

106TH CONGRESS  
2D SESSION

# S. 2934

To provide for the assessment of an increased civil penalty in a case in which a person or entity that is the subject of a civil environmental enforcement action has previously violated an environmental law or in a case in which a violation of an environmental law results in a catastrophic event.

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IN THE SENATE OF THE UNITED STATES

JULY 26, 2000

Mr. TORRICELLI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To provide for the assessment of an increased civil penalty in a case in which a person or entity that is the subject of a civil environmental enforcement action has previously violated an environmental law or in a case in which a violation of an environmental law results in a catastrophic event.

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 “Zero Tolerance for Re-  
5       peat Polluters Act of 2000”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) if a person or entity that is the subject of  
4 a civil enforcement action under an environmental  
5 law has previously violated an environmental law at  
6 the same site or facility or for the same regulated  
7 activity, the person or entity—

8 (A) was apparently not deterred by the  
9 previous Federal or State enforcement action;  
10 and

11 (B) should be subject to an additional pen-  
12 alty to achieve the goal of deterrence; and

13 (2) because of the daily penalty maximums  
14 specified in environmental law in effect on the date  
15 of enactment of this Act, the penalty assessed for a  
16 violation that results in a single catastrophic event  
17 may not be great enough to reflect the serious actual  
18 or potential public health or environmental con-  
19 sequences of the violation.

20 (b) PURPOSE.—The purpose of this Act is to provide  
21 for the assessment of an increased civil penalty in a case  
22 in which—

23 (1) a person or entity that is the subject of a  
24 civil environmental enforcement action has pre-  
25 viously violated an environmental law at the same  
26 site or facility or for the same regulated activity; or

1           (2) a violation of an environmental law results  
2           in a catastrophic event.

3 **SEC. 3. DEFINITIONS.**

4           In this Act:

5           (1) ADMINISTRATOR.—The term “Adminis-  
6           trator” means—

7                   (A) the Administrator of the Environ-  
8                   mental Protection Agency; and

9                   (B) to the extent that a State has been  
10                  delegated, authorized, or approved authority to  
11                  enforce an environmental law, the State.

12           (2) ENVIRONMENTAL LAW.—The term “envi-  
13           ronmental law” means any of the following laws (in-  
14           cluding any regulation, permit, or other requirement,  
15           any administrative or judicial judgment, settlement  
16           agreement, order or decree on consent, and any ad-  
17           ministrative or judicial order issued or imposed  
18           under any such law):

19                   (A) The Federal Insecticide, Fungicide,  
20                   and Rodenticide Act (7 U.S.C. 136 et seq.).

21                   (B) The Toxic Substances Control Act (15  
22                   U.S.C. 2601 et seq.).

23                   (C) The Federal Water Pollution Control  
24                   Act (33 U.S.C. 1251 et seq.).

1 (D) The Marine Protection, Research, and  
2 Sanctuaries Act of 1972 (33 U.S.C. 1401 et  
3 seq.).

4 (E) The Act to Prevent Pollution from  
5 Ships (33 U.S.C. 1901 et seq.).

6 (F) The Shore Protection Act of 1988 (33  
7 U.S.C. 2601 et seq.).

8 (G) The Safe Drinking Water Act (42  
9 U.S.C. 300f et seq.).

10 (H) The Solid Waste Disposal Act (42  
11 U.S.C. 6901 et seq.).

12 (I) The Clean Air Act (42 U.S.C. 7401 et  
13 seq.).

14 (J) The Comprehensive Environmental Re-  
15 sponse, Compensation, and Liability Act of  
16 1980 (42 U.S.C. 9601 et seq.).

17 (K) The Emergency Planning and Commu-  
18 nity Right-To-Know Act of 1986 (42 U.S.C.  
19 11001 et seq.).

20 (L) Chapter 51 of title 49, United States  
21 Code.

22 (M) Chapter 601 of title 49, United States  
23 Code.

24 (3) PERSON.—The term “person” means a per-  
25 son, site or facility owner or operator, or other re-

1       sponsible party identified under a law listed in para-  
2       graph (2).

3           (4) RELATED PARTY.—The term “related  
4       party” means—

5           (A) a person having a relationship de-  
6       scribed in Section 267(b) of the Internal Rev-  
7       enue Code of 1986 to the owner or operator;  
8       and

9           (B) a predecessor of the owner or operator  
10       (including, in the case of a merger of 2 or more  
11       independent corporations, each of the previously  
12       independent corporations).

