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Title 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 6A - PUBLIC HEALTH SERVICE
SUBCHAPTER XII - SAFETY OF PUBLIC WATER SYSTEMS
Part E - General Provisions
Sec. 300j-12 - State revolving loan funds
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§300j–12. State revolving loan funds

(a) General authority

(1) Grants to States to establish State loan funds

(A) In general

The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this subchapter, promote the efficient use of fund resources, and for other purposes as are specified in this subchapter.

(B) Establishment of fund

To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a “State loan fund”) and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this subchapter. No funds authorized by other provisions of this subchapter to be used for other purposes specified in this subchapter shall be deposited in any State loan fund.

(C) Extended period

The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) Allotment formula

Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 300j-2 of this title in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h) of this section, except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) Reallotment

The grants not obligated by the last day of the period for which the grants are available shall be reallotted according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) of this section and none of the funds reallotted by the Administrator shall be reallotted to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) Nonprimacy States

The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 300j-2(a)(9)(A) of this title such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this subchapter in such State and the remainder shall be reallotted to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 300g-2(b) of this title that the requirements of section 300g-2(a) of this title are no longer being met by a State, additional grants for such State under this subchapter shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of August 6, 1996.

(G) Other programs

(i) New system capacity

Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 300g-9(a) of this title (relating to capacity development) and shall withhold 10 percent for fiscal

year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 300g-9(c) of this title (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g-9 of this title (relating to capacity development).

(ii) Operator certification

The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of 300g-8 ¹ of this title (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 300g-8 of this title (relating to operator certification).

(2) Use of funds

Except as otherwise authorized by this subchapter, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit noncommunity water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 300g-1 of this title or otherwise significantly further the health protection objectives of this subchapter. The funds may also be used to provide loans to a system referred to in section 300f(4)(B) of this title for the purpose of providing the treatment described in section 300f(4)(B)(i)(III) of this title. The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) Limitation

(A) In general

Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this subchapter; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) Restructuring

A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this subchapter over the long term.

(C) Review

Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall conduct a review to determine whether subparagraph (A)(i) applies to the system.

(b) Intended use plans

(1) In general

After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) Contents

An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

(B) the criteria and methods established for the distribution of funds; and

(C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.

(3) Use of funds

(A) In general

An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—

- (i) address the most serious risk to human health;
- (ii) are necessary to ensure compliance with the requirements of this subchapter (including requirements for filtration); and
- (iii) assist systems most in need on a per household basis according to State affordability criteria.

(B) List of projects

Each State shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.

(c) Fund management

Each State loan fund under this section shall be established, maintained, and credited with repayments and interest. The fund corpus shall be available in perpetuity for providing financial assistance under this section. To the extent amounts in the fund are not required for current obligation or expenditure, such amounts shall be invested in interest bearing obligations.

(d) Assistance for disadvantaged communities

(1) Loan subsidy

Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) of this section to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).

(2) Total amount of subsidies

For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.

(3) “Disadvantaged community” defined

In this subsection, the term “disadvantaged community” means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.

(e) State contribution

Each agreement under subsection (a) of this section shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) Types of assistance

Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3) of this section), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) Administration of State loan funds

(1) Combined financial administration

Notwithstanding subsection (c) of this section, a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a) of this section; and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 300g–2 of this title, after consultation with other appropriate State agencies (as determined by the State): *Provided*, That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) Cost of administering fund

Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after August 6, 1996, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 300j–2(a) of this title;

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 300g-9(c) of this title; and

(D) for an operator certification program for purposes of meeting the requirements of section 300g-8 of this title,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) Guidance and regulations

The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this subchapter and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) State report

Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) Needs survey

The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after August 6, 1996, and every 4 years thereafter.

(i) Indian Tribes

(1) In general

1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) Use of funds

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) Alaska Native villages

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) Needs assessment

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) Other areas

Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 300j-2(a)(4) of this title for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2) of this section. The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants

under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) Other authorized activities

(1) In general

Notwithstanding subsection (a)(2) of this section, a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) of this section to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 300j–13 of this title, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 300g–1 of this title or otherwise significantly further the health protection objectives of this subchapter. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 300j–14(a)(1)(B)(i) of this title.

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 300g–9(c) of this title.

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 300j–13 of this title, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 300h–7 of this title.

