

111TH CONGRESS  
1ST SESSION

# H. R. 3258

To amend the Safe Drinking Water Act to enhance the security of the public water systems of the United States.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2009

Mr. WAXMAN (for himself, Mr. MARKEY of Massachusetts, Mr. PALLONE, Mrs. CAPPS, Mr. SARBANES, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Safe Drinking Water Act to enhance the security of the public water systems of the United States.

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 “Drinking Water Sys-  
5 tem Security Act of 2009”.

1 **SEC. 2. INTENTIONAL ACTS AFFECTING THE SECURITY OF**  
2 **COVERED WATER SYSTEMS.**

3 (a) AMENDMENT OF SAFE DRINKING WATER ACT.—  
4 Section 1433 of the Safe Drinking Water Act (42 U.S.C.  
5 300i–2) is amended to read as follows:

6 **“SEC. 1433. INTENTIONAL ACTS.**

7 “(a) RISK-BASED PERFORMANCE STANDARDS; VUL-  
8 NERABILITY ASSESSMENTS; SITE SECURITY PLANS;  
9 EMERGENCY RESPONSE PLANS.—

10 “(1) IN GENERAL.—The Administrator shall  
11 issue regulations—

12 “(A) establishing risk-based performance  
13 standards for the security of covered water sys-  
14 tems; and

15 “(B) establishing requirements and dead-  
16 lines for each covered water system—

17 “(i) to conduct a vulnerability assess-  
18 ment or, if the system already has a vul-  
19 nerability assessment, to revise the assess-  
20 ment to be in accordance with this section;

21 “(ii) to update the vulnerability as-  
22 sessment not less than every 5 years and  
23 promptly after any change at the system  
24 that could cause the reassignment of the  
25 system to a different risk-based tier under  
26 subsection (d);

1           “(iii) to develop, implement, and, as  
2           appropriate, revise a site security plan not  
3           less than every 5 years and promptly after  
4           a revision to the vulnerability assessment;

5           “(iv) to develop an emergency re-  
6           sponse plan (or, if the system has already  
7           developed an emergency response plan, to  
8           revise the plan to be in accordance with  
9           this section) and revise the plan not less  
10          than every 5 years thereafter; and

11          “(v) to provide annual training to em-  
12          ployees and contractor employees of cov-  
13          ered water systems on implementing site  
14          security plans and emergency response  
15          plans.

16          “(2) COVERED WATER SYSTEMS.—For purposes  
17          of this section, the term ‘covered water system’  
18          means a public water system that—

19                  “(A) is a community water system serving  
20                  a population greater than 3,300; or

21                  “(B) in the discretion of the Adminis-  
22                  trator, presents a security risk making regula-  
23                  tion under this section appropriate.

24          “(3) CONSULTATION WITH STATE AUTHORI-  
25          TIES.—In developing and carrying out the regula-

1 tions under paragraph (1), the Administrator shall  
2 consult with States exercising primary enforcement  
3 responsibility for public water systems.

4 “(4) CONSULTATION WITH OTHER PERSONS.—

5 In developing and carrying out the regulations under  
6 paragraph (1), the Administrator shall consult with  
7 the Secretary of Homeland Security, and, as appro-  
8 priate, other persons regarding—

9 “(A) provision of threat-related and other  
10 baseline information to covered water systems;

11 “(B) designation of substances of concern;

12 “(C) development of risk-based perform-  
13 ance standards;

14 “(D) establishment of risk-based tiers and  
15 process for the assignment of covered water  
16 systems to risk-based tiers;

17 “(E) process for the development and eval-  
18 uation of vulnerability assessments, site security  
19 plans, and emergency response plans;

20 “(F) treatment of protected information;

21 “(G) security at co-managed drinking  
22 water and wastewater facilities; and

23 “(H) such other matters as the Adminis-  
24 trator determines necessary.

1           “(5) SUBSTANCES OF CONCERN.—For purposes  
2 of this section, the Administrator, in consultation  
3 with the Secretary of Homeland Security—

4           “(A) may designate any chemical sub-  
5 stance as a substance of concern;

6           “(B) at the time any substance is des-  
7 igned pursuant to subparagraph (A), shall es-  
8 tablish by rule a threshold quantity for the re-  
9 lease or theft of the substance, taking into ac-  
10 count the toxicity, reactivity, volatility,  
11 dispersability, combustibility, and flammability  
12 of the substance and the amount of the sub-  
13 stance that, as a result of a release, is known  
14 to cause or may be reasonably anticipated to  
15 cause death, injury, or serious adverse effects to  
16 human health or the environment; and

17           “(C) in making such a designation, shall  
18 take into account appendix A to part 27 of title  
19 6, Code of Federal Regulations (or any suc-  
20 cessor regulations).