13          (5) REPEAT VIOLATION.—The term “repeat  
14       violation” means the violation by a repeat violator  
15       that is the subject of a finding and enforcement ac-  
16       tion, criminal action, or other agency action de-  
17       scribed in paragraph (6).

18          (6) REPEAT VIOLATOR.—The term “repeat vio-  
19       lator” means a person that has been found, in a  
20       final Federal or State administrative, criminal, or  
21       civil judicial action, order, settlement agreement, or  
22       consent decree, to have violated—

23           (A) the same environmental law at the  
24       same site or facility or for the same regulated

1 activity at least twice during the preceding 5-  
2 year period; or

3 (B) any environmental law at the same site  
4 or facility or for the same regulated activity at  
5 least twice during the preceding 3-year period.

6 **SEC. 4. ADDITIONAL PENALTY FOR REPEAT VIOLATIONS.**

7 (a) IN GENERAL.—In a civil judicial or administra-  
8 tive proceeding brought against a repeat violator for a sub-  
9 sequent violation of the same environmental law or sepa-  
10 rate environmental laws at 1 or more sites or facilities  
11 owned or operated by the repeat violator, or for violations  
12 for the same regulated activity under 1 or more environ-  
13 mental laws, the repeat violator shall be assessed up to—

14 (1) an additional penalty of 25 percent of the  
15 maximum penalty assessable per day of violation for  
16 the first repeat violation under the applicable envi-  
17 ronmental law;

18 (2) an additional penalty of 50 percent of the  
19 maximum penalty assessable per day of violation for  
20 the second repeat violation under the applicable envi-  
21 ronmental law; and

22 (3) an additional penalty of 100 percent of the  
23 maximum penalty assessable per day of violation  
24 under the applicable environmental law for the third  
25 and each subsequent violation.

1 (b) TRANSFER OF OWNERSHIP OR OPERATION.—The  
 2 transfer of ownership or operation of a site or facility by  
 3 the owner or operator of the site or facility to a related  
 4 party shall not affect the liability of the owner or operator  
 5 with respect to a repeat violation under this section.

6 **SEC. 5. ADDITIONAL PENALTY FOR CATASTROPHIC**  
 7 **EVENTS.**

8 (a) DEFINITIONS.—In this section:

9 (1) CATASTROPHIC EVENT.—The term “cata-  
 10 strophic event” means a release of pollutants under  
 11 any environmental law that results in—

12 (A) the potential for serious human injury  
 13 or death, or serious environmental damage; or

14 (B) serious human injury or death, or seri-  
 15 ous environmental damage.

16 (2) CRITERIA AIR POLLUTANT.—The term “cri-  
 17 teria air pollutant” means an air pollutant listed  
 18 under section 108 of the Clean Air Act (42 U.S.C.  
 19 7408).

20 (3) HAZARDOUS AIR POLLUTANT.—The term  
 21 “hazardous air pollutant” has the meaning given the  
 22 term in section 112(a) of the Clean Air Act (42  
 23 U.S.C. 7412(a)).

24 (4) HAZARDOUS SUBSTANCE.—The term “haz-  
 25 arduous substance” has the meaning given the term

1 in section 101 of the Comprehensive Environmental  
2 Response, Compensation, and Liability Act of 1980  
3 (42 U.S.C. 9601).

4 (5) OZONE-DEPLETING SUBSTANCE.—The term  
5 “ozone-depleting substance” means a class I sub-  
6 stance or a class II substance, as defined in section  
7 601 of the Clean Air Act (42 U.S.C. 7671).

8 (b) ADDITIONAL PENALTY.—

9 (1) IN GENERAL.—In addition to a civil penalty  
10 assessed in a judicial or administrative proceeding  
11 under another environmental law, the Administrator  
12 shall assess an additional penalty for each cata-  
13 strophic event against the violator—

14 (A) in the case of a catastrophic event that  
15 results in the potential for serious human injury  
16 or death, or serious environmental damage, but  
17 that does not have a result described in sub-  
18 paragraph (B) or (C), a minimum of—

19 (i) \$10,000 per pound of hazardous  
20 air pollutant emitted in the course of the  
21 catastrophic event;

22 (ii) \$10,000 per ton of criteria air pol-  
23 lutant or ozone-depleting substance emit-  
24 ted in the course of the catastrophic event;

