

106TH CONGRESS  
1ST SESSION

# S. 669

To amend the Federal Water Pollution Control Act to ensure compliance  
by Federal facilities with pollution control requirements.

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## IN THE SENATE OF THE UNITED STATES

MARCH 19, 1999

Mr. COVERDELL (for himself, Mr. BREAUX, Mr. DEWINE, and Mr. GRAMS)  
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 ensure  
compliance by Federal facilities with pollution control  
requirements.

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 1999”.

6       **SEC. 2. FEDERAL FACILITIES CLEAN WATER COMPLIANCE.**

7       (a) APPLICATION OF CERTAIN PROVISIONS TO FED-  
8       ERAL FACILITIES.—Section 313 of the Federal Water Pol-  
9       lution Control Act (33 U.S.C. 1323) is amended—

1           (1) by redesignating subsection (b) as sub-  
2           section (d); and

3           (2) by striking subsection (a) and inserting the  
4           following:

5           “(a) COMPLIANCE.—

6           “(1) DEFINITION OF REASONABLE SERVICE  
7           CHARGE.—In this subsection, the term ‘reasonable  
8           service charge’ includes—

9           “(A) a fee or charge assessed in connection  
10          with the processing, issuance, renewal, or  
11          amendment of a permit, review of a plan, study,  
12          or other document, or inspection or monitoring  
13          of a facility; and

14          “(B) any other nondiscriminatory charge  
15          that is assessed in connection with a Federal,  
16          State, interstate, or local regulatory program  
17          concerning the control and abatement of water  
18          pollution.

19          “(2) REQUIREMENT.—Each department, agen-  
20          cy, and instrumentality of the executive, legislative,  
21          or judicial branch of the Federal Government that  
22          has jurisdiction over any property or facility, or is  
23          engaged in any activity that results, or that may re-  
24          sult, in the discharge or runoff of a pollutant shall  
25          be subject to, and shall comply with, all Federal,

1 State, interstate, and local substantive and proce-  
 2 dural requirements (including any requirement for a  
 3 permit or reporting, any provision for injunctive re-  
 4 lief and such sanctions as are imposed by a Federal  
 5 or State court to enforce the relief, and any require-  
 6 ment for the payment of a reasonable service  
 7 charge) concerning the control and abatement of  
 8 water pollution in the same manner, and to the same  
 9 extent, as any other person is subject to the require-  
 10 ments.

11 “(3) WAIVER OF SOVEREIGN IMMUNITY.—The  
 12 United States waives any immunity otherwise appli-  
 13 cable to the United States with respect to any sub-  
 14 stantive or procedural requirement described in  
 15 paragraph (2), including immunity from process in  
 16 an administrative or court action seeking—

17 “(A) injunctive relief;

18 “(B) imposition of a sanction referred to  
 19 in this subsection;

20 “(C) enforcement of an administrative  
 21 order;

22 “(D) imposition of an administrative pen-  
 23 alty or fine; or

24 “(E) payment of a reasonable service  
 25 charge.

1           “(4) ADMINISTRATIVE ORDERS AND PEN-  
 2           ALTIES.—The substantive and procedural require-  
 3           ments described in paragraph (2) include all admin-  
 4           istrative orders and all civil and administrative pen-  
 5           alties or fines, regardless of whether the penalties or  
 6           fines are punitive or coercive in nature or are im-  
 7           posed for isolated, intermittent, or continuing viola-  
 8           tions.

9           “(5) INJUNCTIVE RELIEF.—The United States  
 10          (including any agent, employee, or officer of the  
 11          United States) shall not be immune or exempt from  
 12          any process or sanction of any State or Federal  
 13          court with respect to the enforcement of any injunc-  
 14          tive relief referred to in paragraph (2).

15          “(6) CIVIL PENALTIES.—No agent, employee,  
 16          or officer of the United States shall be personally  
 17          liable for any civil penalty under any Federal, State,  
 18          interstate, or local law concerning the control and  
 19          abatement of water pollution with respect to any act  
 20          or omission within the scope of the official duties of  
 21          the agent, employee, or officer.

22          “(7) CRIMINAL PENALTIES.—

23                 “(A) AGENTS, EMPLOYEES, AND OFFI-  
 24                 CERS.—An agent, employee, or officer of the  
 25                 United States shall be subject to a criminal

1           sanction (including a fine or imprisonment)  
 2           under any Federal or State law concerning the  
 3           control and abatement of water pollution.

4           “(B) DEPARTMENTS, AGENCIES, AND IN-  
 5           STRUMENTALITIES.—No department, agency,  
 6           or instrumentality of the executive, legislative,  
 7           or judicial branch of the Federal Government  
 8           shall be subject to a sanction referred to in sub-  
 9           paragraph (A).

