

116TH CONGRESS  
1ST SESSION

# H. R. 892

To amend the Federal Water Pollution Control Act to limit attorney fees and penalties in citizen suits, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2019

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

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## A BILL

To amend the Federal Water Pollution Control Act to limit attorney fees and penalties in citizen suits, 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. LITIGATION COSTS.**

4       Section 505(d) of the Federal Water Pollution Con-  
5       trol Act (33 U.S.C. 1365(d)) is amended to read as fol-  
6       lows:

7       “(d) AWARDS.—

8               “(1) The court, in issuing any final order in  
9       any action brought under this section, may award  
10      costs of litigation (including reasonable attorney and

expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The award—

“(A) may not exceed an amount that, as compared to the total amount of attorney and expert witness fees charged, bears the same proportion as the number of successful claims included in the complaint bears to the total number of claims included in the complaint;

“(B) may not exceed the amount of monetary penalties awarded; and

“(C) shall be based upon the prevailing market rates in the area in which the violation occurred for the kind and quality of the services furnished.

“(2) 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.”.

**SEC. 2. DILIGENT PROSECUTION.**

Section 309(g)(6) of the Federal Water Pollution Control Act (33 U.S.C. 1319(g)(6)) is amended by adding at the end following new subparagraph:

“(C) DILIGENT PROSECUTION.—

1 “(i) DILIGENTLY PROSECUTING DE-  
 2 FINED.—In this paragraph, the term ‘dili-  
 3 gently prosecuting’ includes the issuance of  
 4 any order made under this section or a  
 5 State law comparable to this section.

6 “(ii) COMMENCEMENT OF DILIGENT  
 7 PROSECUTION.—Diligent prosecution com-  
 8 mences on the date the proposed order is  
 9 issued.

10 “(iii) ISSUANCE OF FINAL ORDER.—  
 11 The Administrator or the Secretary shall  
 12 be considered to be diligently prosecuting  
 13 an action under this subsection if the Ad-  
 14 ministrator or the Secretary issues a final  
 15 order before the date that is one year after  
 16 the date on which such proposed order is  
 17 issued.”.

18 **SEC. 3. AFFIRMATIVE DEFENSES.**

19 Section 309 of the Federal Water Pollution Control  
 20 Act (33 U.S.C. 1319) is amended by adding at the end  
 21 the following new subsection:

22 “(h) AFFIRMATIVE DEFENSES.—

23 “(1) IN GENERAL.—There shall be no liability  
 24 under this Act for a person otherwise liable for the  
 25 unlawful discharge of a pollutant who can establish

1 by a preponderance of the evidence that the imme-  
2 diate cause of the unlawful discharge and any dam-  
3 ages was—

4 “(A) an act of God;

5 “(B) an act of war;

6 “(C) an act or omission of a third party  
7 (unless such third party is an employee or  
8 agent of such person, or such third party’s act  
9 or omission occurred in connection with a con-  
10 tractual relationship, existing directly or indi-  
11 rectly, with such person), if such person estab-  
12 lishes by a preponderance of the evidence that  
13 such person—

14 “(i) exercised due care in light of all  
15 relevant facts and circumstances; and

16 “(ii) took precautions against foresee-  
17 able acts or omissions of any such third  
18 party and the consequences that could  
19 foreseeably result from such acts or omis-  
20 sions; or

21 “(D) any combination of subparagraphs  
22 (A), (B), and (C).

23 “(2) OTHER AFFIRMATIVE DEFENSES.—All  
24 general defenses, affirmative defenses, and bars to  
25 prosecution that may apply with respect to other

1 Federal criminal offenses may apply to a person oth-  
2 erwise liable for the unlawful discharge of a pollut-  
3 ant under this Act and shall be determined by the  
4 courts of the United States according to the prin-  
5 ciples of common law as may be interpreted in light  
6 of reason and experience.”.

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