

106TH CONGRESS
2D SESSION

H. R. 5077

To provide for the assessment of an increased civil penalty in a case in which a person or entity that is the subject of a civil environmental enforcement action has previously violated an environmental law or in a case in which a violation of an environmental law results in a catastrophic event.

IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2000

Mr. PALLONE introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, and Agriculture, 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 provide for the assessment of an increased civil penalty in a case in which a person or entity that is the subject of a civil environmental enforcement action has previously violated an environmental law or in a case in which a violation of an environmental law results in a catastrophic event.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Increased Environ-
3 mental Compliance Act of 2000”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress finds that—

6 (1) if a person or entity that is the subject of
7 a civil enforcement action under an environmental
8 law has previously violated an environmental law at
9 the same site or facility or for the same regulated
10 activity, the person or entity—

11 (A) was apparently not deterred by the
12 previous Federal or State enforcement action;
13 and

14 (B) should be subject to an additional pen-
15 alty to achieve the goal of deterrence; and

16 (2) because of the daily penalty maximums
17 specified in environmental law in effect on the date
18 of enactment of this Act, the penalty assessed for a
19 violation that results in a single catastrophic event
20 may not be great enough to reflect the serious actual
21 or potential public health or environmental con-
22 sequences of the violation.

23 (b) PURPOSE.—The purpose of this Act is to provide
24 for the assessment of an increased civil penalty in a case
25 in which—

- 1 (1) a person or entity that is the subject of a
2 civil environmental enforcement action has pre-
3 viously violated an environmental law at the same
4 site or facility or for the same regulated activity; or
5 (2) a violation of an environmental law results
6 in a catastrophic event.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) **ADMINISTRATOR.**—The term “Adminis-
10 trator” means—

11 (A) the Administrator of the Environ-
12 mental Protection Agency; and

13 (B) to the extent that a State has been
14 delegated, authorized, or approved authority to
15 enforce an environmental law, the State.

16 (2) **ENVIRONMENTAL LAW.**—The term “envi-
17 ronmental law” means any of the following laws (in-
18 cluding any regulation, permit, or other requirement,
19 any administrative or judicial judgment, settlement
20 agreement, order or decree on consent, and any ad-
21 ministrative or judicial order issued or imposed
22 under any such law):

23 (A) The Federal Insecticide, Fungicide,
24 and Rodenticide Act (7 U.S.C. 136 et seq.).

1 (B) The Toxic Substances Control Act (15
2 U.S.C. 2601 et seq.).

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

5 (D) The Marine Protection, Research, and
6 Sanctuaries Act of 1972 (33 U.S.C. 1401 et
7 seq.).

8 (E) The Act to Prevent Pollution from
9 Ships (33 U.S.C. 1901 et seq.).

10 (F) The Shore Protection Act of 1988 (33
11 U.S.C. 2601 et seq.).

12 (G) The Safe Drinking Water Act (42
13 U.S.C. 300f et seq.).

14 (H) The Solid Waste Disposal Act (42
15 U.S.C. 6901 et seq.).

16 (I) The Clean Air Act (42 U.S.C. 7401 et
17 seq.).

18 (J) The Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9601 et seq.).

21 (K) The Emergency Planning and Commu-
22 nity Right-To-Know Act of 1986 (42 U.S.C.
23 11001 et seq.).

24 (L) Chapter 51 of title 49, United States
25 Code.

1 (M) Chapter 601 of title 49, United States
2 Code.

3 (3) PERSON.—The term “person” means a per-
4 son, site or facility owner or operator, or other re-
5 sponsible party identified under a law listed in para-
6 graph (2).

7 (4) RELATED PARTY.—The term “related
8 party” means—

9 (A) a person having a relationship de-
10 scribed in Section 267(b) of the Internal Rev-
11 enue Code of 1986 to the owner or operator;
12 and

13 (B) a predecessor of the owner or operator
14 (including, in the case of a merger of 2 or more
15 independent corporations, each of the previously
16 independent corporations).

17 (5) REPEAT VIOLATION.—The term “repeat
18 violation” means the violation by a repeat violator
19 that is the subject of a finding and enforcement ac-
20 tion, criminal action, or other agency action de-
21 scribed in paragraph (6).