(2) Limitation

For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) Statutory construction

Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(l) Savings

The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this subchapter.

(m) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section \$599,000,000 for the fiscal year 1994 and \$1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) Health effects studies

From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve \$10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 300j-18(c) of this title), disinfection byproducts (as authorized by section 300j-18(c) of this title), and arsenic (as authorized by section 300g-1(b)(12)(A) of this title), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 300j-18(a) of this title).

(o) Monitoring for unregulated contaminants

From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve \$2,000,000 to pay the costs of monitoring for unregulated contaminants under section 300j-4(a)(2)(C) of this title.

(p) Demonstration project for State of Virginia

Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on August 6, 1996, and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia. The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) Small system technical assistance

The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) of this section for each of the fiscal years 1997 through 2003 to carry out the provisions of section 300j-1(e) of this title (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 300j-1(e) of this title) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 300j-1(e) of this title.

(r) Evaluation

The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

(July 1, 1944, ch. 373, title XIV, §1452, as added Pub. L. 104-182, title I, §130, Aug. 6, 1996, 110 Stat. 1662.)

References in Text

The Safe Drinking Water Act Amendments of 1996, referred to in subsec. (n), is Pub. L. 104-182, Aug. 6, 1996, 110 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 201 of this title and Tables.

Combining Fund Assets for Enhancement of Lending Capacity

Pub. L. 105–276, title III, Oct. 21, 1998, 112 Stat. 2498, provided in part: “That, consistent with section 1452(g) of the Safe Drinking Water Act (42 U.S.C. 300j–12(g)), section 302 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182) [set out as a note below] and the accompanying joint explanatory statement of the committee of conference (H. Rept. No. 104–741 to accompany S. 1316, the Safe Drinking Water Act Amendments of 1996), and notwithstanding any other provision of law, beginning in fiscal year 1999 and thereafter, States may combine the assets of State Revolving Funds (SRFs) established under section 1452 of the Safe Drinking Water Act, as amended, and title VI of the Federal Water Pollution Control Act [33 U.S.C. 1381 et seq.], as amended, as security for bond issues to enhance the lending capacity of one or both SRFs, but not to acquire the state match for either program, provided that revenues from the bonds are allocated to the purposes of the Safe Drinking Water Act [this subchapter] and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] in the same portion as the funds are used as security for the bonds”.

Transfer of Funds

Pub. L. 109–54, title II, Aug. 2, 2005, 119 Stat. 530, provided in part: “That for fiscal year 2006 and thereafter, State authority under section 302(a) of Public Law 104–182 [set out as a note below] shall remain in effect”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–447, div. I, title III, Dec. 8, 2004, 118 Stat. 3330.

Pub. L. 108–199, div. G, title III, Jan. 23, 2004, 118 Stat. 406.

Pub. L. 108–7, div. K, title III, Feb. 20, 2003, 117 Stat. 512.

Pub. L. 107–73, title III, Nov. 26, 2001, 115 Stat. 685.

Section 302 of Pub. L. 104–182 provided that:

“(a) In General.—Notwithstanding any other provision of law, at any time after the date 1 year after a State establishes a State loan fund pursuant to section 1452 of the Safe Drinking Water Act [this section] but prior to fiscal year 2002, a Governor of the State may—

“(1) reserve up to 33 percent of a capitalization grant made pursuant to such section 1452 and add the funds reserved to any funds provided to the State pursuant to section 601 of the Federal Water Pollution Control Act (33 U.S.C. 1381); and

“(2) reserve in any year a dollar amount up to the dollar amount that may be reserved under paragraph (1) for that year from capitalization grants made pursuant to section 601 of such Act (33 U.S.C. 1381) and add the reserved funds to any funds provided to the State pursuant to section 1452 of the Safe Drinking Water Act.

“(b) Report.—Not later than 4 years after the date of enactment of this Act [Aug. 6, 1996], the Administrator shall submit a report to the Congress regarding the implementation of this section, together with the Administrator's recommendations, if any, for modifications or improvement.

“(c) State Match.—Funds reserved pursuant to this section shall not be considered to be a State match of a capitalization grant required pursuant to section 1452 of the Safe Drinking Water Act or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).”

¹ So in original. Probably should be preceded by “section”.