

108TH CONGRESS  
1ST SESSION

# S. 1539

To amend the Federal Water Pollution Control Act to establish a National Clean and Safe Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. REED (for himself, Mr. VOINOVICH, Mr. SARBANES, Ms. SNOWE, Mr. JEFFORDS, Mr. LEVIN, and Mr. HARKIN) 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 amend the Federal Water Pollution Control Act to establish a National Clean and Safe Water Fund and to authorize the Administrator of the Environmental Protection Agency to use amounts in the Fund to carry out projects to promote the recovery of waters of the United States from damage resulting from violations of that Act and the Safe Drinking Water Act, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “National Clean and  
3 Safe Water Fund Act of 2003”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Administrator of the Environmental  
7 Protection Agency has determined that more than  
8 40 percent of the assessed water of the United  
9 States does not meet applicable water quality stand-  
10 ards established by States, territories, and Indian  
11 tribes;

12 (2) the water described in paragraph (1) in-  
13 cludes approximately 300,000 miles of rivers and  
14 shorelines, and approximately 5,000,000 acres of  
15 lakes, that are polluted by sediments, excess nutri-  
16 ents, and harmful microorganisms;

17 (3) Congress enacted—

18 (A) the Federal Water Pollution Control  
19 Act (33 U.S.C. 1251 et seq.) to maintain the  
20 chemical, physical, and biological integrity of  
21 water of the United States; and

22 (B) the Safe Drinking Water Act (42  
23 U.S.C. 300f et seq.) to protect public health by  
24 regulating the public drinking water supply of  
25 the United States;

1           (4) because criminal, civil, and administrative  
2 penalties assessed under the Acts referred to in  
3 paragraph (3) are returned to the Treasury, those  
4 amounts are not available to protect, preserve, or en-  
5 hance the quality of water in watersheds in which  
6 violations of those Acts occur; and

7           (5) the establishment of a national clean and  
8 safe water fund would help States in achieving the  
9 goals described in paragraph (1) by providing fund-  
10 ing to protect and improve watersheds and aquifers.

11 **SEC. 3. NATIONAL CLEAN AND SAFE WATER FUND.**

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

15           “(h) NATIONAL CLEAN AND SAFE WATER FUND.—

16           “(1) ESTABLISHMENT.—There is established in  
17 the Treasury a fund to be known as the ‘National  
18 Clean and Safe Water Fund’ (referred to in this  
19 subsection as the ‘Fund’) consisting of amounts  
20 transferred to the Fund under paragraph (2) and  
21 amounts credited to the Fund under paragraph (3).

22           “(2) TRANSFER OF AMOUNTS.—Notwith-  
23 standing any other provision of law, for fiscal year  
24 2003 and each fiscal year thereafter, the Secretary  
25 of the Treasury shall transfer to the Fund an

1 amount determined by the Secretary to be equal to  
2 the total amount deposited in the general fund of  
3 the Treasury in the preceding fiscal year from fines,  
4 penalties, and other funds collected as a result of en-  
5 forcement actions brought under this section, section  
6 505(a)(1), or the Safe Drinking Water Act (42  
7 U.S.C. 300f et seq.), excluding any amounts ordered  
8 to be used to carry out projects in accordance with  
9 subsection (d).

10 “(3) INVESTMENT OF AMOUNTS.—

11 “(A) IN GENERAL.—The Secretary of the  
12 Treasury shall invest in interest-bearing obliga-  
13 tions of the United States such portion of the  
14 Fund as is not, in the judgment of the Sec-  
15 retary, required to meet current withdrawals.

16 “(B) ADMINISTRATION.—The obligations  
17 shall be acquired and sold and interest on, and  
18 the proceeds from the sale or redemption of, the  
19 obligations shall be credited to the Fund in ac-  
20 cordance with section 9602 of the Internal Rev-  
21 enue Code of 1986.

22 “(4) USE OF AMOUNTS FOR WATER QUALITY  
23 PROJECTS.—

24 “(A) IN GENERAL.—Amounts in the Fund  
25 shall be available to the Administrator, subject

1 to appropriation, to carry out projects the pri-  
2 mary purpose of which is water quality mainte-  
3 nance or improvement, including—

4 “(i) water conservation projects;

5 “(ii) wetland protection and restora-  
6 tion projects;

7 “(iii) contaminated sediment projects;

8 “(iv) drinking water source protection  
9 projects;

10 “(v) projects consisting of best man-  
11 agement practices that reduce pollutant  
12 loads in an impaired or threatened body of  
13 water;

14 “(vi) decentralized stormwater or  
15 wastewater treatment projects, including  
16 low-impact development practices;

17 “(vii) projects consisting of conserva-  
18 tion easements or land acquisition for  
19 water quality protection;

20 “(viii) projects consisting of construc-  
21 tion or maintenance of stream buffers;

22 “(ix) projects for planning, design,  
23 and construction of treatment works to re-  
24 mediate or control combined or sanitary  
25 sewer overflows; and

1           “(x) such other similar projects as the  
2           Administrator determines to be appro-  
3           priate.

