

105TH CONGRESS
1ST SESSION

H. R. 2222

To amend the Federal Water Pollution Control Act relating to Federal facilities pollution control.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1997

Mr. DEFAZIO (for himself, Ms. FURSE, Ms. HOOLEY of Oregon, Mr. BLUMENAUER, Mr. DELLUMS, Mr. BONIOR, Mr. BROWN of California, Mrs. MALONEY of New York, Mr. BARRETT of Wisconsin, Mr. HINCHEY, and Mr. TRAFICANT) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act relating to Federal facilities pollution control.

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 “Federal Facilities
5 Clean Water Compliance Act of 1997”.

6 **SEC. 2. APPLICATION OF CERTAIN PROVISIONS TO FED-**
7 **ERAL FACILITIES.**

8 Section 313(a) of the Federal Water Pollution Con-
9 trol Act (33 U.S.C. 1323(a)) is amended by striking the

1 third sentence and all that follows through the period at
2 the end of the last sentence and inserting the following:
3 “The Federal, State, interstate, and local substantive and
4 procedural requirements, administrative authority, and
5 process and sanctions referred to in this subsection in-
6 clude, but are not limited to, all administrative orders and
7 all civil and administrative penalties and fines, regardless
8 of whether such penalties or fines are punitive or coercive
9 in nature or are imposed for isolated, intermittent, or con-
10 tinuing violations. The United States hereby expressly
11 waives any immunity otherwise applicable to the United
12 States with respect to any such requirement, administra-
13 tive authority, and process and sanctions (including, but
14 not limited to, any injunctive relief, administrative order
15 or civil or administrative penalty or fine referred to in the
16 preceding sentence, or reasonable service charge). The rea-
17 sonable service charges referred to in this subsection in-
18 clude, but are not limited to, fees or charges assessed in
19 connection with the processing and issuance of permits,
20 renewal of permits, amendments to permits, review of
21 plans, studies, and other documents, and inspection and
22 monitoring of facilities, as well as any other nondiscrim-
23 inatory charges that are assessed in connection with a
24 Federal, State, interstate, or local water pollution regu-
25 latory program. No agent, employee, or officer of the Unit-

1 ed States shall be personally liable for any civil penalty
2 under any Federal, State, interstate, or local water pollu-
3 tion law with respect to any act or omission within the
4 scope of the official duties of the agent, employee, or offi-
5 cer. An agent, employee, or officer of the United States
6 shall be subject to any criminal sanction (including, but
7 not limited to, any fine or imprisonment) under any Fed-
8 eral or State water pollution law, but no department,
9 agency, or instrumentality of the executive, legislative, or
10 judicial branch of the Federal Government shall be subject
11 to any such sanction.”.

12 **SEC. 3. FEDERAL FACILITY ENFORCEMENT.**

13 Section 309 of the Federal Water Pollution Control
14 Act (33 U.S.C. 1319) is amended by adding at the end
15 the following:

16 “(h) FEDERAL FACILITY ENFORCEMENT.—

17 “(1) COMPLIANCE ORDERS.—

18 “(A) IN GENERAL.—Whenever on the basis
19 of any information available to him—

20 “(i) the Administrator determines
21 that any department, agency, or instru-
22 mentality of the United States has violated
23 or is in violation of section 301, 302, 306,
24 307, 308, 311, 318, or 405 of this Act, or
25 has violated or is in violation of any permit

1 condition or limitation implementing any
2 such section in a permit issued under sec-
3 tion 402 of this Act by the Administrator
4 or by a State, or in a permit issued under
5 section 404 of this Act by a State, or any
6 requirement imposed in a pretreatment
7 program approved under section 402(a)(3)
8 or 402(b)(8) of this Act, or any require-
9 ment imposed under section 402(b)(9) of
10 this Act;

11 “(ii) the Secretary of the Army deter-
12 mines that any department, agency, or in-
13 strumentality of the United States has vio-
14 lated or is in violation of section 301 with
15 regard to discharges of dredged or fill ma-
16 terial or any condition or limitation in a
17 permit issued under section 404 of this
18 Act; and

19 “(iii) the Secretary of the department
20 in which the Coast Guard is operating de-
21 termines that any department, agency, or
22 instrumentality of the United States has
23 violated any provision of section 311 of
24 this Act or any of its implementing regula-
25 tions;

1 the Administrator or Secretary, as applicable,
2 may issue an order to assess an administrative
3 penalty for any past or current violation or re-
4 quire compliance or correction of any past or
5 current violation immediately or within a speci-
6 fied time period, or both.