22 (6) REPEAT VIOLATOR.—The term “repeat vio-
23 lator” means a person that has been found, in a
24 final Federal or State administrative, criminal, or

1 civil judicial action, order, settlement agreement, or
2 consent decree, to have violated—

3 (A) the same environmental law at the
4 same site or facility or for the same regulated
5 activity at least twice during the preceding 5-
6 year period; or

7 (B) any environmental law at the same site
8 or facility or for the same regulated activity at
9 least twice during the preceding 3-year period.

10 **SEC. 4. ADDITIONAL PENALTY FOR REPEAT VIOLATIONS.**

11 (a) IN GENERAL.—In a civil judicial or administra-
12 tive proceeding brought against a repeat violator for a sub-
13 sequent violation of the same environmental law or sepa-
14 rate environmental laws at 1 or more sites or facilities
15 owned or operated by the repeat violator, or for violations
16 for the same regulated activity under 1 or more environ-
17 mental laws, the repeat violator shall be assessed up to—

18 (1) an additional penalty of 25 percent of the
19 maximum penalty assessable per day of violation for
20 the first repeat violation under the applicable envi-
21 ronmental law;

22 (2) an additional penalty of 50 percent of the
23 maximum penalty assessable per day of violation for
24 the second repeat violation under the applicable envi-
25 ronmental law; and

1 (3) an additional penalty of 100 percent of the
2 maximum penalty assessable per day of violation
3 under the applicable environmental law for the third
4 and each subsequent violation.

5 (b) TRANSFER OF OWNERSHIP OR OPERATION.—The
6 transfer of ownership or operation of a site or facility by
7 the owner or operator of the site or facility to a related
8 party shall not affect the liability of the owner or operator
9 with respect to a repeat violation under this section.

10 **SEC. 5. ADDITIONAL PENALTY FOR CATASTROPHIC**
11 **EVENTS.**

12 (a) DEFINITIONS.—In this section:

13 (1) CATASTROPHIC EVENT.—The term “cata-
14 strophic event” means a release of pollutants under
15 any environmental law that results in—

16 (A) the potential for serious human injury
17 or death, or serious environmental damage; or

18 (B) serious human injury or death, or seri-
19 ous environmental damage.

20 (2) CRITERIA AIR POLLUTANT.—The term “cri-
21 teria air pollutant” means an air pollutant listed
22 under section 108 of the Clean Air Act (42 U.S.C.
23 7408).

24 (3) HAZARDOUS AIR POLLUTANT.—The term
25 “hazardous air pollutant” has the meaning given the

1 term in section 112(a) of the Clean Air Act (42
2 U.S.C. 7412(a)).

3 (4) HAZARDOUS SUBSTANCE.—The term “haz-
4 arduous substance” has the meaning given the term
5 in section 101 of the Comprehensive Environmental
6 Response, Compensation, and Liability Act of 1980
7 (42 U.S.C. 9601).

8 (5) OZONE-DEPLETING SUBSTANCE.—The term
9 “ozone-depleting substance” means a class I sub-
10 stance or a class II substance, as defined in section
11 601 of the Clean Air Act (42 U.S.C. 7671).

12 (b) ADDITIONAL PENALTY.—

13 (1) IN GENERAL.—In addition to a civil penalty
14 assessed in a judicial or administrative proceeding
15 under another environmental law, the Administrator
16 shall assess an additional penalty for each cata-
17 strophic event against the violator—

18 (A) in the case of a catastrophic event that
19 results in the potential for serious human injury
20 or death, or serious environmental damage, but
21 that does not have a result described in sub-
22 paragraph (B) or (C), a minimum of—

23 (i) \$10,000 per pound of hazardous
24 air pollutant emitted in the course of the
25 catastrophic event;

1 (ii) \$10,000 per ton of criteria air pol-
2 lutant or ozone-depleting substance emit-
3 ted in the course of the catastrophic event;
4 and

5 (iii) \$10,000 for each quantity of haz-
6 ardous substance equal to the reportable
7 quantity of the hazardous substance, as
8 specified in parts 117 and 302, title 40,
9 Code of Federal Regulations (or any suc-
10 cessor regulation), released in the course of
11 the catastrophic event;