10          “(b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—

11           “(1) IN GENERAL.—

12           “(A) COMMENCEMENT.—The Adminis-  
 13           trator, the Secretary of the Army, and the Sec-  
 14           retary of the department in which the Coast  
 15           Guard is operating may commence an adminis-  
 16           trative enforcement action against any depart-  
 17           ment, agency, or instrumentality of the execu-  
 18           tive, legislative, or judicial branch of the Fed-  
 19           eral Government pursuant to the enforcement  
 20           authorities authorized by this Act.

21           “(B) MANNER AND CIRCUMSTANCES.—The  
 22           Administrator or Secretary, as applicable, shall  
 23           initiate an administrative enforcement action  
 24           against such a department, agency, or instru-  
 25           mentality in the same manner and under the

1 same circumstances as the Administrator or  
 2 Secretary would initiate such an action against  
 3 another person.

4 “(C) CONSENT ORDERS.—Any voluntary  
 5 resolution or settlement of an action described  
 6 in subparagraph (B) shall be set forth in a con-  
 7 sent order.

8 “(2) OPPORTUNITY TO CONFER.—An adminis-  
 9 trative order issued to a department, agency, or in-  
 10 strumentality under paragraph (1) shall not become  
 11 final until the department, agency, or instrumen-  
 12 tality has had the opportunity to confer with the Ad-  
 13 ministrator or Secretary, as applicable.

14 “(c) LIMITATION ON STATE USE OF FUNDS COL-  
 15 LECTED FROM THE FEDERAL GOVERNMENT.—Unless a  
 16 State law in effect on the date of enactment of this sub-  
 17 section or a State constitution requires the funds to be  
 18 used in a different manner, all funds collected by a State  
 19 from the Federal Government from penalties and fines im-  
 20 posed for violation of a substantive or procedural require-  
 21 ment described in subsection (a) shall be used by the State  
 22 only for projects designed to improve or protect the envi-  
 23 ronment or to defray the costs of environmental protection  
 24 or enforcement.”.

25 (b) DEFINITION OF PERSON.—

1           (1) GENERAL DEFINITIONS.—Section 502(5) of  
 2           the Federal Water Pollution Control Act (33 U.S.C.  
 3           1362(5)) is amended—

4                   (A) by striking “or any” and inserting  
 5                   “an”; and

6                   (B) by inserting before the period at the  
 7                   end the following: “or a department, agency, or  
 8                   instrumentality of the United States”.

9           (2) OIL AND HAZARDOUS SUBSTANCE LIABILITY  
 10          PROGRAM.—Section 311(a)(7) of the Federal Water  
 11          Pollution Control Act (33 U.S.C. 1321(a)(7)) is  
 12          amended—

13                   (A) by striking “a”; and

14                   (B) by inserting before the semicolon at  
 15                   the end the following: “and a department, agen-  
 16                   cy, or instrumentality of the United States”.

17          (c) CITIZEN SUITS.—Section 505 of the Federal  
 18          Water Pollution Control Act (33 U.S.C. 1365) is  
 19          amended—

20                   (1) in subsection (a)—

21                           (A) in paragraph (1), by striking “, or”  
 22                           and inserting a semicolon;

23                           (B) in paragraph (2), by striking the pe-  
 24                           riod at the end and inserting “; or”; and

25                           (C) by adding at the end the following:

1 “(3) for the collection of a penalty by the  
 2 United States Government (and associated costs and  
 3 interest) against any Federal agency that fails, by  
 4 the date that is 18 months after the effective date  
 5 of a final order, to pay a penalty assessed by the Ad-  
 6 ministrator under this Act.”; and

7 (2) by striking subsection (b) and inserting the  
 8 following:

9 “(b) NOTICE.—

10 “(1) IN GENERAL.—Except as provided in para-  
 11 graph (2), no action may be commenced—

12 “(A) under subsection (a)(1)—

13 “(i) before 60 days after the plaintiff  
 14 has given notice of the alleged violation  
 15 to—

16 “(I) the Administrator;

17 “(II) the State in which the al-  
 18 leged violation occurs; and

19 “(III) any alleged violator of the  
 20 standard, limitation, or order; or

21 “(ii) if the Administrator or State has  
 22 commenced and is diligently prosecuting a  
 23 civil or criminal action in a court of the  
 24 United States or a State to require compli-  
 25 ance with the standard, limitation, or order



1            (but in any such action in a court of the  
 2            United States any citizen may intervene as  
 3            a matter of right);

4            “(B) under subsection (a)(2), before 60  
 5            days after the plaintiff has given notice of the  
 6            action to the Administrator; or

7            “(C) under subsection (a)(3), before 60  
 8            days after the plaintiff has given notice of the  
 9            action to the Attorney General and the head of  
 10           the Federal agency referred to in subsection  
 11           (a)(3).

12           “(2) EXCEPTION.—An action may be brought  
 13           immediately after the giving of notice in the case of  
 14           an action under this section respecting a violation of  
 15           section 306 or 307(a).

16           “(3) MANNER OF GIVING NOTICE.—Notice  
 17           under this subsection shall be given in such manner  
 18           as the Administrator shall prescribe by regulation.”.

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