

**Calendar No. 146**

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 1033**

[Report No. 104-113]

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**A BILL**

To amend the Federal Water Pollution Control Act to establish uniform national discharge standards for the control of water pollution from vessels of the Armed Forces, and for other purposes.

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JULY 13 (legislative day, JULY 10), 1995

Read twice and placed on the calendar

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### IN THE SENATE OF THE UNITED STATES

JULY 13 (legislative day, JULY 10), 1995

Mr. CHAFEE, from the Committee on Environment and Public Works, reported the following original bill; which was read twice and placed on the calendar

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## A BILL

To amend the Federal Water Pollution Control Act to establish uniform national discharge standards for the control of water pollution from vessels of the Armed Forces, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Uniform National Dis-  
5 charge Standards for Armed Forces Vessels Act of 1995”.

1 **SEC. 2. PURPOSES.**

2 The purposes of this Act are to—

3 (1) enhance the operational flexibility of vessels  
4 of the Armed Forces domestically and internation-  
5 ally;

6 (2) stimulate the development of innovative ves-  
7 sel pollution control technology; and

8 (3) advance the development by the United  
9 States Navy of environmentally sound ships.

10 **SEC. 3. UNIFORM NATIONAL DISCHARGE STANDARDS DE-**  
11 **VELOPMENT.**

12 Section 312 of the Federal Water Pollution Control  
13 Act (33 U.S.C. 1322) is amended by adding at the end  
14 the following:

15 “(n) UNIFORM NATIONAL DISCHARGE STANDARDS  
16 FOR VESSELS OF THE ARMED FORCES.—

17 “(1) APPLICABILITY.—This subsection shall  
18 apply to vessels of the Armed Forces and discharges,  
19 other than sewage, incidental to the normal oper-  
20 ation of a vessel of the Armed Forces, unless the  
21 Secretary of Defense finds that compliance with this  
22 subsection would not be in the national security in-  
23 terests of the United States.

24 “(2) DETERMINATION OF DISCHARGES RE-  
25 QUIRED TO BE CONTROLLED BY MARINE POLLUTION  
26 CONTROL DEVICES.—

1           “(A) IN GENERAL.—The Administrator  
2           and the Secretary of Defense, after consultation  
3           with the Secretary of the department in which  
4           the Coast Guard is operating, the Secretary of  
5           Commerce, and interested States, shall jointly  
6           determine the discharges incidental to the nor-  
7           mal operation of a vessel of the Armed Forces  
8           for which it is reasonable and practicable to re-  
9           quire use of a marine pollution control device to  
10          mitigate adverse impacts on the marine envi-  
11          ronment. Notwithstanding subsection (a)(1) of  
12          section 553 of title 5, United States Code, the  
13          Administrator and the Secretary of Defense  
14          shall promulgate the determinations in accord-  
15          ance with the section.

16          “(B) CONSIDERATIONS.—In making a de-  
17          termination under subparagraph (A), the Ad-  
18          ministrator and the Secretary of Defense shall  
19          take into consideration—

20                  “(i) the nature of the discharge;

21                  “(ii) the environmental effects of the  
22                  discharge;

23                  “(iii) the practicability of using the  
24                  marine pollution control device;

1           “(iv) the effect that installation or use  
2           of the marine pollution control device  
3           would have on the operation or operational  
4           capability of the vessel;

5           “(v) applicable United States law;

6           “(vi) applicable international stand-  
7           ards; and

8           “(vii) the economic costs of the instal-  
9           lation and use of the marine pollution con-  
10          trol device.

11          “(3) PERFORMANCE STANDARDS FOR MARINE  
12          POLLUTION CONTROL DEVICES.—

13               “(A) IN GENERAL.—For each discharge  
14               for which a marine pollution control device is  
15               determined to be required under paragraph (2),  
16               the Administrator and the Secretary of De-  
17               fense, in consultation with the Secretary of the  
18               department in which the Coast Guard is operat-  
19               ing, the Secretary of State, the Secretary of  
20               Commerce, other interested Federal agencies,  
21               and interested States, shall jointly promulgate  
22               Federal standards of performance for each ma-  
23               rine pollution control device required with re-  
24               spect to the discharge. Notwithstanding sub-  
25               section (a)(1) of section 553 of title 5, United

1 States Code, the Administrator and the Sec-  
2 retary of Defense shall promulgate the stand-  
3 ards in accordance with the section.