21           “(6) BASELINE INFORMATION.—The Adminis-  
22 trator, after consultation with appropriate depart-  
23 ments and agencies of the Federal Government and  
24 with State, local, and tribal governments, shall, for  
25 purposes of facilitating compliance with the require-

1       ments of this section, promptly after the effective  
2       date of the regulations under subsection (a)(1) and  
3       as appropriate thereafter, provide baseline informa-  
4       tion to covered water systems regarding which kinds  
5       of intentional acts are the probable threats to—

6               “(A) substantially disrupt the ability of the  
7               system to provide a safe and reliable supply of  
8               drinking water;

9               “(B) cause the release of a substance of  
10              concern at the covered water system; or

11              “(C) cause the theft, misuse, or misappro-  
12              priation of a substance of concern.

13       “(b) RISK-BASED PERFORMANCE STANDARDS.—The  
14       regulations under subsection (a)(1) shall set forth risk-  
15       based performance standards for site security plans re-  
16       quired by this section. The standards shall be separate  
17       and, as appropriate, increasingly stringent based on the  
18       level of risk associated with the covered water system’s  
19       risk-based tier assignment under subsection (d). In devel-  
20       oping such standards, the Administrator shall take into  
21       account section 27.230 of title 6, Code of Federal Regula-  
22       tions (or any successor regulations).

23       “(c) VULNERABILITY ASSESSMENT.—The regula-  
24       tions under subsection (a)(1) shall require each covered  
25       water system to assess the system’s vulnerability to a

1 range of intentional acts, including an intentional act that  
2 results in a release of a substance of concern that is known  
3 to cause or may be reasonably anticipated to cause death,  
4 injury, or serious adverse effects to human health or the  
5 environment. At a minimum, the vulnerability assessment  
6 shall include a review of—

7           “(1) pipes and constructed conveyances;

8           “(2) physical barriers;

9           “(3) water collection, pretreatment, treatment,  
10 storage, and distribution facilities;

11           “(4) electronic, computer, and other automated  
12 systems that are used by the covered water system;

13           “(5) the use, storage, or handling of various  
14 chemicals, including substances of concern;

15           “(6) the operation and maintenance of the cov-  
16 ered water system; and

17           “(7) the covered water system’s resiliency and  
18 ability to ensure continuity of operations in the  
19 event of a disruption caused by an intentional act.

20           “(d) RISK-BASED TIERS.—The regulations under  
21 subsection (a)(1) shall provide for 4 risk-based tiers appli-  
22 cable to covered water systems, with tier one representing  
23 the highest degree of security risk.

24           “(1) ASSIGNMENT OF RISK-BASED TIERS.—

1           “(A) SUBMISSION OF INFORMATION.—The  
2 Administrator may require a covered water sys-  
3 tem to submit information in order to deter-  
4 mine the appropriate risk-based tier for the cov-  
5 ered water system.

6           “(B) FACTORS TO CONSIDER.—The Ad-  
7 ministrator shall assign (and reassign when ap-  
8 propriate) each covered water system to one of  
9 the risk-based tiers established pursuant to this  
10 subsection. In assigning a covered water system  
11 to a risk-based tier, the Administrator shall  
12 consider the potential consequences (such as  
13 death, injury, or serious adverse effects to  
14 human health, the environment, critical infra-  
15 structure, national security, and the national  
16 economy) from—

17                   “(i) an intentional act to cause a re-  
18 lease, including a worst-case release, of a  
19 substance of concern at the covered water  
20 system;

21                   “(ii) an intentional act to introduce a  
22 contaminant into the drinking water sup-  
23 ply or disrupt the safe and reliable supply  
24 of drinking water; and

1                   “(iii) an intentional act to steal, mis-  
2                   appropriate, or misuse substances of con-  
3                   cern.

4                   “(2) EXPLANATION FOR RISK-BASED TIER AS-  
5                   SIGNMENT.—The Administrator shall provide each  
6                   covered water system assigned to a risk-based tier  
7                   with the reasons for the tier assignment and whether  
8                   such system is required to submit an assessment  
9                   under subsection (g)(2).

10                  “(e) DEVELOPMENT AND IMPLEMENTATION OF SITE  
11                  SECURITY PLANS.—The regulations under subsection  
12                  (a)(1) shall permit each covered water system, in devel-  
13                  oping and implementing its site security plan required by  
14                  this section, to select layered security and preparedness  
15                  measures that, in combination, appropriately—

16                         “(1) address the security risks identified in its  
17                         vulnerability assessment; and

18                         “(2) comply with the applicable risk-based per-  
19                         formance standards required under this section.

20                  “(f) ROLE OF EMPLOYEES.—

21                         “(1) DESCRIPTION OF ROLE.—Site security  
22                         plans and emergency response plans required under  
23                         this section shall describe the appropriate roles or  
24                         responsibilities that employees and contractor em-  
25                         ployees are expected to perform to deter or respond

1 to the intentional acts described in subsection  
2 (d)(1)(B).

3 “(2) TRAINING FOR EMPLOYEES.—Each cov-  
4 ered water system shall annually provide employees  
5 and contractor employees with roles or responsibil-  
6 ities described in paragraph (1) with a minimum of  
7 8 hours of training on carrying out those roles or re-  
8 sponsibilities.

