

DRINKING WATER PROTECTION ACT

FEBRUARY 24, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 212]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 212) to amend the Safe Drinking Water Act to provide for the assessment and management of the risk of cyanotoxins in drinking water, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Drinking Water Protection Act”.

SEC. 2. AMENDMENT TO THE SAFE DRINKING WATER ACT.

(a) AMENDMENT.—At the end of part E of the Safe Drinking Water Act (42 U.S.C. 300j et seq.) add the following new section:

“SEC. 1459. ALGAL TOXIN RISK ASSESSMENT AND MANAGEMENT.

“(a) STRATEGIC PLAN.—

“(1) DEVELOPMENT.—Not later than 90 days after the date of enactment of this section, the Administrator shall develop and submit to Congress a strategic plan for assessing and managing risks associated with algal toxins in drinking water provided by public water systems. The strategic plan shall include steps and timelines to—

“(A) evaluate the risk to human health from drinking water provided by public water systems contaminated with algal toxins;

“(B) establish, publish, and update a comprehensive list of algal toxins which the Administrator determines may have an adverse effect on human health when present in drinking water provided by public water systems, taking into account likely exposure levels;

“(C) summarize—

“(i) the known adverse human health effects of algal toxins included on the list published under subparagraph (B) when present in drinking water provided by public water systems; and

“(ii) factors that cause toxin-producing cyanobacteria and algae to proliferate and express toxins;

“(D) with respect to algal toxins included on the list published under subparagraph (B), determine whether to—

“(i) publish health advisories pursuant to section 1412(b)(1)(F) for such algal toxins in drinking water provided by public water systems;

“(ii) establish guidance regarding feasible analytical methods to quantify the presence of algal toxins; and

“(iii) establish guidance regarding the frequency of monitoring necessary to determine if such algal toxins are present in drinking water provided by public water systems;

“(E) recommend feasible treatment options, including procedures, equipment, and source water protection practices, to mitigate any adverse public health effects of algal toxins included on the list published under subparagraph (B); and

“(F) enter into cooperative agreements with, and provide technical assistance to, affected States and public water systems, as identified by the Administrator, for the purpose of managing risks associated with algal toxins included on the list published under subparagraph (B).

“(2) UPDATES.—The Administrator shall, as appropriate, update and submit to Congress the strategic plan developed under paragraph (1).

“(b) INFORMATION COORDINATION.—In carrying out this section the Administrator shall—

“(1) identify gaps in the Agency’s understanding of algal toxins, including—

“(A) the human health effects of algal toxins included on the list published under subsection (a)(1)(B); and

“(B) methods and means of testing and monitoring for the presence of harmful algal toxins in source water of, or drinking water provided by, public water systems;

“(2) as appropriate, consult with—

“(A) other Federal agencies that—

“(i) examine or analyze cyanobacteria or algal toxins; or

“(ii) address public health concerns related to harmful algal blooms;

“(B) States;

“(C) operators of public water systems;

“(D) multinational agencies;

“(E) foreign governments;

“(F) research and academic institutions; and

“(G) companies that provide relevant drinking water treatment options;

and

“(3) assemble and publish information from each Federal agency that has—

“(A) examined or analyzed cyanobacteria or algal toxins; or

“(B) addressed public health concerns related to harmful algal blooms.

“(c) USE OF SCIENCE.—The Administrator shall carry out this section in accordance with the requirements described in section 1412(b)(3)(A), as applicable.

“(d) FEASIBLE.—For purposes of this section, the term ‘feasible’ has the meaning given such term in section 1412(b)(4)(D).”

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report that includes—

(1) an inventory of funds—

(A) expended by the United States, for each of fiscal years 2010 through 2014, to examine or analyze toxin-producing cyanobacteria and algae or address public health concerns related to harmful algal blooms; and

(B) that includes the specific purpose for which the funds were made available, the law under which the funds were authorized, and the Federal agency that received or spent the funds; and

(2) recommended steps to reduce any duplication, and improve interagency coordination, of such expenditures.

Amend the title so as to read:

A bill to amend the Safe Drinking Water Act to provide for the assessment and management of the risk of algal toxins in drinking water, and for other purposes.

PURPOSE AND SUMMARY

H.R. 212 amends the Safe Drinking Water Act to provide for the creation of a strategic plan by the Administrator of the Environmental Protection Agency for the assessment and management of the risk posed by algal toxins in drinking water.