4 “(B) CONSIDERATIONS.—In promulgating  
5 standards under this paragraph, the Adminis-  
6 trator and the Secretary of Defense shall take  
7 into consideration the matters set forth in para-  
8 graph (2)(B).

9 “(C) CLASSES, TYPES, AND SIZES OF VES-  
10 SELS.—The standards promulgated under this  
11 paragraph may—

12 “(i) distinguish among classes, types,  
13 and sizes of vessels;

14 “(ii) distinguish between new and ex-  
15 isting vessels; and

16 “(iii) provide for a waiver of the appli-  
17 cability of the standards as necessary or  
18 appropriate to a particular class, type, or  
19 size of vessel.

20 “(4) REGULATIONS FOR USE OF MARINE POL-  
21 LUTION CONTROL DEVICES.—The Secretary of De-  
22 fense, after consultation with the Administrator and  
23 the Secretary of the department in which the Coast  
24 Guard is operating, shall promulgate such regula-  
25 tions governing the design, construction, installation,

1 and use of marine pollution control devices on board  
2 vessels of the Armed Forces as are necessary to  
3 achieve the standards promulgated under paragraph  
4 (3).

5 “(5) DEADLINES; EFFECTIVE DATE.—

6 “(A) DETERMINATIONS.—The Adminis-  
7 trator and the Secretary of Defense shall—

8 “(i) make the initial determinations  
9 under paragraph (2) not later than 2 years  
10 after the date of enactment of this sub-  
11 section; and

12 “(ii) every 5 years—

13 “(I) review the determinations;

14 and

15 “(II) if necessary, revise the de-  
16 terminations based on significant new  
17 information.

18 “(B) STANDARDS.—The Administrator  
19 and the Secretary of Defense shall—

20 “(i) promulgate standards of perform-  
21 ance for a marine pollution control device  
22 under paragraph (3) not later than 2 years  
23 after the date of a determination under  
24 paragraph (2) that the marine pollution  
25 control device is required; and

1 “(ii) every 5 years—

2 “(I) review the standards; and

3 “(II) if necessary, revise the  
4 standards, consistent with paragraph  
5 (3)(B) and based on significant new  
6 information.

7 “(C) REGULATIONS.—The Secretary of  
8 Defense shall promulgate regulations with re-  
9 spect to a marine pollution control device under  
10 paragraph (4) as soon as practicable after the  
11 Administrator and the Secretary of Defense  
12 promulgate standards with respect to the device  
13 under paragraph (3), but not later than 1 year  
14 after the Administrator and the Secretary of  
15 Defense promulgate the standards. The regula-  
16 tions promulgated by the Secretary of Defense  
17 under paragraph (4) shall become effective  
18 upon promulgation unless another effective date  
19 is specified in the regulations.

20 “(D) PETITION FOR REVIEW.—The Gov-  
21 ernor of any State may submit a petition re-  
22 questing that the Secretary of Defense and the  
23 Administrator review a determination under  
24 paragraph (2) or a standard under paragraph  
25 (3), if there is significant new information, not

1 considered previously, that could reasonably re-  
2 sult in a change to the particular determination  
3 or standard after consideration of the matters  
4 set forth in paragraph (2)(B). The petition  
5 shall be accompanied by the scientific and tech-  
6 nical information on which the petition is based.  
7 The Administrator and the Secretary of De-  
8 fense shall grant or deny the petition not later  
9 than 2 years after the date of receipt of the pe-  
10 tition.

11 “(6) EFFECT ON OTHER LAWS.—

12 “(A) PROHIBITION ON REGULATION BY  
13 STATES OR POLITICAL SUBDIVISIONS OF  
14 STATES.—Beginning on the effective date of—

15 “(i) a determination under paragraph  
16 (2) that it is not reasonable and prac-  
17 ticable to require use of a marine pollution  
18 control device regarding a particular dis-  
19 charge incidental to the normal operation  
20 of a vessel of the Armed Forces; or

21 “(ii) regulations promulgated by the  
22 Secretary of Defense under paragraph (4);  
23 except as provided in paragraph (7), neither a  
24 State nor a political subdivision of a State may  
25 adopt or enforce any statute or regulation of

1 the State or political subdivision with respect to  
2 the discharge or the design, construction, instal-  
3 lation, or use of any marine pollution control  
4 device required to control the discharge.

5 “(B) FEDERAL LAWS.—This subsection  
6 shall not affect the application of any other pro-  
7 vision of Federal law, including this Act, to dis-  
8 charges incidental to the normal operation of a  
9 vessel.