9 “(3) EMPLOYEE PARTICIPATION.—In devel-  
10 oping, revising, or updating a vulnerability assess-  
11 ment, site security plan, and emergency response  
12 plan required under this section, a covered water  
13 system shall include—

14 “(A) at least one supervisory and at least  
15 one non-supervisory employee of the covered  
16 water system; and

17 “(B) at least one representative of each  
18 certified or recognized bargaining agent rep-  
19 resenting facility employees or contractor em-  
20 ployees with roles or responsibilities described  
21 in paragraph (1), if any, in a collective bar-  
22 gaining relationship with the private or public  
23 owner or operator of the system or with a con-  
24 tractor to that system.

1       “(g) METHODS TO REDUCE THE CONSEQUENCES OF  
2 A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

3           “(1) DEFINITION.—In this section, the term  
4 ‘method to reduce the consequences of a chemical re-  
5 lease from an intentional act’ means a measure at  
6 a covered water system that reduces or eliminates  
7 the potential consequences of a release of a sub-  
8 stance of concern from an intentional act such as—

9           “(A) the elimination or reduction in the  
10 amount of a substance of concern possessed or  
11 planned to be possessed by a covered water sys-  
12 tem through the use of alternate substances,  
13 formulations, or processes;

14           “(B) the modification of pressures, tem-  
15 peratures, or concentrations of a substance of  
16 concern; and

17           “(C) the reduction or elimination of onsite  
18 handling of a substance of concern through im-  
19 provement of inventory control or chemical use  
20 efficiency.

21           “(2) ASSESSMENT.—For each covered water  
22 system that possesses or plans to possess a sub-  
23 stance of concern in excess of the release threshold  
24 quantity set by the Administrator under subsection  
25 (a)(5), the regulations under subsection (a)(1) shall

1       require the covered water system to include in its  
2       site security plan an assessment of methods to re-  
3       duce the consequences of a chemical release from an  
4       intentional act at the covered water system. The cov-  
5       ered water system shall provide such assessment to  
6       the Administrator and the State exercising primary  
7       enforcement responsibility for the covered water sys-  
8       tem, if any. The regulations under subsection (a)(1)  
9       shall require the system, in preparing the assess-  
10      ment, to consider factors appropriate to the system’s  
11      security, public health, or environmental mission,  
12      and include—

13               “(A) a description of the methods to re-  
14               duce the consequences of a chemical release  
15               from an intentional act;

16               “(B) how each described method to reduce  
17               the consequences of a chemical release from an  
18               intentional act could, if applied, reduce the po-  
19               tential extent of death, injury, or serious ad-  
20               verse effects to human health resulting from a  
21               chemical release;

22               “(C) how each described method to reduce  
23               the consequences of a chemical release from an  
24               intentional act could, if applied, affect the pres-

1           ence of contaminants in treated water, human  
2           health, or the environment;

3           “(D) whether each described method to re-  
4           duce the consequences of a chemical release  
5           from an intentional act at the covered water  
6           system is feasible, as defined in section  
7           1412(b)(4)(D), but not including cost calcula-  
8           tions under subparagraph (E);

9           “(E) the costs (including capital and oper-  
10          ational costs) and avoided costs (including sav-  
11          ings and liabilities) associated with applying  
12          each described method to reduce the con-  
13          sequences of a chemical release from an inten-  
14          tional act at the covered water system;

15          “(F) any other relevant information that  
16          the covered water system relied on in con-  
17          ducting the assessment; and

18          “(G) a statement of whether the covered  
19          water system has implemented or plans to im-  
20          plement one or more methods to reduce the  
21          consequences of a chemical release from an in-  
22          tentional act, a description of any such meth-  
23          ods, and, in the case of a covered water system  
24          described in paragraph (3)(A), an explanation

1 of the reasons for any decision not to imple-  
2 ment any such methods.

3 “(3) REQUIRED METHODS.—

4 “(A) APPLICATION.—This paragraph ap-  
5 plies to a covered water system—

6 “(i) that is assigned to one of the two  
7 highest risk-based tiers under subsection  
8 (d); and

9 “(ii) that possesses or plans to possess  
10 a substance of concern in excess of the re-  
11 lease threshold quantity set by the Admin-  
12 istrator under subsection (a)(5).

13 “(B) HIGHEST-RISK SYSTEMS.—If, on the  
14 basis of its assessment under paragraph (2), a  
15 covered water system described in subparagraph  
16 (A) decides not to implement methods to reduce  
17 the consequences of a chemical release from an  
18 intentional act, the State exercising primary en-  
19 forcement responsibility for the covered water  
20 system, if the system is located in such a State,  
21 or the Administrator, if the covered water sys-  
22 tem is not located in such a State, shall, in ac-  
23 cordance with a timeline set by the Adminis-  
24 trator—

1           “(i) determine whether to require the  
2 covered water system to implement the  
3 methods; and

4           “(ii) for States exercising primary en-  
5 forcement responsibility, report such deter-  
6 mination to the Administrator.