7 “(B) REQUIRED TERMS.—Any order is-
8 sued under this subsection—

9 “(i) by the Administrator may include
10 a suspension or revocation of any permit
11 issued by the Administrator or a State
12 under sections 402 and 404 of this Act;
13 and

14 “(ii) by the Secretary of the Army
15 may include a suspension or revocation of
16 any permit issued by the Secretary of the
17 Army under section 404 of this Act; and

18 shall state with reasonable specificity the nature of
19 the violation. Any penalty assessed in the order shall
20 not exceed \$25,000 per day for each violation.

21 “(2) PUBLIC HEARING.—Any order under this
22 section shall become final unless, not later than 30
23 days after the order is served, a department, agency,
24 or instrumentality of the United States named there-
25 in requests a public hearing. Upon such request, the

1 Administrator or Secretary, as applicable, shall
2 promptly conduct a public hearing. Such public
3 hearing shall be conducted in accordance with sec-
4 tion 554 of title 5, United States Code. In connec-
5 tion with any proceeding under this subsection, the
6 Administrator or Secretary may issue subpoenas for
7 the attendance and testimony of witnesses and the
8 production of relevant papers, books, and documents
9 and may promulgate rules for discovery procedures.

10 “(3) VIOLATION OF COMPLIANCE ORDERS.—If
11 a violator fails to take corrective action within the
12 time specified in an order issued under paragraph
13 (1)—

14 “(A) the Administrator or Secretary, as
15 applicable, may assess a civil penalty of not
16 more than \$25,000 for each day of continued
17 noncompliance with the order; and

18 “(B)(i) the Administrator may suspend or
19 revoke any permit issued pursuant to section
20 402 or 404 of this Act which is the subject of
21 the order, whether issued by the Administrator
22 or the State; and

23 “(ii) the Secretary of the Army may sus-
24 pend or revoke any permit issued pursuant to
25 section 404 of this Act.

1 “(4) DETERMINATION OF AMOUNT OF PEN-
2 ALTY.—In determining the amount of any penalty
3 assessed under this subsection, the Administrator or
4 Secretary, as the case may be, shall consider the se-
5 riousness of each violation or violations, the viola-
6 tor’s economic benefit or savings (if any) resulting
7 from each violation, any history of prior violations,
8 any good-faith efforts to avoid noncompliance or to
9 comply with the applicable requirements, the viola-
10 tor’s ability to pay the penalty, and such other mat-
11 ters in mitigation and aggravation as justice may re-
12 quire.

13 “(5) EMERGENCY ORDERS AT FEDERAL FACILI-
14 TIES.—The Administrator may issue an emergency
15 administrative order to, and assess an administrative
16 penalty for violations of the order against, a Federal
17 agency under the same circumstances as an emer-
18 gency order may be issued to, and such penalty for
19 violation of such order may be assessed, against any
20 other person under this title.

21 “(6) CONSULTATION WITH THE ADMINIS-
22 TRATOR.—No administrative order, including any
23 emergency order or field citation, issued to a Federal
24 department, agency or instrumentality under this
25 subsection shall become final until such department,

1 agency, or instrumentality has had the opportunity
2 to confer with the Administrator.

3 “(7) EXISTING COMPLIANCE ORDERS.—Nothing
4 in this section shall be construed to alter, modify, or
5 change in any manner any Federal facility compli-
6 ance agreement, permit, administrative order or ju-
7 dicial order that is in effect on the effective date of
8 this subsection.

9 “(8) ACTIONS AND RIGHTS OF INTERESTED
10 PERSONS.—No administrative action which has been
11 commenced by the Administrator or the Secretary
12 under this subsection with respect to a violation
13 shall preclude a civil enforcement action under sec-
14 tion 505 of this Act for the same violation or viola-
15 tions.

