

106TH CONGRESS  
1ST SESSION

# S. 1706

To amend the Federal Water Pollution Control Act to exclude from stormwater regulation certain areas and activities, and to improve the regulation and limit the liability of local governments concerning co-permitting and the implementation of control measures.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 1999

Mrs. HUTCHISON (for herself and Mr. GRAMM) 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 exclude from stormwater regulation certain areas and activities, and to improve the regulation and limit the liability of local governments concerning co-permitting and the implementation of control measures.

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 “Water Regulation Im-  
5 provement Act of 1999”.

1 **SEC. 2. WAIVER OF LIABILITY OF CO-PERMITTEES.**

2 Section 402(p)(3)(B) of the Federal Water Pollution  
3 Control Act (33 U.S.C. 1342(p)(3)(B)) is amended—

4 (1) in clause (ii), by striking “and”;

5 (2) in clause (iii), by striking the period at the  
6 end and inserting “; and”; and

7 (3) by adding at the end the following:

8 “(iv) shall—

9 “(I) recognize the responsibility  
10 of governmental entities to carry out  
11 the control measures described in  
12 clause (iii), including responsibilities  
13 established through co-permits or  
14 other mechanisms; and

15 “(II) provide that, in the case of  
16 a local governmental entity (including  
17 a municipality, county, city, or bor-  
18 ough) that relies on a co-permittee or  
19 another governmental entity to comply  
20 with any requirement to implement a  
21 control measure in which the co-per-  
22 mittee or other governmental entity  
23 assumes responsibility for implemen-  
24 tation of, but fails to implement, the  
25 control measure, the local govern-  
26 mental entity shall not be liable for

1 the failure of the co-permittee or  
2 other governmental entity to imple-  
3 ment the control measure.”.

4 **SEC. 3. EXCLUSION OF CERTAIN AREAS AND ACTIVITIES**  
5 **FROM STORMWATER REGULATION.**

6 Section 402(p) of the Federal Water Pollution Con-  
7 trol Act (33 U.S.C. 1342(p)) is amended by adding at the  
8 end the following:

9 “(7) EXCLUSIONS.—

10 “(A) VEGETATED ROAD DITCHES.—For  
11 stormwater discharges identified under para-  
12 graph (5), the Administrator shall not require  
13 any local governmental entity (including a mu-  
14 nicipality, county, city, or borough), to apply for  
15 and obtain a permit for any stormwater dis-  
16 charge associated with an above-ground vege-  
17 tated drainage ditch or a drainage way owned  
18 or operated in connection with a road or street  
19 under the jurisdiction of the local governmental  
20 entity.

21 “(B) CONSTRUCTION ACTIVITIES AND ROU-  
22 TINE ROAD MAINTENANCE.—A discharge regu-  
23 lated under subparagraph (B) or (E) of para-  
24 graph (2), and any stormwater discharge identi-  
25 fied under paragraph (5), shall not include—

1           “(i) a stormwater discharge associated  
2           with a construction activity (including  
3           grading, clearing, and excavation) that dis-  
4           turbs not more than 5 acres of land; or

5           “(ii) a routine maintenance activity  
6           associated with a road, street, vegetated  
7           road ditch, or vegetated drainage way.

8           “(C) PROHIBITION OF REQUIREMENTS EX-  
9           CEEDING STATE LAW AUTHORITY.—Nothing in  
10          this subsection requires a local governmental  
11          entity to exceed the authority granted to the  
12          local governmental entity under State law to  
13          implement a regulatory requirement.”.

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