7           “(C) STATE OR ADMINISTRATOR’S CONSID-  
8 ERATIONS.—Before requiring, pursuant to sub-  
9 paragraph (B), the implementation of a method  
10 to reduce the consequences of a chemical re-  
11 lease from an intentional act, the State exer-  
12 cising primary enforcement responsibility for  
13 the covered water system, if the system is lo-  
14 cated in such a State, or the Administrator, if  
15 the covered water system is not located in such  
16 a State, shall consider factors appropriate to  
17 the security, public health, and environmental  
18 missions of covered water systems, including an  
19 examination of whether the method—

20           “(i) would significantly reduce the  
21 risk of death, injury, or serious adverse ef-  
22 fects to human health resulting directly  
23 from a chemical release from an inten-  
24 tional act at the covered water system;

1           “(ii) would not increase the interim  
2 storage of a substance of concern by the  
3 covered water system;

4           “(iii) would not render the covered  
5 water system unable to comply with other  
6 requirements of this Act or drinking water  
7 standards established by the State or polit-  
8 ical subdivision in which the system is lo-  
9 cated; and

10           “(iv) is feasible, as defined in section  
11 1412(b)(4)(D), to be incorporated into the  
12 operation of the covered water system.

13           “(4) INCOMPLETE OR LATE ASSESSMENTS.—

14           “(A) INCOMPLETE ASSESSMENTS.—If the  
15 Administrator finds that the covered water sys-  
16 tem, in conducting its assessment under para-  
17 graph (2), did not meet the requirements of  
18 paragraph (2) and the applicable regulations,  
19 the Administrator shall, after notifying the cov-  
20 ered water system and the State exercising pri-  
21 mary enforcement responsibility for that sys-  
22 tem, if any, require the covered water system to  
23 submit a revised assessment not later than 60  
24 days after the Administrator notifies such sys-  
25 tem. The Administrator may require such addi-

1           tional revisions as are necessary to ensure that  
2           the system meets the requirements of para-  
3           graph (2) and the applicable regulations.

4           “(B) LATE ASSESSMENTS.—If the Admin-  
5           istrator finds that a covered water system, in  
6           conducting its assessment pursuant to para-  
7           graph (2), did not complete such assessment in  
8           accordance with the deadline set by the Admin-  
9           istrator, the Administrator may, after notifying  
10          the covered water system and the State exer-  
11          cising primary enforcement responsibility for  
12          that system, if any, take appropriate enforce-  
13          ment action under subsection (o).

14          “(C) REVIEW.—The State exercising pri-  
15          mary enforcement responsibility for the covered  
16          water system, if the system is located in such  
17          a State, or the Administrator, if the system is  
18          not located in such a State, shall review a re-  
19          vised assessment that meets the requirements  
20          of paragraph (2) and applicable regulations to  
21          determine whether the covered water system  
22          will be required to implement methods to reduce  
23          the consequences of an intentional act pursuant  
24          to paragraph (3).

25          “(5) ENFORCEMENT.—

1           “(A) FAILURE BY STATE TO MAKE DETER-  
2           MINATION.—Whenever the Administrator finds  
3           that a State exercising primary enforcement re-  
4           sponsibility for a covered water system has  
5           failed to determine whether to require the cov-  
6           ered water system to implement methods to re-  
7           duce the consequences of a chemical release  
8           from an intentional act, as required by para-  
9           graph (3)(B), the Administrator shall so notify  
10          the State and covered water system. If, beyond  
11          the thirtieth day after the Administrator’s noti-  
12          fication under the preceding sentence, the State  
13          has failed to make the determination described  
14          in such sentence, the Administrator shall so no-  
15          tify the State and covered water system and  
16          shall determine whether to require the covered  
17          water system to implement methods to reduce  
18          the consequences of a chemical release from an  
19          intentional act based on the factors described in  
20          paragraph (3)(C).

21           “(B) FAILURE BY STATE TO BRING EN-  
22           FORCEMENT ACTION.—If the Administrator  
23           finds, with respect to a period in which a State  
24           has primary enforcement responsibility for a  
25           covered water system, that the system has

1 failed to implement methods to reduce the con-  
2 sequences of a chemical release from an inten-  
3 tional act (as required by the State or the Ad-  
4 ministrator under paragraph (3)(B) or the Ad-  
5 ministrator under subparagraph (A)), the Ad-  
6 ministrator shall so notify the State and the  
7 covered water system. If, beyond the thirtieth  
8 day after the Administrator’s notification under  
9 the preceding sentence, the State has not com-  
10 menced appropriate enforcement action, the Ad-  
11 ministrator shall so notify the State and may  
12 commence an enforcement action against the  
13 system, including by seeking or imposing civil  
14 penalties under subsection (o), to require imple-  
15 mentation of such methods.

16 “(C) CONSIDERATION OF CONTINUED PRI-  
17 MARY ENFORCEMENT RESPONSIBILITY.—For a  
18 State with primary enforcement responsibility  
19 for a covered water system, the Administrator  
20 may consider the failure of such State to make  
21 a determination as described under subpara-  
22 graph (A) or to bring enforcement action as de-  
23 scribed under subparagraph (B) when deter-  
24 mining whether a State may retain primary en-  
25 forcement responsibility under this Act.

