

105TH CONGRESS
1ST SESSION

H. R. 277

To increase penalties and strengthen enforcement of environmental crimes,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. SCHUMER (for himself, Mr. PALLONE, and Mr. MILLER of California) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Commerce, Agriculture, Transportation and Infrastructure, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To increase penalties and strengthen enforcement of
environmental crimes, 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 “Environmental Crimes
5 and Enforcement Act of 1997”.

1 **SEC. 2. JOINT FEDERAL, STATE, LOCAL, AND TRIBAL ENVI-**
2 **RONMENTAL ENFORCEMENT.**

3 (a) IN GENERAL.—Chapter 232 of title 18, United
4 States Code, is amended by inserting after section 3673
5 the following:

6 **“§ 3674. Reimbursement of State, local, or tribal gov-**
7 **ernment costs for assistance in Federal**
8 **investigation and prosecution of environ-**
9 **mental crimes**

10 “(a) Upon the motion of the United States, any per-
11 son who is found guilty of a criminal violation of the Fed-
12 eral environmental laws set forth in subsection (b) below,
13 or conspiracy to violate such laws, may be ordered to pay
14 the costs incurred by a State, local, or tribal government
15 or an agency thereof for assistance to the Federal Govern-
16 ment’s investigation and criminal prosecution of the case.
17 Such moneys shall be paid to the State, local, or tribal
18 government or agency thereof and be used solely for the
19 purpose of environmental law enforcement.

20 “(b) This section applies to a violation of, or a con-
21 spiracy to violate, any of the following provisions of law:

22 “(1) Section 14(b) of the Federal Insecticide,
23 Fungicide, and Rodenticide Act (7 U.S.C. 136l(b)).

24 “(2) Section 16(b) of the Toxic Substances
25 Control Act (15 U.S.C. 2615(b)).

1 “(3) Sections 10, 12, 13, and 16 of the Rivers
2 and Harbors Appropriations Act of 1899 (33 U.S.C.
3 403, 406, 407, 411).

4 “(4) Sections 309(c) and 311(b)(5) of the Fed-
5 eral Water Pollution Control Act (33 U.S.C.
6 1319(c), 1321(b)(5)).

7 “(5) Section 105(b) of the Marine Protection,
8 Research, and Sanctuaries Act of 1972 (33 U.S.C.
9 1415(b)).

10 “(6) Section 9(a) of the Act to Prevent Pollu-
11 tion from Ships (33 U.S.C. 1908(a)).

12 “(7) Section 4109(c) of the Shore Protection
13 Act of 1988 (33 U.S.C. 2609(c)).

14 “(8) Sections 1423 and 1432 of the Safe
15 Drinking Water Act (42 U.S.C. 300h-2, 300i-1).

16 “(9) Sections 3008(d), 3008(e), and 3008(i) of
17 the Resource Conservation and Recovery Act of
18 1976 (42 U.S.C. 6928(d), 6928(e), 6928(i)).

19 “(10) Section 113(c) of the Clean Air Act (42
20 U.S.C. 7413(c)).

21 “(11) Sections 103(b) and 103(d) of the Com-
22 prehensive Environmental Response, Compensation,
23 and Liability Act (42 U.S.C. 9603(b), 9603(d)).

1 a Federal, State, local, or tribal government employee per-
2 forming official duties as a result of the violation, shall
3 be subject to a maximum term of imprisonment of 20
4 years, a fine of not more than \$500,000, or both, and,
5 if the defendant is an organization, to a fine of not more
6 than \$2,000,000.

7 “(2) The provisions of law to which this subsection
8 applies are—

9 “(A) section 309(c)(2), 309(c)(4), or 311(b)(5)
10 of the Federal Water Pollution Control Act (33
11 U.S.C. 1319(c)(2), 1319(c)(4), 1321(b)(5));

12 “(B) section 105(b) of the Marine Protection,
13 Research, and Sanctuaries Act of 1972 (33 U.S.C.
14 1415(b));

15 “(C) section 1423 or 1432 of the Safe Drinking
16 Water Act (42 U.S.C. 300h–2, 300i–1);

17 “(D) section 3008(d) of the Resource Conserva-
18 tion and Recovery Act of 1976 (42 U.S.C. 6928(d));

19 “(E) section 113(c)(1) or 113(c)(2) of the
20 Clean Air Act (42 U.S.C. 7413(c)(1), 7413(c)(2));

21 “(F) section 103(b) or 103(d) of the Com-
22 prehensive Response, Compensation, and Liability
23 Act (42 U.S.C. 9603(b), 9603(d));

1 “(G) section 325(b)(4) of the Emergency Plan-
2 ning and Community Right-to-Know Act of 1986
3 (42 U.S.C. 11045(b)(4)); or

4 “(H) section 5124, 60123(a), or 60123(b) of
5 title 49, United States Code.

