

112TH CONGRESS  
1ST SESSION

# H. R. 3544

To amend the Federal Water Pollution Control Act to limit citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 1, 2011

Mr. McCLINTOCK 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 citizens suits against publicly owned treatment works, to provide for defenses, to extend the period of a permit, to limit attorneys fees, 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. LIMITATION ON CITIZEN SUIT PROVISION.**

4       Section 505 of the Federal Water Pollution Control  
5       Act (33 U.S.C. 1365) is amended—

6               (1) in subsection (a) by striking “subsection  
7       (b)” and inserting “subsections (b) and (i)”; and

8               (2) by adding at the end the following:

1 “(i) LIMITATION FOR POTW SUITS.—

2 “(1) IN GENERAL.—No action may be com-  
3 menced under subsection (a)(1) by a citizen with re-  
4 spect to a publicly owned treatment works to enforce  
5 an effluent standard or limitation under this Act or  
6 an order issued by the Administrator or a State with  
7 respect to such a standard or limitation unless the  
8 publicly owned treatment works is in significant non-  
9 compliance, as defined in the Environmental Protec-  
10 tion Agency’s December 12, 1996, guidance docu-  
11 ment entitled ‘A General Design for SNC Redefini-  
12 tion Enhancement in PCS’.

13 “(2) EXCEPTION.—Notwithstanding paragraph  
14 (1), no action may be commenced under subsection  
15 (a)(1) with respect to a publicly owned treatment  
16 works that is in significant non-compliance based on  
17 a manual designation, as defined in the Environ-  
18 mental Protection Agency’s December 12, 1996,  
19 guidance document entitled ‘A General Design for  
20 SNC Redefinition Enhancement in PCS.’.”

21 **SEC. 2. AFFIRMATIVE DEFENSES.**

22 Section 309 of the Federal Water Pollution Control  
23 Act (33 U.S.C. 1319) is amended by adding at the end  
24 the following:

25 “(h) AFFIRMATIVE DEFENSES.—

1           “(1) IN GENERAL.—There shall be no liability  
2 under this Act for a person otherwise liable for the  
3 unlawful discharge of a pollutant from a publicly  
4 owned treatment works who can establish by a pre-  
5 ponderance of the evidence that the immediate cause  
6 of the unlawful discharge and any damages was—

7                   “(A) an act of God;

8                   “(B) an act of war;

9                   “(C) an act or omission of a third party  
10 other than an employee or agent of the defend-  
11 ant, or than one whose act or omission occurs  
12 in connection with a contractual relationship,  
13 existing directly or indirectly, with the defend-  
14 ant, if the defendant establishes by a prepon-  
15 derance of the evidence that—

16                   “(i) he exercised due care in light of  
17 all relevant facts and circumstances; and

18                   “(ii) he took precautions against fore-  
19 seeable acts or omissions of any such third  
20 party and the consequences that could  
21 foreseeably result from such acts or omis-  
22 sions; or

23                   “(D) any combination of the foregoing  
24 subparagraphs.

1           “(2) ADDITIONAL DEFENSES.—All general de-  
2           fenses, affirmative defenses, and bars to prosecution  
3           that may apply with respect to other Federal crimi-  
4           nal offenses may apply under this Act and shall be  
5           determined by the courts of the United States ac-  
6           cording to the principles of common law as they may  
7           be interpreted in the light of reason and experience.  
8           Concepts of justification and excuse applicable under  
9           this section may be developed in the light of reason  
10          and experience.”.

11 **SEC. 3. WAITING PERIOD.**

12          In implementing the Federal Water Pollution Control  
13 Act, the Administrator of the Environmental Protection  
14 Agency or a State, as the case may be, shall provide a  
15 60-day waiting period between the notice of a violation of  
16 the Act by a publicly owned treatment works and the  
17 issuance of a civil penalty. If within such 60-day period  
18 the publicly owned treatment works submits a viable plan  
19 for correcting the non-compliance that is the subject of  
20 the notice and thereafter diligently implements such plan,  
21 the Administrator shall not assess a civil penalty for the  
22 notice of violation.

23 **SEC. 4. PERMIT LENGTH.**

24          (a) IN GENERAL.—Notwithstanding any other law,  
25 any permit issued to the owner or operator of a publicly

1 owned treatment works by the Administrator of the Envi-  
2 ronmental Protection Agency or a State, as the case may  
3 be, to discharge a pollutant under the Federal Water Pol-  
4 lution Control Act shall have a 15-year term.

5 (b) CONFORMING AMENDMENT.—Section  
6 402(b)(1)(B) of the Federal Water Pollution Control Act  
7 is amended by striking “five years” and inserting “5  
8 years, or, in the case of a publicly owned treatment works,  
9 15 years”.

10 **SEC. 5. ATTORNEY’S FEES.**

11 Section 505(d) of the Federal Water Pollution Con-  
12 trol Act (33 U.S.C. 1365(d)) is amended by inserting after  
13 the first sentence the following: “With respect to an action  
14 involving a publicly owned treatment works, the court, in  
15 determining whether the costs of litigation (including at-  
16 torney and expert witness fees) are reasonable, shall con-  
17 sider the prevailing rate of such fees in the community  
18 where the publicly owned treatment works is located.”.

19 **SEC. 6. COST BENEFIT ANALYSIS.**

20 Notwithstanding any other law, any new or increased  
21 treatment requirement associated with a permit issued to  
22 the owner or operator of a publicly owned treatment works  
23 by the Administrator of the Environmental Protection  
24 Agency or a State, as the case may be, to discharge a  
25 pollutant under the Federal Water Pollution Control Act

1 shall be subject to a cost-benefit analysis performed by  
2 the Administrator or the State to ensure that the costs  
3 imposed on such owner or operator to comply with such  
4 new or increased requirement are outweighed by the ben-  
5 efit to the public of the new or increased requirement.

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