1 “(h) REVIEW BY ADMINISTRATOR.—

2 “(1) IN GENERAL.—The regulations under sub-  
3 section (a)(1) shall require each covered water sys-  
4 tem to submit its vulnerability assessment and site  
5 security plan to the Administrator for review accord-  
6 ing to deadlines set by the Administrator. The Ad-  
7 ministrator shall review each vulnerability assess-  
8 ment and site security plan submitted under this  
9 section and—

10 “(A) if the assessment or plan has any sig-  
11 nificant deficiency described in paragraph (2),  
12 require the covered water system to correct the  
13 deficiency; or

14 “(B) approve such assessment or plan.

15 “(2) SIGNIFICANT DEFICIENCIES.—A vulner-  
16 ability assessment or site security plan of a covered  
17 water system has a significant deficiency under this  
18 subsection if the Administrator, in consultation, as  
19 appropriate, with the State exercising primary en-  
20 forcement responsibility for such system, if any, de-  
21 termines that—

22 “(A) such assessment does not comply with  
23 the regulations established under section (a)(1);  
24 or

25 “(B) such plan—

1                   “(i) fails to address vulnerabilities  
2                   identified in a vulnerability assessment; or

3                   “(ii) fails to meet applicable risk-  
4                   based performance standards.

5                   “(3) STATE, REGIONAL, OR LOCAL GOVERN-  
6                   MENTAL ENTITIES.—No covered water system shall  
7                   be required under State, local, or tribal law to pro-  
8                   vide a vulnerability assessment or site security plan  
9                   described in this section to any State, regional, local,  
10                  or tribal governmental entity solely by reason of the  
11                  requirement set forth in paragraph (1) that the sys-  
12                  tem submit such an assessment and plan to the Ad-  
13                  ministrator.

14                  “(i) EMERGENCY RESPONSE PLAN.—

15                  “(1) IN GENERAL.—Each covered water system  
16                  shall prepare or revise, as appropriate, an emergency  
17                  response plan that incorporates the results of the  
18                  system’s most current vulnerability assessment and  
19                  site security plan.

20                  “(2) CERTIFICATION.—Each covered water sys-  
21                  tem shall certify to the Administrator that the sys-  
22                  tem has completed an emergency response plan. The  
23                  system shall submit such certification to the Admin-  
24                  istrator not later than 6 months after the system’s  
25                  first completion or revision of a vulnerability assess-

1       ment under this section and shall submit an addi-  
2       tional certification following any update of the emer-  
3       gency response plan.

4           “(3) CONTENTS.—A covered water system’s  
5       emergency response plan shall include—

6           “(A) plans, procedures, and identification  
7       of equipment that can be implemented or used  
8       in the event of an intentional act at the covered  
9       water system; and

10          “(B) actions, procedures, and identification  
11       of equipment that can obviate or significantly  
12       lessen the impact of intentional acts on public  
13       health and the safety and supply of drinking  
14       water provided to communities and individuals.

15          “(4) COORDINATION.—As part of its emergency  
16       response plan, each covered water system shall pro-  
17       vide appropriate information to any local emergency  
18       planning committee, local law enforcement officials,  
19       and local emergency response providers to ensure an  
20       effective, collective response.

21          “(j) MAINTENANCE OF RECORDS.—Each covered  
22       water system shall maintain an updated copy of its vulner-  
23       ability assessment, site security plan, and emergency re-  
24       sponse plan.

25          “(k) AUDIT; INSPECTION.—

1           “(1) IN GENERAL.—Notwithstanding section  
2           1445(b)(2), the Administrator, or duly designated  
3           representatives of the Administrator, shall audit and  
4           inspect covered water systems, as necessary, for pur-  
5           poses of determining compliance with this section.

6           “(2) ACCESS.—In conducting an audit or in-  
7           spection of a covered water system, the Adminis-  
8           trator or duly designated representatives of the Ad-  
9           ministrators, as appropriate, shall have access to the  
10          owners, operators, employees and contractor employ-  
11          ees, and employee representatives, if any, of such  
12          covered water system.

13          “(1) PROTECTION OF INFORMATION.—

14                 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF  
15                 PROTECTED INFORMATION.—Protected information  
16                 shall—

17                         “(A) be exempt from disclosure under sec-  
18                         tion 552 of title 5, United States Code; and

19                         “(B) not be made available pursuant to  
20                         any State, local, or tribal law requiring disclo-  
21                         sure of information or records.

