unit and a corresponding management entity under this subsection shall be submitted to the Administrator and the Secretary of the Army, acting through the Chief of Engineers (referred to in this section as the ‘Secretary’), for approval. If the Administrator and the Secretary disapprove a designation, the Administrator and the Secretary shall notify the management entity in writing of the reasons for the disapproval. A revised designation may be submitted to meet the objections of the Administrator and the Secretary.

“(c) Public Participation.--Approved management entities shall opportunities for public participation in the development of wetlands and watershed management plans under this section including procedures for public notice and comment and establishment of scientific and citizens advisory committees.

“(d) Approval of Plans.--

“(1) Submission of plan.--The Governor of a State may submit to the Administrator for approval by the Administrator and the Secretary a comprehensive wetlands and watershed management plan developed pursuant to this section.

“(2) Decision on plan.--The Administrator and the Secretary shall, in consultation with the Secretaries of the Interior, Agriculture, and Commerce, and after providing notice and an opportunity for public comment, approve or disapprove a comprehensive wetlands and watershed management plan.

“(3) Plan requirements.--A wetlands and watershed management plan shall include--

“(A) the designation of an administering agency which shall be responsible for making reports to the Secretary and the Administrator every 2 years on implementation of the plan and on the losses and gains in functions and acres of wetlands within the watershed plan area;

“(B) inventory, mapping, and characterization of--

“(i) the boundary of the plan area; and

“(ii) all wetlands and waters of the United States within the plan area as well as other areas proposed for protection under the plan, including characterization of weather effects and other physical factors affecting the plan area;

“(C) proposed wetlands restoration sites with a description of the intended functions of the sites upon completion and the time required for completion;

“(D) primary land uses within the boundaries of the plan;

“(E) presence of endangered species, cultural and historic resources, wetlands and other natural resource areas of special State, regional, or national concern;

“(F) current infrastructure such as major roads and bridges and sewage treatment facilities;

“(G) a description of the regulatory policies and standards applicable to all wetlands and waters within the plan areas and all activities which may affect these wetlands and waters that will assure, at a minimum, no net loss of the functions and acres of wetlands within the plan area;

“(H) demonstration that the administering agency has the legal authority, financial resources, and scientific monitoring capability to carry out the proposed plan;

“(I) provisions that the management entity will report to the Administrator, the Secretary, and the public not later than 2 years after the date of implementation of the plan, and every 2 years thereafter, on the implementation of the plan and on the losses and gains in functions and acres of wetlands within the wetlands and watershed management unit.

“(e) Planning, Implementation, and Monitoring Schedule.--Each wetlands and watershed management plan submitted and approved under subsection (b) shall include a planning, implementation, and monitoring schedule for a period of at least 10 years. The implementation schedule shall include all appropriate milestones for meeting the management objectives established under the plan.

“(f) Incentives for Wetlands and Watershed Management Planning.--

“(1) Grants.--Subject to the requirements of this section, the Administrator is authorized to make grants to approved management entities which shall be eligible to receive funding for the following activities in the development of a wetlands and watershed management plan:

“(A) An inventory and mapping of--

“(i) all navigable waters within the proposed wetlands and watershed management unit; and

“(ii) potential wetlands restoration sites.

“(B) An assessment of the functions and relative value of wetlands within the wetlands and watershed management unit.

“(C) The identification of potential mitigation banks.

“(D) The development and implementation of measures to integrate wetlands planning and management with broader water resource and land use planning and management, including floodplain management, water supply, stormwater management, and the control of point and nonpoint source pollution.

“(E) The development and implementation of management strategies for preserving and restoring wetlands on a watershed basis.

“(F) The consideration of, and coordination with, water resource and land use planning efforts in adjacent States within the region or basin in which the wetlands and watershed management unit is located.

“(2) Authorization of appropriations.--There is authorized to be appropriated to carry out this section \$10,000,000 for each of fiscal years 1999 through 2003.

“(3) Expedited permit review.--At the request of an approved management entity, a decision under section 404(a) with respect to a completed application for a permit for the discharge of dredged or fill material into navigable waters within a designated wetlands and watershed unit shall be made in accordance with expedited permit processing procedures if the application is in compliance with an approved wetlands and watershed management plan. Such procedures shall be established by the Secretary and the Administrator after providing notice and an opportunity for public comment.