10 “(7) ESTABLISHMENT OF STATE NO-DIS-  
11 CHARGE ZONES.—

12 “(A) STATE PROHIBITION.—

13 “(i) IN GENERAL.—After the effective  
14 date of—

15 “(I) a determination under para-  
16 graph (2) that it is not reasonable  
17 and practicable to require use of a  
18 marine pollution control device re-  
19 garding a particular discharge inci-  
20 dental to the normal operation of a  
21 vessel of the Armed Forces; or

22 “(II) regulations promulgated by  
23 the Secretary of Defense under para-  
24 graph (4);

1 if a State determines that the protection  
2 and enhancement of the quality of some or  
3 all of the waters within the State require  
4 greater environmental protection, the State  
5 may prohibit 1 or more discharges inciden-  
6 tal to the normal operation of a vessel,  
7 whether treated or not treated, into the  
8 waters. No prohibition shall apply until the  
9 Administrator makes the determination de-  
10 scribed in subparagraph (B)(ii).

11 “(ii) DOCUMENTATION.—To the ex-  
12 tent that a prohibition under this para-  
13 graph would apply to vessels of the Armed  
14 Forces and not to other types of vessels,  
15 the State shall document the technical or  
16 environmental basis for the distinction.

17 “(B) PROHIBITION BY THE ADMINIS-  
18 TRATOR.—

19 “(i) IN GENERAL.—Upon application  
20 of a State, the Administrator shall by reg-  
21 ulation prohibit the discharge from a vessel  
22 of 1 or more discharges incidental to the  
23 normal operation of a vessel, whether  
24 treated or not treated, into the waters cov-

1           ered by the application if the Adminis-  
2           trator determines that—

3                   “(I) the protection and enhance-  
4                   ment of the quality of the specified  
5                   waters within the State require a pro-  
6                   hibition of the discharge into the wa-  
7                   ters;

8                   “(II) adequate facilities for the  
9                   safe and sanitary removal of the dis-  
10                  charge incidental to the normal oper-  
11                  ation of a vessel are reasonably avail-  
12                  able for the waters to which the prohi-  
13                  bition would apply; and

14                  “(III) the prohibition will not  
15                  have the effect of discriminating  
16                  against a vessel of the Armed Forces  
17                  by reason of the ownership or oper-  
18                  ation by the Federal Government, or  
19                  the military function, of the vessel.

20                  “(ii) APPROVAL OR DISAPPROVAL.—  
21                  The Administrator shall approve or dis-  
22                  approve an application submitted under  
23                  clause (i) not later than 90 days after the  
24                  date on which the application is submitted  
25                  to the Administrator. Notwithstanding

1 clause (i)(II), the Administrator shall not  
2 disapprove an application for the sole rea-  
3 son that there are not adequate facilities to  
4 remove any discharge incidental to the nor-  
5 mal operation of a vessel from vessels of  
6 the Armed Forces.

7 “(C) APPLICABILITY TO FOREIGN  
8 FLAGGED VESSELS.—A prohibition under this  
9 paragraph—

10 “(i) shall not impose any design, con-  
11 struction, manning, or equipment standard  
12 on a foreign flagged vessel engaged in in-  
13 nocent passage unless the prohibition im-  
14 plements a generally accepted international  
15 rule or standard; and

16 “(ii) that relates to the prevention, re-  
17 duction, and control of pollution shall not  
18 apply to a foreign flagged vessel engaged  
19 in transit passage unless the prohibition  
20 implements an applicable international reg-  
21 ulation regarding the discharge of oil, oily  
22 waste, or any other noxious substance into  
23 the waters.

24 “(8) PROHIBITION RELATING TO VESSELS OF  
25 THE ARMED FORCES.—After the effective date of the

1 regulations promulgated by the Secretary of Defense  
2 under paragraph (4), it shall be unlawful for any  
3 vessel of the Armed Forces subject to the regula-  
4 tions to—

5 “(A) operate in the navigable waters of the  
6 United States or the waters of the contiguous  
7 zone, if the vessel is not equipped with any re-  
8 quired marine pollution control device meeting  
9 standards established under this subsection; or

10 “(B) discharge overboard any discharge in-  
11 cidental to the normal operation of a vessel in  
12 waters with respect to which a prohibition on  
13 the discharge has been established under para-  
14 graph (7).

15 “(9) ENFORCEMENT.—This subsection shall be  
16 enforceable, as provided in subsections (j) and (k),  
17 against any agency of the United States responsible  
18 for vessels of the Armed Forces notwithstanding any  
19 immunity asserted by the agency.”.