22          “(2) INFORMATION SHARING.—

23                         “(A) SHARING OF PROTECTED INFORMA-  
24                         TION.—The Administrator shall provide stand-  
25                         ards for and facilitate the appropriate sharing

1 of protected information with and between Fed-  
2 eral, State, local, and tribal authorities, first re-  
3 sponders, law enforcement officials, designated  
4 supervisory and non-supervisory covered water  
5 system personnel with security, operational, or  
6 fiduciary responsibility for the system, and des-  
7 ignated facility employee representatives, if any.  
8 Such standards shall include procedures for the  
9 sharing of all portions of a covered water sys-  
10 tem’s vulnerability assessment and site security  
11 plan relating to the roles and responsibilities of  
12 system employees or contractor employees  
13 under subsection (f)(1) with a representative of  
14 each certified or recognized bargaining agent  
15 representing such employees, if any, or, if none,  
16 with at least one supervisory and at least one  
17 non-supervisory employee with roles and re-  
18 sponsibilities under subsection (f)(1).

19 “(B) PENALTIES.—Protected information,  
20 as described in paragraph (7), shall not be  
21 shared except in accordance with the standards  
22 created under subparagraph (A). Any person  
23 who purposefully publishes, divulges, discloses,  
24 or makes known protected information in any  
25 manner or to any extent not authorized by the

1 standards set by the Administrator under sub-  
2 paragraph (A), shall, upon conviction, be im-  
3 prisoned for not more than one year or fined in  
4 accordance with the provisions of chapter 227  
5 of title 18, United States Code, applicable to  
6 class A misdemeanors, or both, and, in the case  
7 of Federal employees or officeholders, shall be  
8 removed from Federal office or employment.

9 “(3) TREATMENT OF INFORMATION IN ADJU-  
10 DICATIVE PROCEEDINGS.—In any judicial or admin-  
11 istrative proceeding, protected information, as de-  
12 scribed in paragraph (7), shall be treated in a man-  
13 ner consistent with the treatment of Sensitive Secu-  
14 rity Information under section 525 of the Depart-  
15 ment of Homeland Security Appropriations Act,  
16 2007 (Public Law 109–295; 120 Stat. 1381).

17 “(4) OTHER OBLIGATIONS UNAFFECTED.—  
18 Nothing in this section amends or affects an obliga-  
19 tion of a covered water system—

20 “(A) to submit or make available informa-  
21 tion to system employees, employee organiza-  
22 tions, or a Federal, State, tribal, or local gov-  
23 ernment agency under any other law; or

24 “(B) to comply with any other law.

1           “(5) CONGRESSIONAL OVERSIGHT.—Nothing in  
2 this section permits or authorizes the withholding of  
3 information from Congress or any committee or sub-  
4 committee thereof.

5           “(6) DISCLOSURE OF INDEPENDENTLY FUR-  
6 NISHED INFORMATION.—Nothing in this section  
7 amends or affects any authority or obligation of a  
8 Federal, State, local, or tribal agency to protect or  
9 disclose any record or information that the Federal,  
10 State, local, or tribal agency obtains from a covered  
11 water system or the Administrator under any other  
12 law except as provided in subsection (h)(3).

13           “(7) PROTECTED INFORMATION.—

14           “(A) IN GENERAL.—For purposes of this  
15 section, protected information is any of the fol-  
16 lowing:

17           “(i) Vulnerability assessments and  
18 site security plans under this section, in-  
19 cluding any assessment developed pursuant  
20 to subsection (g)(2).

21           “(ii) Documents directly related to the  
22 Administrator’s review of assessments and  
23 plans described in clause (i) and, as appli-  
24 cable, the State’s review of an assessment  
25 prepared under subsection (g)(2).

1           “(iii) Documents directly related to  
2           inspections and audits under this section.

3           “(iv) Orders, notices, or letters re-  
4           garding the compliance of a covered water  
5           system with the requirements of this sec-  
6           tion.

7           “(v) Information required to be pro-  
8           vided to, or documents and records created  
9           by, the Administrator under subsection  
10          (d).

11          “(vi) Other documents and records  
12          developed exclusively for the purposes of  
13          this section that the Administrator deter-  
14          mines would be detrimental to the security  
15          of one or more covered water systems if  
16          disclosed.

17          “(B) DETRIMENT REQUIREMENT.—For  
18          purposes of clauses (ii), (iii), (iv), and (v) of  
19          subparagraph (A), the only portions of docu-  
20          ments, records, orders, notices, and letters that  
21          shall be considered protected information are  
22          those portions that—

23                 “(i) would be detrimental to the secu-  
24                 rity of one or more covered water systems  
25                 if disclosed; and

1           “(ii) are developed by the Adminis-  
2           trator, the State, or the covered water sys-  
3           tem exclusively for the purposes of this  
4           section.

5           “(C) EXCLUSIONS.—For purposes of this  
6           section, protected information does not in-  
7           clude—

8                   “(i) information that is otherwise pub-  
9                   licly available, including information that is  
10                  required to be made publicly available  
11                  under any law;

12                  “(ii) information that a covered water  
13                  system has lawfully disclosed other than in  
14                  accordance with this section; and

15                  “(iii) information that, if disclosed,  
16                  would not be detrimental to the security of  
17                  one or more covered water systems, includ-  
18                  ing aggregate regulatory data that the Ad-  
19                  ministrators determines appropriate to de-  
20                  scribe system compliance with the require-  
21                  ments of this section and the Administra-  
22                  tor’s implementation of such requirements.