“(4) Technical assistance.--At the request of an approved management entity, the Secretaries of the Interior, Commerce, and Agriculture, shall, to the extent practicable, provide the management entity with technical assistance in carrying out wetlands and watershed management planning activities under this section.

“(g) Research Program.--The Secretary, in cooperation with the Administrator, the Secretaries of the Interior and Commerce, and the heads of other appropriate Federal, State, and local government entities, shall carry out a research program on wetlands and watershed management. The research program shall include--

“(1) study of the functions, values, and management needs of altered, artificial, and managed wetlands systems;

“(2) study and development of techniques and methods for determining and analyzing the functions and values of different types of wetlands;

“(3) study and development of techniques for managing and restoring wetlands within a watershed context;

“(4) study and development of techniques for better coordinating and integrating wetlands protection, floodplain management, stormwater management, point and nonpoint source pollution controls, and water supply planning on a watershed basis;

“(5) development of criteria for identifying wetlands restoration sites on a watershed basis; and

“(6) recommendation of procedures and ecological criteria for wetlands restoration.”.

SEC. 10. GRANTS TO FACILITATE IMPLEMENTATION OF SECTION 404.

(a) In General.--Subject to the requirements of this section, the Administrator may make grants to States for activities that implement section 404 of the Federal Water Pollution Control Act through--

(1) State assumption of permitting pursuant to subsections (g) and (h) of section 404 of such Act;

(2) permitting through a programmatic general permit pursuant to section 404(e) of such Act; and

(3) other monitoring, management, protection, and enforcement activities.

(b) Assurances.--In order to be eligible to receive a grant under this section, a State shall provide assurances satisfactory to the Administrator that amounts received by the State in grants under this section will be used to carry out the activities listed in subsection (a) consistent with the overall goals of section 404 of the Federal Water Pollution Control Act and the standards and procedures of subsections (g) and (h) of such section 404.

(c) Maximum Amount.--No State may receive more than \$300,000 in grants under this section in any fiscal year.

(d) Federal Share.--The Federal share of the cost of activities carried out using amounts made available in grants under this section shall not exceed 75 percent.

(e) Authorization of Appropriations.--There is authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 1999 through 2003.

SEC. 11. STATE, LOCAL, AND LANDOWNER TECHNICAL ASSISTANCE AND COOPERATIVE TRAINING.

(a) State and Local Technical Assistance.--Upon request, the Administrator or the Secretary, as appropriate, shall provide technical assistance to State and local governments in the development and implementation of State permitting programs under subsections (e) and (h) of section 404 of the Federal

Water Pollution Control Act and wetlands and watershed management plans under section 321 of such Act.

(b) Cooperative Training.--The Administrator and the Secretary shall conduct training courses for States and local governments involving wetland delineation, utilization of wetlands in nonpoint pollution control, wetland and stream restoration, wetland planning, wetland evaluation, mitigation banking, and other subjects deemed appropriate by the Administrator or the Secretary.

(c) Private Landowner Technical Assistance.--The Administrator and the Secretary, in cooperation with appropriate State and Federal agencies, shall develop and provide to private landowners guidebooks, pamphlets, or other materials and technical assistance to help the landowners in identifying and evaluating wetlands, developing integrated wetland management plans for their lands consistent with the goals of this Act and the Federal Water Pollution Control Act, and restoring wetlands.

SEC. 12. CITIZEN SUITS.

Section 505 (33 U.S.C. 1365) is amended by striking the section heading and all that follows through subsection (a) and inserting the following:

“SEC. 505. CITIZEN SUITS.

“(a) In General.--Except as provided in subsection (b) of this section and section 309(g)(6), any citizen may commence a civil action on his own behalf--

“(1) against any person, including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution, who is alleged to be in violation of--

“(A) an effluent standard or limitation under this Act;

“(B) the terms and conditions included in a general permit, a mitigation banking instrument, or other mitigation requirement; or

“(C) an order issued by the Secretary or the Administrator (or both) or a State with respect to such standard or limitation; and

“(2) against the Secretary or the Administrator where there is alleged a failure of the Secretary or the Administrator to perform any act or duty under this Act which is not discretionary with the Secretary or 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, general permit term, mitigation requirement, or such an order, or to order the Secretary or the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309(d).”.

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