

105TH CONGRESS
2D SESSION

S. 1923

To amend the Federal Water Pollution Control Act to ensure compliance by Federal facilities with pollution control requirements.

IN THE SENATE OF THE UNITED STATES

APRIL 2, 1998

Mr. COVERDELL (for himself, Mr. BREAU, and Mr. DEWINE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to ensure compliance by Federal facilities with pollution control requirements.

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 1998”.

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

8 Section 313 of the Federal Water Pollution Control
9 Act (33 U.S.C. 1323) is amended—

1 (1) by redesignating subsection (b) as sub-
2 section (d); and

3 (2) by striking subsection (a) and inserting the
4 following:

5 “(a) COMPLIANCE.—

6 “(1) DEFINITION OF REASONABLE SERVICE
7 CHARGE.—In this subsection, the term ‘reasonable
8 service charge’ includes but is not limited to—

9 “(A) a fee or charge assessed in connection
10 with the processing, issuance, renewal, or
11 amendment of a permit, review of a plan, study,
12 or other document, or inspection or monitoring
13 of a facility; and

14 “(B) any other nondiscriminatory charge
15 that is assessed in connection with a Federal,
16 State, interstate, or local regulatory program
17 concerning the control and abatement of water
18 pollution.

19 “(2) REQUIREMENT.—Each department, agen-
20 cy, and instrumentality of the executive, legislative,
21 or judicial branch of the Federal Government that
22 has jurisdiction over any property or facility, or is
23 engaged in any activity that results, or that may re-
24 sult, in the discharge or runoff of a pollutant shall
25 be subject to, and shall comply with, all Federal,

1 State, interstate, and local substantive and proce-
2 dural requirements (including any requirement for a
3 permit or reporting, any provision for injunctive re-
4 lief and such sanctions as are imposed by a Federal
5 or State court to enforce the relief, and any require-
6 ment for the payment of a reasonable service
7 charge) concerning the control and abatement of
8 water pollution in the same manner, and to the same
9 extent, as any other person is subject to the require-
10 ments.

11 “(3) LIMITED WAIVER OF SOVEREIGN IMMUN-
12 NITY.—The United States waives any immunity oth-
13 erwise applicable to the United States with respect
14 to any substantive or procedural requirement de-
15 scribed in paragraph (2), including but not limited
16 to immunity from process in an administrative or
17 court action seeking—

18 “(A) injunctive relief;

19 “(B) imposition of a sanction referred to
20 in this subsection;

21 “(C) enforcement of an administrative
22 order;

23 “(D) imposition of an administrative pen-
24 alty or fine; or

1 “(E) payment of a reasonable service
2 charge.

3 “(4) ADMINISTRATIVE ORDERS AND PEN-
4 ALTIES.—The substantive and procedural require-
5 ments described in paragraph (2) include but are
6 not limited to all administrative orders and all civil
7 and administrative penalties or fines, regardless of
8 whether the penalties or fines are punitive or coer-
9 cive in nature or are imposed for isolated, intermit-
10 tent, or continuing violations.

11 “(5) INJUNCTIVE RELIEF.—The United States
12 (including any agent, employee, or officer of the
13 United States) shall not be immune or exempt from
14 any process or sanction of any State or Federal
15 court with respect to the enforcement of any injunc-
16 tive relief referred to in paragraph (2).

17 “(6) CIVIL PENALTIES.—No agent, employee,
18 or officer of the United States shall be personally
19 liable for any civil penalty under any Federal, State,
20 interstate, or local law concerning the control and
21 abatement of water pollution with respect to any act
22 or omission within the scope of the official duties of
23 the agent, employee, or officer.

24 “(7) CRIMINAL PENALTIES.—

1 “(A) AGENTS, EMPLOYEES, AND OFFI-
2 CERS.—An agent, employee, or officer of the
3 United States shall be subject to a criminal
4 sanction (including but not limited to a fine or
5 imprisonment) under any Federal or State law
6 concerning the control and abatement of water
7 pollution.

8 “(B) DEPARTMENTS, AGENCIES, AND IN-
9 STRUMENTALITIES.—No department, agency,
10 or instrumentality of the executive, legislative,
11 or judicial branch of the Federal Government
12 shall be subject to a sanction referred to in sub-
13 paragraph (A).

14 “(b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—

15 “(1) IN GENERAL.—

16 “(A) COMMENCEMENT.—The Adminis-
17 trator, the Secretary of the Army, and the Sec-
18 retary of the department in which the Coast
19 Guard is operating may commence an adminis-
20 trative enforcement action against any depart-
21 ment, agency, or instrumentality of the execu-
22 tive, legislative, or judicial branch of the Fed-
23 eral Government pursuant to the enforcement
24 authorities authorized by this Act.

1 “(B) MANNER AND CIRCUMSTANCES.—The
2 Administrator or Secretary, as applicable, shall
3 initiate an administrative enforcement action
4 against such a department, agency, or instru-
5 mentality in the same manner and under the
6 same circumstances as the Administrator or
7 Secretary would initiate such an action against
8 another person.

9 “(C) CONSENT ORDERS.—Any voluntary
10 resolution or settlement of an action described
11 in subparagraph (B) shall be set forth in a con-
12 sent order.

13 “(2) OPPORTUNITY TO CONFER.—An adminis-
14 trative order issued to a department, agency, or in-
15 strumentality under paragraph (1) shall not become
16 final until the department, agency, or instrumentality
17 has had the opportunity to confer with the Ad-
18 ministrator or Secretary, as applicable.

19 “(c) LIMITATION ON STATE USE OF FUNDS COL-
20 LECTED FROM THE FEDERAL GOVERNMENT.—Unless a
21 State law in effect on the date of enactment of this sub-
22 section or a State constitution requires the funds to be
23 used in a different manner, all funds collected by a State
24 from the Federal Government from penalties and fines im-
25 posed for violation of a substantive or procedural require-

1 ment described in subsection (a) shall be used by the State
2 only for projects designed to improve or protect the envi-
3 ronment or to defray the costs of environmental protection
4 or enforcement.”.

5 **SEC. 3. DEFINITION OF PERSON.**

6 (a) GENERAL DEFINITIONS.—Section 502(5) of the
7 Federal Water Pollution Control Act (33 U.S.C. 1362(5))
8 is amended—

9 (1) by striking “or any” and inserting “an”;
10 and

11 (2) by inserting before the period at the end the
12 following: “or a department, agency, or instrumen-
13 tality of the United States”.

14 (b) OIL AND HAZARDOUS SUBSTANCE LIABILITY
15 PROGRAM.—Section 311(a)(7) of the Federal Water Pol-
16 lution Control Act (33 U.S.C. 1321(a)(7)) is amended—

17 (1) by striking “a”; and

18 (2) by inserting before the semicolon at the end
19 the following: “and a department, agency, or instru-
20 mentality of the United States”.

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