6 “(b)(1) Any person who commits a criminal violation
7 of Federal environmental law identified in this subsection
8 that is the direct or proximate cause of serious bodily in-
9 jury to or death of any other person, including a Federal,
10 State, local, or tribal government employee performing of-
11 ficial duties as a result of the violation, shall be fined
12 under this title or imprisoned not more than 5 years, or
13 both, but if the defendant is an organization, the defend-
14 ant may be fined not more than \$1,000,000.

15 “(2) The provisions of law to which this subsection
16 applies are—

17 “(A) section 14(b) of the Federal Insecticide,
18 Fungicide, and Rodenticide Act (7 U.S.C. 136l(b));
19 and

20 “(B) section 16(b) of the Toxic Substances
21 Control Act (15 U.S.C. 2615(b)).

22 “(c) For purposes of this section, the term ‘serious
23 bodily injury’ means bodily injury which involves—

24 “(1) unconsciousness;

25 “(2) extreme physical pain;

1 “(3) protracted and obvious disfigurement; or

2 “(4) protracted loss or impairment of the func-
3 tion of a bodily member, organ, or mental faculty.

4 “(d) For purposes of this section, the term ‘organiza-
5 tion’ means a legal entity, other than a government, estab-
6 lished or organized for any purpose, and such term in-
7 cludes a corporation, company, association, firm, partner-
8 ship, joint stock company, foundation, institution, trust,
9 society, union, or any other association of persons.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
11 at the beginning of chapter 39 of title 18, United States
12 Code, is amended by inserting after the item relating to
13 section 837 the following:

“838. Protection of government employees and the public from environmental
crimes.”.

14 **SEC. 4. ENVIRONMENTAL CRIMES TRAINING FOR STATE,**
15 **LOCAL, AND TRIBAL LAW ENFORCEMENT.**

16 (a) SHORT TITLE.—This section may be cited as the
17 “Environmental Crimes Training Act of 1996”.

18 (b) PROGRAM.—The Administrator of the Environ-
19 mental Protection Agency, as soon as practicable, within
20 the Office of Enforcement and Compliance Assurance,
21 shall establish the State, local, and Tribal Environmental
22 Enforcement Training Program to be administered by the
23 National Enforcement Training Institute within the Office
24 of Criminal Enforcement, Forensics and Training. This

1 Program shall be dedicated to training State, local, and
2 tribal law enforcement personnel in the investigation of
3 environmental crimes at the Federal Law Enforcement
4 Training Center (FLETC) in Glynn County, Georgia, at
5 the EPA–FLETC training center or other training sites
6 which are accessible to State, local, and tribal law enforce-
7 ment. State, local, and tribal law enforcement personnel
8 shall include, among others, the following: inspectors, civil
9 and criminal investigators, technical experts, regulators,
10 government lawyers, and police.

11 **SEC. 5. STATUTE OF LIMITATIONS.**

12 (a) IN GENERAL.—Chapter 213 of title 18, United
13 States Code, is amended by adding after section 3294 the
14 following new section—

15 **“§ 3295. Felony environmental crimes**

16 “(a) No person shall be prosecuted, tried, or punished
17 for a violation of, or a conspiracy to violate, any of the
18 offenses listed in subsection (b), unless the indictment is
19 returned or the information is filed within 5 years after
20 the offense is committed. However, when a person com-
21 mits an affirmative act that conceals the offense from any
22 Federal, State, local, or tribal government agency, that
23 person shall not be prosecuted, tried, or punished for a
24 violation of, or a conspiracy to violate, any of the offenses

1 listed below in subsection (b) unless the indictment is re-
2 turned or the information is filed within 5 years after the
3 offense is committed, or within 3 years after the offense
4 is discovered by a government agency, whichever is later
5 but in no event later than 8 years after the offense is com-
6 mitted.

