To amend title 10, United States Code, to require the Department of Defense and all other defense-related agencies of the United States to fully comply with Federal and State environmental laws, including certain laws relating to public health and worker safety, that are designed to protect the environment and the health and safety of the public, particularly those persons most vulnerable to the hazards incident to military operations and installations, such as children, members of the Armed Forces, civilian employees, and persons living in the vicinity of military operations and installations.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2011

Mr. FILNER introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Energy and Commerce, Transportation and Infrastructure, Natural Resources, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 10, United States Code, to require the Department of Defense and all other defense-related agencies of the United States to fully comply with Federal and State environmental laws, including certain laws relating to public health and worker safety, that are designed to protect the environment and the health and safety of the public, particularly those persons most vulnerable to the hazards incident to military operations and installations, such as children, members of the
Armed Forces, civilian employees, and persons living in the vicinity of military operations and installations.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Military Environmental Responsibility Act”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.
Sec. 3. Compliance of Federal defense agencies with public safety and environ-
mental laws.
Sec. 4. Applicability of NEPA to weapon system development and procurement.
Sec. 5. Repeal of prohibitions on use of defense funds for environmental compli-
ance and payment of penalties.
Sec. 6. Savings provision.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To require the Department of Defense and all other defense-related agencies of the United States, as defined in the amendment made by sec-

(2) To entirely waive any and all sovereign im-
munity and to entirely revoke any and all exemp-
tions of the Department of Defense and all other de-
fense-related agencies of the United States within
the United States and abroad that might in any way
limit or exempt those agencies from complying with
all Federal and State environmental laws designed
to protect the health and safety of the public or the
environment.

(3) To leave no ambiguity for the executive or
judicial branches that the Department of Defense
and all other defense-related agencies are fully sub-
ject to all the requirements and possible enforcement
of all Federal and State environmental laws designed
to protect the health and safety of the public or the
environment.

SEC. 3. COMPLIANCE OF FEDERAL DEFENSE AGENCIES
WITH PUBLIC SAFETY AND ENVIRONMENTAL
LAWS.

(a) COMPLIANCE REQUIRED.—Chapter 160 of title
10, United States Code, is amended by adding at the end
the following new section:

“§ 2711. Applicability of environmental laws to the
Department of Defense and defense-re-
lated agencies

“(a) DEFINITIONS.—In this section:

“(1) The term ‘Federal defense agency’ means—
“(A) the Department of Defense;

“(B) the Department of Energy;

“(C) the Nuclear Regulatory Commission;

“(D) the Office of Naval Nuclear Reactors provided for by Executive Order 12344 (47 Fed. Reg. 4979; 50 U.S.C. 2511 note; February 3, 1982), relating to the Naval Nuclear Propulsion Program;

“(E) any other defense-related agency of the United States designated by the President for purposes of this section; and

“(F) installations, facilities, and operations of the Department of Defense and other defense-related agencies covered by this paragraph, whether located or conducted inside or outside of the United States.

“(2) The term ‘defense agency head’ means—

“(A) the Secretary of Defense, with respect to the Department of Defense and installations, facilities, and operations of the Department of Defense, whether located or conducted inside or outside of the United States; and

“(B) the head of a Federal defense agency covered by any of subparagraphs (B) through (E) of paragraph (1), with respect to that agen-
cy and installations, facilities, and operations of
that agency, whether located or conducted in-
side or outside of the United States.

“(3) The term ‘administering Federal agency’
means the Federal agency responsible for the admin-
istration or enforcement, or both, of a Federal law
covered by subsection (c). In most cases that agency
is the Environmental Protection Agency.

“(4) The term ‘State’ includes any unit of local
government within a State, and the term ‘State law’
includes any local law and any interstate compact or
agreement.

“(b) Applicability of Environmental Laws.—
The substantive and procedural requirements of each of
the laws covered by subsection (c) shall apply to each Fed-
eral defense agency in the same manner and to the same
extent as any person is subject to those requirements. To
the extent not provided before the date of the enactment
of the Military Environmental Responsibility Act in any
other provision of law, the United States hereby expressly
waives any immunity, and revokes any exemption, other-
wise applicable to a Federal defense agency with respect
to any such substantive or procedural requirement.

“(c) Covered Laws.—The laws covered by this sub-
section are all Federal laws, including treaties and regula-
tions, and all State laws, that are designed to protect the
environment or designed to protect the health and safety
of the public. At a minimum, those laws include the fol-
lowing Federal laws and their analogous State counter-
parts:

“(1) The Atomic Energy Act of 1954 (42
U.S.C. 2011 et seq.).

“(2) The Clean Air Act (42 U.S.C. 7401 et
seq.).

“(3) The Comprehensive Environmental Re-
response, Compensation, and Liability Act of 1980 (42
U.S.C. 9601 et seq.).

“(4) The Coastal Zone Management Act of
1972 (16 U.S.C. 1451 et seq.).

“(5) The Department of Energy Organization
Act (42 U.S.C. 7101 et seq.).

“(6) The Emergency Planning and Community
Right-To-Know Act of 1986 (42 U.S.C. 11001 et
seq.).

“(7) The Endangered Species Act of 1973 (16
U.S.C. 1531 et seq.).

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

“(9) The Marine Mammal Protection Act of
1972 (16 U.S.C. 1361 et seq.).


