

Public Law 95-576
95th Congress

An Act

To amend the Federal Water Pollution Control Act to provide additional authorizations for certain operating programs under the Act.

Nov. 2, 1978

[H.R. 12140]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) clause (1) of section 104(u) of the Federal Water Pollution Control Act (33 U.S.C. 1254) is amended to read as follows: "(1) not to exceed \$100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed \$14,039,000 for the fiscal year ending September 30, 1980, for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions;"

Federal Water
Pollution Control
Act, amendment.

(b) (1) Section 311(a) (2) of the Federal Water Pollution Control Act is amended by inserting before the semicolon at the end thereof the following: ", but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;"

Oil and
hazardous
substance
liability.
33 USC 1321.
33 USC 1342.

(2) Section 311(a) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(17) 'Otherwise subject to the jurisdiction of the United States' means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party."

(3) Section 311(b) (2) (B) of such Act is amended to read as follows:

Study and report
to Congress.

"(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b) (2) of section 311 of Public Law 92-500 should be enacted."

86 Stat. 862.

33 USC 1321.

(4) Section 311(b)(3) of such Act is amended by striking out "in harmful quantities" and inserting in lieu thereof "in such quantities as may be harmful".

Regulations.

(5) Section 311(b)(4) of such Act is amended to read as follows:

"(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches."

(6) Section 311(b)(5) of the Federal Water Pollution Control Act is amended by inserting "at the time of the discharge" after the words "otherwise subject to the jurisdiction of the United States".

(7) Section 311(b)(6) of such Act is amended by inserting after "(6)" the letter "(A)" and by inserting "at the time of the discharge" after the words "otherwise subject to the jurisdiction of the United States", and by inserting four new subparagraphs as follows:

Penalty.

"(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifested by the owner, operator, or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed \$50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed \$250,000. Each violation is a separate offense. Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

Jurisdiction.

Damages,
mitigation.

Costs.

"(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

“(D) Any costs of removal incurred in connection with a discharge excluded by subsection (a) (2) (C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309 (b) of this Act. Recovery.

“(E) Civil penalties shall not be assessed under both this section and section 309 for the same discharge.”

33 USC 1319.

Approved November 2, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1097 (Comm. on Public Works and Transportation).
CONGRESSIONAL RECORD, Vol. 124 (1978):

June 5, considered and passed House.

Oct. 15, considered and passed Senate, amended; House concurred in Senate amendment.