23           “(m) RELATION TO CHEMICAL FACILITY SECURITY  
24           REQUIREMENTS.—The following provisions (and any reg-

1 ulations promulgated thereunder) shall not apply to any  
2 public water system subject to this Act:

3           “(1) Title XXI of the Homeland Security Act  
4           of 2002 (as proposed to be added by H.R. 2868, the  
5           Chemical Facility Anti-Terrorism Act of 2009).

6           “(2) Section 550 of the Department of Home-  
7           land Security Appropriations Act, 2007 (Public Law  
8           109–295).

9           “(3) The Chemical Facility Anti-Terrorism Act  
10          of 2009.

11          “(n) PREEMPTION.—This section does not preclude  
12          or deny the right of any State or political subdivision  
13          thereof to adopt or enforce any regulation, requirement,  
14          or standard of performance with respect to a covered  
15          water system that is more stringent than a regulation, re-  
16          quirement, or standard of performance under this section.

17          “(o) VIOLATIONS.—

18                 “(1) IN GENERAL.—A covered water system  
19                 that violates any requirement of this section, includ-  
20                 ing by not implementing all or part of its site secu-  
21                 rity plan by such date as the Administrator requires,  
22                 shall be liable for a civil penalty of not more than  
23                 \$25,000 for each day on which the violation oc-  
24                 curs.

1           “(2) PROCEDURE.—When the Administrator  
2 determines that a covered water system is subject to  
3 a civil penalty under paragraph (1), the Adminis-  
4 trator, after consultation with the State, for covered  
5 water systems located in a State exercising primary  
6 responsibility for the covered water system, and,  
7 after considering the severity of the violation or defi-  
8 ciency and the record of the covered water system in  
9 carrying out the requirements of this section, may—

10           “(A) after notice and an opportunity for  
11 the covered water system to be heard, issue an  
12 order assessing a civil penalty under such para-  
13 graph for any past or current violation, requir-  
14 ing compliance immediately or within a speci-  
15 fied time period; or

16           “(B) commence a civil action in the United  
17 States district court in the district in which the  
18 violation occurred for appropriate relief, includ-  
19 ing temporary or permanent injunction.

20           “(3) METHODS TO REDUCE THE CON-  
21 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-  
22 TENTIONAL ACT.—Except as provided in subsections  
23 (g)(4) and (g)(5), if a covered water system is lo-  
24 cated in a State exercising primary enforcement re-  
25 sponsibility for the system, the Administrator may

1 not issue an order or commence a civil action under  
2 this section for any deficiency in the content or im-  
3 plementation of the portion of the system’s site secu-  
4 rity plan relating to methods to reduce the con-  
5 sequences of a chemical release from an intentional  
6 act (as defined in subsection (g)(1)).

7 “(p) REPORT TO CONGRESS.—

8 “(1) PERIODIC REPORT.—Not later than 3  
9 years after the effective date of the regulations  
10 under subsection (a)(1), and every 3 years there-  
11 after, the Administrator shall transmit to the Com-  
12 mittee on Energy and Commerce of the House of  
13 Representatives and the Committee on Environment  
14 and Public Works of the Senate a report on progress  
15 in achieving compliance with this section. Each such  
16 report shall include, at a minimum, the following:

17 “(A) A generalized summary of measures  
18 implemented by covered water systems in order  
19 to meet each risk-based performance standard  
20 established by this section.

21 “(B) A summary of how the covered water  
22 systems, differentiated by risk-based tier as-  
23 signment, are complying with the requirements  
24 of this section during the period covered by the  
25 report and how the Administrator is imple-

1           menting and enforcing such requirements dur-  
2           ing such period including—

3                   “(i) the number of public water sys-  
4                   tems that provided the Administrator with  
5                   information pursuant to subsection (d)(1);

6                   “(ii) the number of covered water sys-  
7                   tems assigned to each risk-based tier;

8                   “(iii) the number of vulnerability as-  
9                   sessments and site security plans sub-  
10                  mitted by covered water systems;

11                  “(iv) the number of vulnerability as-  
12                  sessments and site security plans approved  
13                  and disapproved by the Administrator;

14                  “(v) the number of covered water sys-  
15                  tems without approved vulnerability assess-  
16                  ments or site security plans;

17                  “(vi) the number of covered water sys-  
18                  tems that have been assigned to a different  
19                  risk-based tier due to implementation of a  
20                  method to reduce the consequences of a  
21                  chemical release from an intentional act  
22                  and a description of the types of such im-  
23                  plemented methods;

24                  “(vii) the number of audits and in-  
25                  spections conducted by the Administrator

1 or duly designated representatives of the  
2 Administrator;

3 “(viii) the number of orders for com-  
4 pliance issued by the Administrator;

5 “(ix) the administrative penalties as-  
6 sessed by the Administrator for non-com-  
7 pliance with the requirements of this sec-  
8 tion;

9 “(x) the civil penalties assessed by  
10 courts for non-compliance with the require-  
11 ments of this section; and

12 “(xi) any other regulatory data the  
13 Administrator determines appropriate to  
14 describe covered water system compliance  
15 with the requirements of this section and  
16 the Administrator’s implementation of  
17 such requirements.

