H. R. 3353

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

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. HUNTER (for himself, Mr. McCLINTOCK, and Mr. CALVERT) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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,
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4 SECTION 1. LITIGATION COSTS.
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6 Section 505(d) of the Federal Water Pollution Con- 
7 trol Act (33 U.S.C. 1365(d)) is amended to read as fol- 
8 lows:
9 “(d) AWARDS.—
10 “(1) The court, in issuing any final order in
11 any action brought under this section, may award
costs of litigation (including reasonable attorney and
expert witness fees) to any prevailing or substan-
tially prevailing party, whenever the court deter-
mines 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 mone-
tary 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.—
“(i) Diligently Prosecuting Defined.—In this paragraph, the term ‘diligently prosecuting’ includes the issuance of any order made under this section or a State law comparable to this section.

“(ii) Commencement of Diligent Prosecution.—Diligent prosecution commences on the date the proposed order is issued.

“(iii) Issuance of Final Order.—The Administrator or the Secretary shall be considered to be diligently prosecuting an action under this subsection if the Administrator or the Secretary issues a final order before the date that is one year after the date on which such proposed order is issued.”.

SEC. 3. AFFIRMATIVE DEFENSES.

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

“(h) Affirmative Defenses.—

“(1) In General.—There shall be no liability under this Act for a person otherwise liable for the unlawful discharge of a pollutant who can establish
by a preponderance of the evidence that the imme-
diate cause of the unlawful discharge and any dam-
ages was—

“(A) an act of God;

“(B) an act of war;

“(C) an act or omission of a third party (unless such third party is an employee or agent of such person, or such third party’s act or omission occurred in connection with a contractsual relationship, existing directly or indi-
rectly, with such person), if such person estab-
lishes by a preponderance of the evidence that such person—

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

“(ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

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

“(2) Other Affirmative Defenses.—All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other
Federal criminal offenses may apply to a person otherwise liable for the unlawful discharge of a pollutant under this Act and shall be determined by the courts of the United States according to the principles of common law as may be interpreted in light of reason and experience.”.