4           “(B) LIMITATIONS ON USE OF FUNDS.—  
5           Amounts in the Fund—

6           “(i)(I) shall be used only to carry out  
7           projects described in subparagraph (A);  
8           and

9           “(II) shall not be used by the Admin-  
10          istrator to pay the cost of any legal or ad-  
11          ministrative expense incurred by the Ad-  
12          ministrator (except a legal or administra-  
13          tive expense relating to administration of  
14          the Fund); and

15          “(ii) shall be in addition to any  
16          amount made available to carry out  
17          projects described in subparagraph (A)  
18          under any other provision of law.

19          “(5) SELECTION OF PROJECTS.—

20          “(A) PRIORITY.—In selecting among  
21          projects eligible for assistance under this sub-  
22          section, the Administrator shall give priority to  
23          a project described in paragraph (4) that is lo-  
24          cated in a watershed in a State in which there  
25          has occurred a violation under this Act or the

1 Safe Drinking Water Act (42 U.S.C. 300f et  
2 seq.) for which an enforcement action was  
3 brought that resulted in the payment of an  
4 amount into the general fund of the Treasury.

5 “(B) SELECTION CRITERIA.—The Admin-  
6 istrator, in consultation with the United States  
7 Geological Survey and other appropriate agen-  
8 cies, shall establish criteria that maximize water  
9 quality improvement in watersheds and aquifers  
10 for use in selecting projects to carry out under  
11 this subsection.

12 “(C) COORDINATION WITH STATES.—In  
13 selecting a project to carry out under this sub-  
14 section, the Administrator shall coordinate with  
15 the State in which the Administrator is consid-  
16 ering carrying out the project.

17 “(6) IMPLEMENTATION.—

18 “(A) IN GENERAL.—Subject to subpara-  
19 graph (B), the Administrator may carry out a  
20 project under this subsection making grants  
21 to—

22 “(i) another Federal agency;

23 “(ii) a State agency;

24 “(iii) a political subdivision of a State;

1           “(iv) a publicly-owned treatment  
2 works;

3           “(v) a nonprofit entity;

4           “(vi) a public water system (as de-  
5 fined in section 1401 of the Safe Drinking  
6 Water Act (42 U.S.C. 300f));

7           “(vii) a Federal interstate water com-  
8 pact commission;

9           “(viii) an Indian tribe (as defined in  
10 section 4 of the Indian Self-Determination  
11 and Education Assistance Act (25 U.S.C.  
12 450b)); or

13           “(ix) a Native Hawaiian (as defined  
14 in section 12 of the Native Hawaiian  
15 Health Care Improvement Act (42 U.S.C.  
16 11710)).

17           “(B) EXCLUSION.—Under subparagraph  
18 (A), the Administrator may not make any grant  
19 to or enter into any contract with any private  
20 entity that is subject to regulation under—

21           “(i) this Act; or

22           “(ii) the Safe Drinking Water Act (42  
23 U.S.C. 300f et seq.).

24           “(7) REPORT TO CONGRESS.—Not later than 1  
25 year after the date of enactment of this subsection

1 and biennially thereafter, the Administrator shall  
2 submit to Congress a report that—

3 “(A) identifies the projects selected for  
4 funding under this subsection during the period  
5 covered by the report;

6 “(B) details the selection criteria estab-  
7 lished under paragraph (5)(B) that were used  
8 to select those projects;

9 “(C) describes the ways in which the Ad-  
10 ministrator coordinated with States under para-  
11 graph (5)(C) in selecting those projects; and

12 “(D) describes the priorities for use of  
13 funds from the Fund in future years in order  
14 to achieve water quality goals in bodies of im-  
15 paired or threatened water.

16 “(8) NO EFFECT ON OBLIGATION TO COM-  
17 PLY.—Nothing in this subsection affects the obliga-  
18 tion of any person subject to this Act or the Safe  
19 Drinking Water Act (42 U.S.C. 300f et seq.) to  
20 comply with either of those Acts.”.

21 **SEC. 4. USE OF CIVIL PENALTIES FOR REMEDIAL**  
22 **PROJECTS.**

23 (a) IN GENERAL.—Section 309(d) of the Federal  
24 Water Pollution Control Act (33 U.S.C. 1319(d)) is  
25 amended by inserting after the second sentence the fol-

1 lowing: “The court may order that a civil penalty assessed  
2 under this Act or the Safe Drinking Water Act (42 U.S.C.  
3 300f et seq.) (other than a civil penalty that would other-  
4 wise be deposited in the Oil Spill Liability Trust Fund  
5 under section 9509 of the Internal Revenue Code of 1986)  
6 be used to carry out 1 or more projects in accordance with  
7 clauses (i) through (iv) of subsection (h)(4)(A).”.

8 (b) CONFORMING AMENDMENT.—Section 505(a) of  
9 the Federal Water Pollution Control Act (33 U.S.C.  
10 1365(a)) is amended in the last sentence by inserting be-  
11 fore the period at the end the following: “, including order-  
12 ing the use of a civil penalty for carrying out projects in  
13 accordance with section 309(d)”.

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