7 “(b) This section applies to a violation of—

8 “(1) section 309(c)(2), 309(c)(3), 309(c)(4), or
9 311(b)(5) of the Federal Water Pollution Control
10 Act (33 U.S.C. 1319(c)(2), 1319(c)(3), 1319(c)(4),
11 1321(b)(5));

12 “(2) section 105(b) of the Marine Protection,
13 Research, and Sanctuaries Act of 1972 (33 U.S.C.
14 1415(b));

15 “(3) section 9(a) of the Act to Prevent Pollu-
16 tion from Ships (33 U.S.C. 1908(a));

17 “(4) section 4109(c) of the Shore Protection
18 Act of 1988 (33 U.S.C. 2609(c));

19 “(5) section 1423 or 1432 of the Safe Drinking
20 Water Act (42 U.S.C. 300h–2, 300i–1);

21 “(6) section 3008(d) or 3008(e) of the Re-
22 source Conservation and Recovery Act of 1976 (42
23 U.S.C. 6928(d), 6928(e));

1 “(7) section 113(c)(1), 113(c)(2), 113(c)(3), or
2 113(c)(5) of the Clean Air Act (42 U.S.C.
3 7413(c)(1), 7413(c)(2), 7413(c)(3), 7413(c)(5));

4 “(8) section 103(b) or 103(d) of the Com-
5 prehensive Response, Compensation, and Liability
6 Act (42 U.S.C. 9603(b), 9603(d));

7 “(9) section 325(b)(4) of the Emergency Plan-
8 ning and Community Right-to-Know Act of 1986
9 (42 U.S.C. 11045(b)(4)); or

10 “(10) section 5124, 60123(a), or 60123(b) of
11 title 49, United States Code.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 of chapter 213 of title 18, United States Code, is amended
14 by inserting after the item referring to section 3294 the
15 following new item:

“3295. Felony environmental crimes.”.

16 **SEC. 6. ATTEMPTS.**

17 (a) FEDERAL INSECTICIDE, FUNGICIDE, AND
18 RODENTICIDE ACT.—Section 14(b) of the Federal Insecti-
19 cide, Fungicide, and Rodenticide Act (7 U.S.C. 136l(b))
20 is amended by adding the following new paragraph:

21 “(5) ATTEMPTS.—Any person who attempts to
22 commit the conduct that constitutes an offense
23 under paragraph (1) of this subsection shall be sub-
24 ject to the same penalties as those prescribed for
25 such an offense.”.

1 (b) TOXIC SUBSTANCES CONTROL ACT.—Section
2 16(b) of the Toxic Substances Control Act (15 U.S.C.
3 2615(b)), is amended by inserting “(1)” before “Any” and
4 by adding the following new paragraph:

5 “(2) Any person who attempts to commit the
6 conduct that constitutes any offense under para-
7 graph (1) of this subsection shall be subject to the
8 same penalties as those prescribed for such of-
9 fense.”.

10 (c) FEDERAL WATER POLLUTION CONTROL ACT.—
11 Section 309(c) of the Federal Water Pollution Control Act
12 (33 U.S.C. 1319(c)), is amended by adding after para-
13 graph (7) the following new paragraph:

14 “(8) Any person who attempts to commit the
15 conduct that constitutes any offense under para-
16 graph (2), (3), or (4) of this subsection shall be sub-
17 ject to the same penalties as those prescribed for
18 such offense.”.

19 (d) OCEAN DUMPING.—Section 105(b) of the Marine
20 Protection, Research, and Sanctuaries Act of 1972 (33
21 U.S.C. 1415(b)) is amended by striking “and” at the end
22 of paragraph (1), striking the period at the end of para-
23 graph (2)(B) and inserting “; and”, and adding after
24 paragraph (2) the following new paragraph:

1 “(3) any person who attempts to commit con-
2 duct that constitutes an offense under paragraph (1)
3 of this subsection shall be subject to the same pen-
4 alties as those prescribed for such offense.”.

5 (e) MARPOL.—Section 9(a) of the Act to Prevent
6 Pollution from Ships (33 U.S.C. 1908(a)) is amended by
7 inserting “(1)” before “A person”, and by adding at the
8 end the following new paragraph:

9 “(2) Any person who attempts to commit conduct
10 that constitutes an offense under paragraph (1) of this
11 subsection shall be subject to the same penalties as those
12 prescribed for such offense.”.

13 (f) SOLID WASTE DISPOSAL ACT.—Section 3008 of
14 the Solid Waste Disposal Act (42 U.S.C. 6928), is amend-
15 ed by adding after section 3008(h) the following new sub-
16 section:

17 “(i) Any person who attempts to commit the conduct
18 that constitutes any offense under subsection (d) or (e)
19 of this section shall be subject to the same penalties as
20 those prescribed for such offense.”.

21 (g) CLEAN AIR ACT.—Section 113(c) of the Clean
22 Air Act (42 U.S.C. 7413(c)), is amended by adding after
23 paragraph (6) the following new paragraph:

1 “(7) Any person who attempts to commit the
2 conduct that constitutes any offense under para-
3 graphs (1), (2), or (3) of this subsection shall be
4 subject to the same penalties as those prescribed for
5 such offense.”.