18 “(2) PUBLIC AVAILABILITY.—A report sub-  
19 mitted under this section shall be made publicly  
20 available.

21 “(q) GRANT PROGRAMS.—

22 “(1) IMPLEMENTATION GRANTS TO STATES.—  
23 The Administrator may award grants to, or enter  
24 into cooperative agreements with, States, based on  
25 an allocation formula established by the Adminis-

1       trator, to assist the States in implementing this sec-  
2       tion.

3               “(2) RESEARCH, TRAINING, AND TECHNICAL  
4       ASSISTANCE GRANTS.—The Administrator may  
5       award grants to, or enter into cooperative agree-  
6       ments with, non-profit organizations to provide re-  
7       search, training, and technical assistance to covered  
8       water systems to assist them in carrying out their  
9       responsibilities under this section.

10              “(3) PREPARATION GRANTS.—The Adminis-  
11       trator may award grants to, or enter into coopera-  
12       tive agreements with, covered water systems to as-  
13       sist such systems in—

14                      “(A) preparing and updating vulnerability  
15       assessments, site security plans, and emergency  
16       response plans;

17                      “(B) assessing and implementing methods  
18       to reduce the consequences of a release of a  
19       substance of concern from an intentional act;  
20       and

21                      “(C) implementing any other security re-  
22       views and enhancements necessary to comply  
23       with this section.

24              “(4) WORKER TRAINING GRANTS PROGRAM AU-  
25       THORITY.—

1           “(A) IN GENERAL.—The Administrator  
2 shall establish a grant program to award grants  
3 to eligible entities to provide for training and  
4 education of employees and contractor employ-  
5 ees with roles or responsibilities described in  
6 subsection (f)(1) and first responders and emer-  
7 gency response providers who would respond to  
8 an intentional act at a covered water system.

9           “(B) ADMINISTRATION.—The Adminis-  
10 trator shall enter into an agreement with the  
11 National Institute of Environmental Health  
12 Sciences to make and administer grants under  
13 this paragraph.

14           “(C) USE OF FUNDS.—The recipient of a  
15 grant under this paragraph shall use the grant  
16 to provide for—

17           “(i) training and education of employ-  
18 ees and contractor employees with roles or  
19 responsibilities described in subsection  
20 (f)(1), including the annual mandatory  
21 training specified in subsection (f)(2) or  
22 training for first responders in protecting  
23 nearby persons, property, or the environ-  
24 ment from the effects of a release of a sub-  
25 stance of concern at the covered water sys-

1           tem, with priority given to covered water  
2           systems assigned to tier one or tier two  
3           under subsection (d); and

4                   “(ii) appropriate training for first re-  
5           sponders and emergency response pro-  
6           viders who would respond to an intentional  
7           act at a covered water system.

8                   “(D) ELIGIBLE ENTITIES.—For purposes  
9           of this paragraph, an eligible entity is a non-  
10          profit organization with demonstrated experi-  
11          ence in implementing and operating successful  
12          worker or first responder health and safety or  
13          security training programs.

14          “(r) AUTHORIZATION OF APPROPRIATIONS.—To  
15          carry out this section, there are authorized to be appro-  
16          priated—

17                   “(1) \$315,000,000 for fiscal year 2011, of  
18          which up to—

19                           “(A) \$30,000,000 may be used for admin-  
20          istrative costs incurred by the Administrator or  
21          the States, as appropriate; and

22                           “(B) \$125,000,000 may be used to imple-  
23          ment methods to reduce the consequences of a  
24          chemical release from an intentional act at cov-  
25          ered water systems with priority given to cov-

1           ered water systems assigned to tier one or tier  
2           two under subsection (d); and

3           “(2) such sums as may be necessary for fiscal  
4           years 2012 through 2015.”.

5           (b) REGULATIONS; TRANSITION.—

6           (1) REGULATIONS.—Not later than 2 years  
7           after the date of the enactment of this Act, the Ad-  
8           ministrators of the Environmental Protection Agency  
9           shall promulgate final regulations to carry out sec-  
10          tion 1433 of the Safe Drinking Water Act, as  
11          amended by subsection (a).

12          (2) EFFECTIVE DATE.—Until the effective date  
13          of the regulations promulgated under paragraph (1),  
14          section 1433 of the Safe Drinking Water Act, as in  
15          effect on the day before the date of the enactment  
16          of this title, shall continue to apply.

17          (3) SAVINGS PROVISION.—Nothing in this sec-  
18          tion or the amendment made by this section shall af-  
19          fect the application of section 1433 of the Safe  
20          Drinking Water Act, as in effect before the effective  
21          date of the regulations promulgated under para-  
22          graph (1), to any violation of such section 1433 oc-  
23          curring before such effective date, and the require-  
24          ments of such section 1433 shall remain in force and  
25          effect with respect to such violation until the viola-

- 1 tion has been corrected or enforcement proceedings
- 2 completed, whichever is later.

○