“(14) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

“(15) The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

Notwithstanding the first sentence of this subsection, the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) are not covered by this subsection, such laws containing sovereign immunity waiver provisions that otherwise appropriately provide for protection of the environment and the health and safety of the public.

“(d) COVERED SUBSTANTIVE AND PROCEDURAL REQUIREMENTS.—(1) The substantive and procedural requirements referred to in subsection (b) include the following:
“(A) All regulatory standards, guidelines, and prohibitions including all emission standards, toxicity standards, exposure standards, and use prohibitions.

“(B) All administrative orders.

“(C) All civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

“(D) All conditions for permits or reporting.

“(E) All provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief.

“(F) The payment of service charges.

“(2) The service charges referred to in paragraph (1)(F) include fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal or State regulatory program under a law covered by subsection (c).

“(3) Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with
respect to the enforcement of any such injunctive relief.

No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal or State law covered by subsection (c) with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including any fine or imprisonment) under any Federal or State law covered by subsection (c), but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the United States shall be subject to any such sanction.

“(e) USE OF EXEMPTION AUTHORITY.—If a Federal law covered by subsection (c) authorizes the President or the head of the administering Federal agency to grant exemptions from any substantive or procedural requirement of that law, any use of that authority on behalf of a Federal defense agency after the date of the enactment of the Military Environmental Responsibility Act shall be effective only for a specified period, not to exceed 180 days, unless such period is specifically extended by Act of Congress.

“(f) ADMINISTRATIVE ENFORCEMENT ACTIONS.—The head of an administering Federal agency shall commence an administrative enforcement action against a de-
fense agency head pursuant to the enforcement authorities contained in the relevant Federal law covered by subsection (c) in the same manner and under the same circumstances as an action would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

“(g) CITIZEN SUITS.—(1) Except as provided in paragraph (3) or (4), any person may commence a civil action on the person’s own behalf against—

“(A) a defense agency head who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to a Federal law covered by subsection (c); or

“(B) the head of an administering Federal agency where there is alleged a failure of the head of the administering Federal agency to perform any act or duty under a Federal law covered by subsection (c) that is not discretionary.

“(2) Any action under paragraph (1)(A) shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (1)(B) may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district
court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties—

“(A) to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A);

“(B) to restrain a defendant from continuing a violation of a Federal law covered by subsection (c);

“(C) to order the head of an administering Federal agency to perform the act or duty referred to in paragraph (1)(B);

“(D) to order a defendant to take such other action as may be necessary; and

“(E) to apply any appropriate civil penalties available under the Federal law at issue.

“(3) No action may be commenced under paragraph (1)(A)—

“(A) prior to 60 days after the plaintiff has given notice of the violation to—

“(i) the head of the relevant administering Federal agency;

“(ii) the State in which the alleged violation occurs; and

“(iii) the defense agency head in violation of the permit, standard, regulation, condition, requirement, prohibition, or order at issue; or
“(B) if the head of the administering Federal agency or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

“(4) No action may be commenced under paragraph (1)(B) prior to 60 days after the plaintiff has given notice to the head of the relevant administering Federal agency that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the head of the administering Federal agency shall prescribe by regulation.

“(5) In any action under this subsection, the head of the relevant administering Federal agency, if not a party, may intervene as a matter of right.

“(6) The court, in issuing any final order in any action brought pursuant to this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.
“(7) Nothing in this subsection shall restrict any right that a person (or class of persons) may have under a Federal law covered by subsection (c) or common law to seek enforcement of that Federal law or to seek any other relief (including relief against the head of an administering Federal agency or a State agency).

“(h) JUDICIAL INTERPRETATION.—The courts of the United States and of the States shall construe the provisions of this section and any other provision of law waiving the sovereign immunity of the United States under a law covered by subsection (c) liberally to effect the intent of Congress that the United States, acting through a covered defense agency, comply with, and be subject to enforcement under, those laws to the same extent as private parties.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2711. Applicability of environmental laws to the Department of Defense and defense-related agencies.”.

SEC. 4. APPLICABILITY OF NEPA TO WEAPON SYSTEM DEVELOPMENT AND PROCUREMENT.

Section 2431 of title 10, United States Code, is amended by adding at the end the following new subsection:
“(d) In the case of each weapon system for which the Secretary of Defense is required to submit documents under subsection (a), the Secretary shall ensure that all development and procurement decisions regarding the weapon system are made in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”.

SEC. 5. REPEAL OF PROHIBITIONS ON USE OF DEFENSE FUNDS FOR ENVIRONMENTAL COMPLIANCE AND PAYMENT OF PENALTIES.

(a) Restored Availability of Restoration Account.—Section 2703 of title 10, United States Code, is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(b) Formerly Used Site Remedial Action Program.—Section 3131 of the National Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. 2701 note) is repealed.

(c) Conforming Repeal.—Section 8149 of the Department of Defense Appropriations Act, 2000 (Public Law 106–79; 113 Stat. 1271), is repealed.
SEC. 6. SAVINGS PROVISION.

Nothing in section 2711 of title 10, United States Code, as added by section 3 of this Act, or any other provision of this Act, may be construed as creating an inference that any provision of Federal law enacted before the date of the enactment of this Act that waived the sovereign immunity of the United States under a law of the United States or of any State was not fully effective and in force under its own terms before the date of the enactment of this Act.