6 **SEC. 7. ENVIRONMENTAL CRIMES RESTITUTION.**

7 (a) **GENERALLY.**—Section 3663(a)(1) of title 18,
8 United States Code, is amended by striking “or” before
9 “section 46312” and inserting “or an environmental crime
10 listed in section 3674 of this title,” after “section
11 3663A(c),”

12 (b) **DEFINITION OF “VICTIM”.**—Subsection 3663(b)
13 of title 18, United States Code, is amended—

14 (1) by striking “and” at the end of paragraph
15 (4);

16 (2) by striking the period at the end of para-
17 graph (5) and inserting “; and”; and

18 (3) by inserting after paragraph (5) the follow-
19 ing:

20 “(6) in the case of an offense resulting in pollu-
21 tion of or damage to the environment, pay for re-
22 moval and remediation of the environmental pollu-
23 tion or damage and restoration of the environment,
24 to the extent of the pollution or damage resulting
25 from the offense; in such a case, the term ‘victim’

1 in section 3663(a)(2) includes a community or com-
 2 munities, whether or not the members are individ-
 3 ually identified.”.

4 **SEC. 8. PREVENTION OF ALIENATION OR DISPOSAL OF AS-**
 5 **SETS NEEDED TO REMEDY ENVIRONMENTAL**
 6 **HARMS CAUSED BY ENVIRONMENTAL**
 7 **CRIMES.**

8 (a) IN GENERAL.—Chapter 39 of title 18, United
 9 States Code, is amended by inserting after section 838 the
 10 following:

11 **“§ 839. Prejudgment orders to secure payment for en-**
 12 **vironmental damage**

13 “(a) At the time of the filing of an indictment or in-
 14 formation for the violation of any of the statutory provi-
 15 sions set forth in section 838(a) of this title, or at any
 16 time thereafter, if, after notice to the defendant, the
 17 United States shows probable cause to believe that—

18 “(1) the defendant will conceal, alienate, or dis-
 19 pose of property, or place property outside the juris-
 20 diction of the Federal district courts; and

21 “(2) the defendant will thereby reduce or im-
 22 pair the defendant’s ability to pay restitution, in
 23 whole or in part, including removal and remediation

1 of environmental pollution or damage and restora-
2 tion of the environment resulting from the statutory
3 violation;
4 the court may order the defendant not to alienate or dis-
5 pose of any such property, or place such property outside
6 the jurisdiction of the United States district courts, with-
7 out leave of the court. The Government shall bear the bur-
8 den of proving, by a preponderance of the evidence, the
9 projected cost for the removal and remediation of the envi-
10 ronmental pollution or damage and restoration of the envi-
11 ronment.

12 “(b) DEFENSES.—The defendant may establish the
13 following affirmative defenses to a motion by the Govern-
14 ment under this section:

15 “(1) That the defendant possesses other assets
16 sufficient to pay restitution, including the costs of
17 removal and remediation of the environmental pollu-
18 tion or damage and restoration of the environment
19 resulting from the statutory violation, provided that
20 the defendant places those other assets under the
21 control of the court.

22 “(2) That the defendant has made full restituti-
23 on, including the removal and remediation of the
24 environmental pollution or damage and restoration
25 of the environment.

1 “(c) PROCEDURES.—Any proceeding under this sec-
2 tion is governed by the Federal Rules of Criminal Proce-
3 dure.

4 “(d) PROPERTY DEFINED.—For the purposes of this
5 section, ‘property’ shall include—

6 “(1) real property, including things growing on,
7 affixed to, and found in land; and

8 “(2) tangible and intangible personal property,
9 including money, rights, privileges, interests, claims,
10 and securities.

11 “(e) EXPIRATION OF ORDER.—The court may amend
12 an order issued pursuant to this section at any time. In
13 no event, however, shall the order extend beyond sentenc-
14 ing, in the case of a conviction, or a dismissal or acquittal
15 of the prosecution.

16 “(f) ALL WRITS ACT.—Nothing in this section dimin-
17 ishes the powers of the court otherwise available under
18 section 1651 of title 28.”.

19 (b) CLERICAL AMENDMENT.—The table of sections
20 at the beginning of chapter 39 of title 18, United States
21 Code, is amended by adding after the item relating to sec-
22 tion 838, the following new item—

“839. Prejudgment orders to secure payment for environmental damage.”.

