

Federal Water Pollution Control Act Amendments of 1972 (FWPCA)
Public Law 92-500, October 18, 1972
33 USC Section 1367

§1367. Employee protection

- (a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited. No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act.
- (b) Application for review; investigation; hearing; review. Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing, or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code [5 USCS §554]. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.
- (c) Costs and expenses. Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.
- (d) Deliberate violations by employee acting without direction from his employer or his agent. This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or

other limitation under section 301 or 302 of this Act [33 USCS §1311 or 1312], standards of performance under section 306 of this Act [33 USCS §1316], effluent standards, prohibition or pretreatment standard under this section 307 of this Act [33 USCS §1317], or any other prohibition or limitation established under this Act.

- (e) Investigations of employment reductions. The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this Act, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any alleged discharge, layoffs or other discrimination and the detailed reasons or justification therefore. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code [5 USCS §554]. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, layoffs or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this Act. (June 30, 1948, ch 758, Title V, §507, as added, Oct. 18, 1972, P. L. 92-500, §2, 86 Stat. 890.)