12 (B) in the case of a catastrophic event that
13 results either in a serious human injury or
14 death, or in serious environmental damage, a
15 minimum of—

16 (i) \$15,000 per pound of hazardous
17 air pollutant emitted in the course of the
18 catastrophic event; and

19 (ii) \$15,000 per ton of criteria air pol-
20 lutant or ozone-depleting substance emit-
21 ted in the course of the catastrophic event;
22 and

23 (iii) \$15,000 for each quantity of haz-
24 ardous substance equal to the reportable
25 quantity of the hazardous substance, as

1 specified in parts 117 and 302, title 40,
2 Code of Federal Regulations (or any suc-
3 cessor regulation), released in the course of
4 the catastrophic event; and

5 (C) in the case of a catastrophic event that
6 results both in a serious human injury or death
7 and in serious environmental damage, a min-
8 imum of—

9 (i) \$25,000 per pound of hazardous
10 air pollutant emitted in the course of the
11 catastrophic event;

12 (ii) \$25,000 per ton of criteria air pol-
13 lutant or ozone-depleting substance emit-
14 ted in the course of the catastrophic event;
15 and

16 (iii) \$25,000 for each quantity of haz-
17 ardous substance equal to the reportable
18 quantity of the hazardous substance, as
19 specified in parts 117 and 302, title 40,
20 Code of Federal Regulations (or any suc-
21 cessor regulation), released in the course of
22 the catastrophic event.

23 (2) AIR POLLUTANTS FALLING WITHIN MUL-
24 TIPLE CATEGORIES.—For the purpose of deter-
25 mining an additional civil penalty under paragraph

1 (1), if an air pollutant is both a hazardous air pol-
2 lutant and a criteria air pollutant, hazardous sub-
3 stance, or ozone-depleting substance, the air pollut-
4 ant shall be considered to be a hazardous air pollut-
5 ant.

6 (c) PREVENTIVE MEASURES.—In addition to any
7 measures required to be implemented under any other pro-
8 vision of law, the Administrator may require in an order,
9 consent decree, settlement agreement, permit, or other en-
10 forceable mechanism that a violator against which a pen-
11 alty is assessed under subsection (b) shall implement pre-
12 ventive measures, including additional monitoring, record-
13 keeping, reporting, training, and other design, equipment,
14 work practice, and operational requirements.

15 **SEC. 6. PRESERVATION OF AUTHORITY.**

16 Nothing in this Act limits the authority of the
17 Administrator—

18 (1) to assess appropriate penalties, on consider-
19 ation of relevant factors, under any environmental
20 law; or

21 (2) to impose more stringent requirements and
22 penalties or exercise any civil or criminal authority
23 in the case of repeat violators or catastrophic events.

1 **SEC. 7. EMERGENCY ORDER AND CIVIL ACTION PENALTY**

2 **AUTHORITY.**

3 (a) **IN GENERAL.**—Notwithstanding any other provi-
4 sion of law, the Administrator may, with respect to any
5 person or entity responsible for creating a condition that
6 may present an imminent and substantial endangerment
7 to human health or the environment in violation of an en-
8 vironmental law, issue an administrative order or bring a
9 civil action in United States District Court, seeking such
10 relief as is necessary to protect human health or the envi-
11 ronment.

12 (b) **PENALTY.**—A person or entity described in sub-
13 section (a) may be fined not less than \$25,000 and not
14 more than \$10,000,000, to be paid into the Health and
15 Environment Trust Fund of the Environmental Protection
16 Agency.

17 (c) **AVAILABILITY OF FUNDS.**—The Administrator
18 shall make funds in the Health and Environmental Trust
19 Fund available for withdrawals, without further Act of ap-
20 propriation, in an amount not to exceed \$500,000 for each
21 project, to pay costs incurred by the Federal Government
22 in addressing a health or environmental threat—

23 (1) for which a fine was collected under sub-
24 section (b); and

1 (2) in accordance with the statutory authority
2 under which the action seeking payment of the fine
3 was initiated.

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