16 “(9) SPECIAL RULES.—

17 “(A) PUBLIC NOTICE.—Before issuing an
18 order under this subsection, the Administrator
19 or Secretary, as the case may be, shall provide
20 public notice of and reasonable opportunity to
21 comment on the proposed issuance of such
22 order.

23 “(B) PRESENTATION OF EVIDENCE.—Any
24 person who comments on a proposed order
25 under this subsection shall be given notice of

1 any hearing held under paragraph (2) and the
2 order. In any hearing held under this sub-
3 section, such person shall have a reasonable op-
4 portunity to be heard and to present evidence.

5 “(C) RIGHTS OF INTERESTED PERSONS TO
6 A HEARING.—If no hearing is held under para-
7 graph (2), any person who commented on the
8 proposed order may petition, within 30 days
9 after the issuance of such order, the Adminis-
10 trator or Secretary, as the case may be, to set
11 aside such order and to provide a hearing on
12 the order. If the evidence presented by the peti-
13 tioner in support of the petition is material and
14 was not considered in the issuance of the order,
15 the Administrator or Secretary shall imme-
16 diately set aside such order and provide a hear-
17 ing in accordance with paragraph (2). The af-
18 fected Federal department, agency, or instru-
19 mentality shall be given notice of any hearing
20 and shall be permitted to participate in such
21 hearing. If the Administrator or Secretary de-
22 nies a hearing under this subparagraph, the
23 Administrator shall provide to the petitioner
24 and to the affected Federal department, agency,
25 or instrumentality, and publish in the Federal

1 Register, notice of and the reasons for such de-
2 nial.

3 “(D) FINALITY OF ORDER.—An order is-
4 sued under this subsection shall become final
5 30 days after its issuance unless the order is
6 withdrawn or a hearing is requested under
7 paragraph (2) or (5). If such a hearing is de-
8 nied, such order shall become final 30 days
9 after such denial. If such a hearing is granted,
10 the order shall become final 30 days after the
11 decision to uphold the order or to issue a new
12 order.

13 “(10) CITIZEN’S CIVIL ACTION.—Any person
14 may commence a civil action on his or her own be-
15 half against—

16 “(A) any Federal agency that is alleged to
17 have violated or to be in violation of any order
18 issued by the Administrator or the Secretary
19 under this title; or

20 “(B) any Federal agency that fails, within
21 1 year of the effective date of a final order, to
22 pay a penalty assessed by the Administrator or
23 the Secretary under this subsection.”.

1 **SEC. 4. DETERMINATION OF AMOUNT OF CIVIL PENALTIES.**

2 The second sentence of section 309(d) of the Federal
3 Water Pollution Control Act (33 U.S.C. 1319(d)) is
4 amended by inserting “the amount of any penalty pre-
5 viously imposed on the violator by a court or administra-
6 tive agency for the same violation or violations,” after
7 “economic impact of the penalty on the violator,”.

8 **SEC. 5. DEFINITION OF PERSON.**

9 (a) GENERAL DEFINITIONS.—Section 502(5) of the
10 Federal Water Pollution Control Act (33 U.S.C. 1362(5))
11 is amended by inserting before the period at the end the
12 following: “and includes any department, agency, or in-
13 strumentality of the United States”.

14 (b) OIL AND HAZARDOUS SUBSTANCE LIABILITY
15 PROGRAM.—Section 311(a)(7) of such Act (33 U.S.C.
16 1321(a)(7)) is amended by inserting before the semicolon
17 at the end the following: “and any department, agency,
18 or instrumentality of the United States”.

19 **SEC. 6. DEFINITION OF RADIOACTIVE MATERIAL.**

20 Section 502 of the Federal Water Pollution Control
21 Act (33 U.S.C. 1362) is amended by adding at the end
22 the following:

23 “(21) The term ‘radioactive materials’ includes
24 source materials, special nuclear materials, and byproduct
25 materials (as such terms are defined under the Atomic
26 Energy Act of 1954) which are used, produced, or man-

- 1 aged at facilities not licensed by the Nuclear Regulatory
- 2 Commission.”.

