

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2580

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 1, 1993

Mr. DEFAZIO (for himself, Mr. WYDEN, Mr. KOPETSKI, and Ms. FURSE) introduced the following bill; which was referred to the Committee on Public Works and Transportation

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## 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 1993”.

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  
10 third sentence and all that follows through the period at

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

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

11 **SEC. 3. FEDERAL FACILITY ENFORCEMENT.**

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) FEDERAL FACILITY ENFORCEMENT.—

16 “(1) COMPLIANCE ORDERS.—

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

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

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

8 “(ii) the Secretary of the Army deter-  
9 mines that any department, agency, or in-  
10 strumentality of the United States has vio-  
11 lated or is in violation of any condition or  
12 limitation in a permit issued under section  
13 404 of this Act;

14 “(iii) the Secretary of the department  
15 in which the Coast Guard is operating de-  
16 termines that any department, agency, or  
17 instrumentality of the United States has  
18 violated any provision of section 311 of  
19 this Act or any of its implementing regula-  
20 tions;

21 the Administrator or Secretary, as applicable,  
22 may propose an order to assess a civil penalty  
23 for any past or current violation or require  
24 compliance immediately or within a specified  
25 time period, or both.

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

3                   “(i) by the Administrator may include  
4                   a suspension or revocation of any permit  
5                   issued by the Administrator or a State  
6                   under sections 402 and 404 of this Act;  
7                   and

8                   “(ii) by the Secretary of the Army  
9                   may include a suspension or revocation of  
10                  any permit issued by the Secretary of the  
11                  Army or a State under section 404 of this  
12                  Act; and

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

16           “(2) PUBLIC HEARING.—Any order under this  
17           section shall become final unless, not later than 30  
18           days after the order is served, a Federal department,  
19           agency, or instrumentality of the United States  
20           named therein requests a public hearing. Upon such  
21           request, the Administrator or Secretary, as applica-  
22           ble, shall promptly conduct a public hearing. Such  
23           public hearing shall be conducted in accordance with  
24           section 554 of title 5, United States Code. In con-  
25           nection with any proceeding under this subsection,

1 the Administrator or Secretary may issue subpoenas  
2 for the attendance and testimony of witnesses and  
3 the production of relevant papers, books, and docu-  
4 ments and may promulgate rules for discovery pro-  
5 cedures.

6 “(3) VIOLATION OF COMPLIANCE ORDERS.—If  
7 a violator fails to take corrective action within the  
8 time specified in an order issued under paragraph  
9 (1)—

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

14 “(B)(i) the Administrator may suspend or  
15 revoke any permit issued pursuant to section  
16 402 or 404 of this Act which is the subject of  
17 the order, whether issued by the Administrator  
18 or the State; and

19 “(ii) the Secretary of the Army may sus-  
20 pend or revoke any permit issued pursuant to  
21 section 404 of this Act, whether issued by the  
22 Secretary of the Army or a State.

23 “(4) DETERMINATION OF AMOUNT OF PEN-  
24 ALTY.—In determining the amount of any penalty  
25 assessed under this subsection, the Administrator or

1 Secretary, as the case may be, shall consider the se-  
2 riousness of each violation or violations, the viola-  
3 tor's economic benefit or savings (if any) resulting  
4 from each violation, any history of prior violations,  
5 any good-faith efforts to avoid noncompliance or to  
6 comply with the applicable requirements, the viola-  
7 tor's ability to pay the penalty, and such other mat-  
8 ters in mitigation and aggravation as justice may  
9 require.

10 “(5) LIMITATION ON ACTIONS AND RIGHT OF  
11 INTERVENTION.—Any violation with respect to  
12 which the Administrator or the Secretary, as appli-  
13 cable, has commenced and is diligently prosecuting  
14 an action under this subsection, or for which the Ad-  
15 ministrator or the Secretary has issued a final order  
16 and the violator has paid a penalty assessed under  
17 this subsection, shall not be the subject of a civil en-  
18 forcement action under section 505 of this Act. In  
19 any action under this subsection, any citizen may in-  
20 tervene as a matter of right.

21 “(6) PENALTY FUND.—Penalties received under  
22 this subsection shall be deposited into a special fund  
23 in the United States Treasury for licensing and  
24 other services. Amounts in the fund are authorized  
25 to be appropriated and shall remain available until

1 expended for allocation by the Administrator to fi-  
2 nance water remediation and other restorative and  
3 preventive projects at Federal facilities. The Admin-  
4 istrator shall annually report to Congress about the  
5 sums deposited into the fund, the sources thereof,  
6 and the allocations thereof.”.

7 **SEC. 4. DEFINITION OF PERSON.**

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

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

18 **SEC. 5. DEFINITION OF RADIOACTIVE MATERIAL.**

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

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

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

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