

112TH CONGRESS
1ST SESSION

H. R. 3544

To amend the Federal Water Pollution Control Act to limit citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. McCLINTOCK introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to limit citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, 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. LIMITATION ON CITIZEN SUIT PROVISION.**

4 Section 505 of the Federal Water Pollution Control
5 Act (33 U.S.C. 1365) is amended—

6 (1) in subsection (a) by striking “subsection
7 (b)” and inserting “subsections (b) and (i)”; and

8 (2) by adding at the end the following:

1 “(i) LIMITATION FOR POTW SUITS.—

2 “(1) IN GENERAL.—No action may be com-
3 menced under subsection (a)(1) by a citizen with re-
4 spect to a publicly owned treatment works to enforce
5 an effluent standard or limitation under this Act or
6 an order issued by the Administrator or a State with
7 respect to such a standard or limitation unless the
8 publicly owned treatment works is in significant non-
9 compliance, as defined in the Environmental Protec-
10 tion Agency’s December 12, 1996, guidance docu-
11 ment entitled ‘A General Design for SNC Redefini-
12 tion Enhancement in PCS’.

13 “(2) EXCEPTION.—Notwithstanding paragraph
14 (1), no action may be commenced under subsection
15 (a)(1) with respect to a publicly owned treatment
16 works that is in significant non-compliance based on
17 a manual designation, as defined in the Environ-
18 mental Protection Agency’s December 12, 1996,
19 guidance document entitled ‘A General Design for
20 SNC Redefinition Enhancement in PCS’.”.

21 **SEC. 2. AFFIRMATIVE DEFENSES.**

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

25 “(h) AFFIRMATIVE DEFENSES.—

1 “(1) IN GENERAL.—There shall be no liability
2 under this Act for a person otherwise liable for the
3 unlawful discharge of a pollutant from a publicly
4 owned treatment works who can establish by a pre-
5 ponderance of the evidence that the immediate cause
6 of the unlawful discharge and any damages was—

7 “(A) an act of God;

8 “(B) an act of war;

9 “(C) an act or omission of a third party
10 other than an employee or agent of the defend-
11 ant, or than one whose act or omission occurs
12 in connection with a contractual relationship,
13 existing directly or indirectly, with the defend-
14 ant, if the defendant establishes by a prepon-
15 derance of the evidence that—

16 “(i) he exercised due care in light of
17 all relevant facts and circumstances; and

18 “(ii) he took precautions against fore-
19 seeable acts or omissions of any such third
20 party and the consequences that could
21 foreseeably result from such acts or omis-
22 sions; or

23 “(D) any combination of the foregoing
24 subparagraphs.

1 “(2) ADDITIONAL DEFENSES.—All general de-
2 fenses, affirmative defenses, and bars to prosecution
3 that may apply with respect to other Federal crimi-
4 nal offenses may apply under this Act and shall be
5 determined by the courts of the United States ac-
6 cording to the principles of common law as they may
7 be interpreted in the light of reason and experience.
8 Concepts of justification and excuse applicable under
9 this section may be developed in the light of reason
10 and experience.”.

11 **SEC. 3. WAITING PERIOD.**

12 In implementing the Federal Water Pollution Control
13 Act, the Administrator of the Environmental Protection
14 Agency or a State, as the case may be, shall provide a
15 60-day waiting period between the notice of a violation of
16 the Act by a publicly owned treatment works and the
17 issuance of a civil penalty. If within such 60-day period
18 the publicly owned treatment works submits a viable plan
19 for correcting the non-compliance that is the subject of
20 the notice and thereafter diligently implements such plan,
21 the Administrator shall not assess a civil penalty for the
22 notice of violation.

23 **SEC. 4. PERMIT LENGTH.**

24 (a) IN GENERAL.—Notwithstanding any other law,
25 any permit issued to the owner or operator of a publicly

1 owned treatment works by the Administrator of the Envi-
2 ronmental Protection Agency or a State, as the case may
3 be, to discharge a pollutant under the Federal Water Pol-
4 lution Control Act shall have a 15-year term.

5 (b) CONFORMING AMENDMENT.—Section
6 402(b)(1)(B) of the Federal Water Pollution Control Act
7 is amended by striking “five years” and inserting “5
8 years, or, in the case of a publicly owned treatment works,
9 15 years”.

10 **SEC. 5. ATTORNEY’S FEES.**

11 Section 505(d) of the Federal Water Pollution Con-
12 trol Act (33 U.S.C. 1365(d)) is amended by inserting after
13 the first sentence the following: “With respect to an action
14 involving a publicly owned treatment works, the court, in
15 determining whether the costs of litigation (including at-
16 torney and expert witness fees) are reasonable, shall con-
17 sider the prevailing rate of such fees in the community
18 where the publicly owned treatment works is located.”.

19 **SEC. 6. COST BENEFIT ANALYSIS.**

20 Notwithstanding any other law, any new or increased
21 treatment requirement associated with a permit issued to
22 the owner or operator of a publicly owned treatment works
23 by the Administrator of the Environmental Protection
24 Agency or a State, as the case may be, to discharge a
25 pollutant under the Federal Water Pollution Control Act

1 shall be subject to a cost-benefit analysis performed by
2 the Administrator or the State to ensure that the costs
3 imposed on such owner or operator to comply with such
4 new or increased requirement are outweighed by the ben-
5 efit to the public of the new or increased requirement.

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