20 **SEC. 4. CONFORMING AMENDMENTS.**

21 (a) DEFINITIONS.—Section 312(a) of the Federal  
22 Water Pollution Control Act (33 U.S.C. 1322(a)) is  
23 amended—

24 (1) in paragraph (8)—

25 (A) by striking “or”; and

1 (B) by inserting “or agency of the United  
2 States” after “association,”;

3 (2) in paragraph (11), by striking the period at  
4 the end and inserting a semicolon; and

5 (3) by adding at the end the following:

6 “(12) ‘discharge incidental to the normal oper-  
7 ation of a vessel’—

8 “(A) means a discharge, including—

9 “(i) graywater, bilge water, cooling  
10 water, weather deck runoff, ballast water,  
11 oil water separator effluent, and any other  
12 pollutant discharge from the operation of a  
13 marine propulsion system, shipboard ma-  
14 neuvering system, crew habitability system,  
15 or installed major equipment, such as an  
16 aircraft carrier elevator or a catapult, or  
17 from a protective, preservative, or absorp-  
18 tive application to the hull of the vessel;  
19 and

20 “(ii) a discharge in connection with  
21 the testing, maintenance, and repair of a  
22 system described in clause (i) whenever the  
23 vessel is engaged in transportation; and

24 “(B) does not include—

1           “(i) a discharge of rubbish, trash, gar-  
2           bage, or other such material discharged  
3           overboard; or

4           “(ii) an air emission resulting from  
5           the operation of a vessel propulsion sys-  
6           tem, motor driven equipment, or inciner-  
7           ator;

8           “(13) ‘marine pollution control device’ means  
9           any equipment or management practice, for installa-  
10          tion or use on board a vessel of the Armed Forces,  
11          that is—

12           “(A) designed to receive, retain, treat, con-  
13          trol, or discharge a discharge incidental to the  
14          normal operation of a vessel; and

15           “(B) determined by the Administrator and  
16          the Secretary of Defense to be the most effec-  
17          tive equipment or management practice to re-  
18          duce the environmental impacts of the dis-  
19          charge consistent with the considerations set  
20          forth in subsection (n)(2)(B); and

21          “(14) ‘vessel of the Armed Forces’ means—

22           “(A) any vessel owned or operated by the  
23          Department of Defense, other than a time or  
24          voyage chartered vessel; and

1           “(B) any vessel owned or operated by the  
2           Department of Transportation that is des-  
3           ignated by the Secretary of the department in  
4           which the Coast Guard is operating as a vessel  
5           equivalent to a vessel described in subparagraph  
6           (A).”.

7           (b) ENFORCEMENT.—The first sentence of section  
8           312(j) of the Federal Water Pollution Control Act (33  
9           U.S.C. 1322(j)) is amended—

10           (1) by striking “of this section or” and insert-  
11           ing a comma; and

12           (2) by striking “of this section shall” and in-  
13           serting “, or subsection (n)(8) shall”.

14           (c) OTHER DEFINITIONS.—Subparagraph (A) of the  
15           second sentence of section 502(6) of the Federal Water  
16           Pollution Control Act (33 U.S.C. 1362(6)) is amended by  
17           striking “‘sewage from vessels’” and inserting “sewage  
18           from vessels or a discharge incidental to the normal oper-  
19           ation of a vessel of the Armed Forces”.

20           **SEC. 5. COOPERATION IN STANDARDS DEVELOPMENT.**

21           The Administrator of the Environmental Protection  
22           Agency and the Secretary of Defense may, by mutual  
23           agreement, with or without reimbursement, provide for the  
24           use of information, reports, personnel, or other resources  
25           of the Environmental Protection Agency or the Depart-

1 ment of Defense to carry out section 312(n) of the Federal  
2 Water Pollution Control Act (as added by section 3), in-  
3 cluding the use of the resources to—

4 (1) determine—

5 (A) the nature and environmental effect of  
6 discharges incidental to the normal operation of  
7 a vessel of the Armed Forces;

8 (B) the practicability of using marine pol-  
9 lution control devices on vessels of the Armed  
10 Forces; and

11 (C) the effect that installation or use of  
12 marine pollution control devices on vessels of  
13 the Armed Forces would have on the operation  
14 or operational capability of the vessels; and

15 (2) establish performance standards for marine  
16 pollution control devices on vessels of the Armed  
17 Forces.

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