25 and

1 (iii) \$10,000 for each quantity of haz-  
2 arduous substance equal to the reportable  
3 quantity of the hazardous substance, as  
4 specified in parts 117 and 302, title 40,  
5 Code of Federal Regulations (or any suc-  
6 cessor regulation), released in the course of  
7 the catastrophic event;

8 (B) in the case of a catastrophic event that  
9 results either in a serious human injury or  
10 death, or in serious environmental damage, a  
11 minimum of—

12 (i) \$15,000 per pound of hazardous  
13 air pollutant emitted in the course of the  
14 catastrophic event; and

15 (ii) \$15,000 per ton of criteria air pol-  
16 lutant or ozone-depleting substance emit-  
17 ted in the course of the catastrophic event;  
18 and

19 (iii) \$15,000 for each quantity of haz-  
20 arduous substance equal to the reportable  
21 quantity of the hazardous substance, as  
22 specified in parts 117 and 302, title 40,  
23 Code of Federal Regulations (or any suc-  
24 cessor regulation), released in the course of  
25 the catastrophic event; and

1 (C) in the case of a catastrophic event that  
2 results both in a serious human injury or death  
3 and in serious environmental damage, a min-  
4 imum of—

5 (i) \$25,000 per pound of hazardous  
6 air pollutant emitted in the course of the  
7 catastrophic event;

8 (ii) \$25,000 per ton of criteria air pol-  
9 lutant or ozone-depleting substance emit-  
10 ted in the course of the catastrophic event;  
11 and

12 (iii) \$25,000 for each quantity of haz-  
13 ardous substance equal to the reportable  
14 quantity of the hazardous substance, as  
15 specified in parts 117 and 302, title 40,  
16 Code of Federal Regulations (or any suc-  
17 cessor regulation), released in the course of  
18 the catastrophic event.

19 (2) AIR POLLUTANTS FALLING WITHIN MUL-  
20 TIPLE CATEGORIES.—For the purpose of deter-  
21 mining an additional civil penalty under paragraph  
22 (1), if an air pollutant is both a hazardous air pol-  
23 lutant and a criteria air pollutant, hazardous sub-  
24 stance, or ozone-depleting substance, the air pollut-

1 ant shall be considered to be a hazardous air pollutant.  
2 ant.

3 (c) PREVENTIVE MEASURES.—In addition to any  
4 measures required to be implemented under any other pro-  
5 vision of law, the Administrator may require in an order,  
6 consent decree, settlement agreement, permit, or other en-  
7 forceable mechanism that a violator against which a pen-  
8 alty is assessed under subsection (b) shall implement pre-  
9 ventive measures, including additional monitoring, record-  
10 keeping, reporting, training, and other design, equipment,  
11 work practice, and operational requirements.

12 **SEC. 6. PRESERVATION OF AUTHORITY.**

13 Nothing in this Act limits the authority of the  
14 Administrator—

15 (1) to assess appropriate penalties, on consider-  
16 ation of relevant factors, under any environmental  
17 law; or

18 (2) to impose more stringent requirements and  
19 penalties or exercise any civil or criminal authority  
20 in the case of repeat violators or catastrophic events.

21 **SEC. 7. EMERGENCY ORDER AND CIVIL ACTION PENALTY**  
22 **AUTHORITY.**

23 (a) IN GENERAL.—Notwithstanding any other provi-  
24 sion of law, the Administrator may, with respect to any  
25 person or entity responsible for creating a condition that

1 may present an imminent and substantial endangerment  
2 to human health or the environment in violation of an en-  
3 vironmental law, issue an administrative order or bring a  
4 civil action in United States District Court, seeking such  
5 relief as is necessary to protect human health or the envi-  
6 ronment.

7 (b) PENALTY.—A person or entity described in sub-  
8 section (a) may be fined not less than \$25,000 and not  
9 more than \$10,000,000, to be paid into the Health and  
10 Environment Trust Fund of the Environmental Protection  
11 Agency.

12 (c) AVAILABILITY OF FUNDS.—The Administrator  
13 shall make funds in the Health and Environmental Trust  
14 Fund available for withdrawals, without further Act of ap-  
15 propriation, in an amount not to exceed \$500,000 for each  
16 project, to pay costs incurred by the Federal Government  
17 in addressing a health or environmental threat—

18 (1) for which a fine was collected under sub-  
19 section (b); and

20 (2) in accordance with the statutory authority  
21 under which the action seeking payment of the fine  
22 was initiated.

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