BACKGROUND AND NEED FOR LEGISLATION

Contamination from algal blooms in a public water system’s source water gained attention in the Summer of 2014 when blue-green algae (cyanobacteria) producing a toxin called microcystin (a cyanotoxin), were found in Lake Erie and Toledo’s Collins Water Treatment Plant. On Saturday, August 2, 2014, based upon two sample readings for microcystin registering above Ohio’s one (1) microgram per liter standard, the City of Toledo, Ohio urged all customers of Toledo water to neither drink nor boil its treated tap water until an “all clear” was issued.^{1,2} Two days later, the Mayor of Toledo announced that the water was safe to drink and lifted the advisory.³ In the interim, residents were advised against using the water to brush their teeth, bathe their children, or give to their pets. After the ban was lifted, the city banned swimming and other recreational activities in one of the drinking water reservoirs.⁴

Cyanobacteria and algal toxins

Cyanobacteria and algae are often found in lakes and other surface water. Certain combinations of conditions trigger growth of algae in these waters, including warm water temperatures and high levels of light and nutrients (primarily phosphorus and nitrogen). Sources of nutrients include agricultural runoff (fertilizers and manure); discharges from sewage treatment plants; and storm-water runoff from lawns, streets, and elsewhere.

¹ http://www.who.int/water_sanitation_health/dwq/chemicals/microcystinsum.pdf?ua=1.

² <http://toledo.oh.gov/news/2014/08/urgent-water-notice/>.

³ <http://www.washingtonpost.com/news/post-nation/wp/2014/08/04/toledo-mayor-lifts-ban-declares-drinking-water-safe/>.

⁴ <http://www.toledoblade.com/local/2014/08/20/Toxin-from-algae-prompts-ban-on-swimming-at-Ohio-reservoir.html>.

Some algae produce toxins that can contaminate surface waters and drinking water supplies. These toxins can affect the liver, skin, and nervous system. Exposure to algal toxins—of which cyanotoxins are a subset—can cause a range of health effects, from mild rashes to severe illness and, in rare cases, death in humans. In addition, deaths of exposed wildlife, livestock, birds, and pets have been documented worldwide.⁵

Most human exposures are thought to occur during recreational activities, such as swimming and boating, through the accidental ingestion or inhalation of water, or when skin comes into contact with toxins. Exposures also result from drinking or showering in contaminated water.⁶

Drinking water standards for algal toxins

No enforceable Federal standards or guidelines have been established for algal toxins in drinking water. The World Health Organization (WHO) has issued a provisional drinking water standard of 1 microgram per liter (g/L, or parts per billion) for microcystin-LR, one of the most common and harmful algal toxins. Ohio and Oregon have adopted the WHO drinking water guidance levels, while Minnesota has established a more stringent level based on acute infant exposure.

On August 8, 2014, the Association of State Drinking Water Administrators (ASDWA) published the results of a survey it took on States' responses to cyanobacteria and cyanotoxins in drinking water.⁷ The survey responses indicate that while nine States have created programs, developed health thresholds, or enacted policies and protocols for sampling and issuing public notices, all of the respondents would like to have more Federal (or national) leadership to help them address these issues. The respondents specifically noted in their comments that help is needed to:

- provide Federal guidance values and analytical methods and risk communications strategies;
- develop appropriate notification language to better inform the public when a cyanobacteria bloom is occurring, taste and odor complaints are received from customers, gastro-intestinal illnesses are reported, and toxin concentrations exceed thresholds in drinking water supplies;
- address issues when toxins concentrate in treatment facility sludge without any blooms in the water source; and
- consider the impacts to Ground Water Under the Direct Influence of surface waters that have toxic blooms (public water supply wells may tap groundwater influenced by surface water).

Challenges to governmental involvement concerning algal toxins in water supplies

An Environmental Protection Agency (EPA) factsheet notes that the conditions that cause cyanobacteria to produce cyanotoxins are not well understood.⁸ Further, biochemical and analytical complex-

⁵ <http://www2.epa.gov/nutrient-policy-data/cyanobacteriacyanotoxins>.

⁶ <http://www2.epa.gov/nutrient-policy-data/health-and-ecological-effects>.

⁷ http://www2.epa.gov/sites/production/files/2014-09/documents/asdwa_drinking_water_hab_survey_summary.pdf.

⁸ http://water.epa.gov/scitech/swguidance/standards/criteria/nutrients/upload/cyanobacteria_factsheet.pdf.

ities make it difficult to determine which toxins are present.⁹ Not only does incorrect identification of a cyanotoxin by a water system complicate its ability to properly treat for it, but selection of the wrong treatment can cause some bacteria to release more toxins into the water.

EPA is working to issue a health advisory to help States and water providers address certain cyanotoxins. Authorized under section 1412(b)(1)(F) of the Safe Drinking Water Act (SDWA), health advisories generally include non-enforceable contaminant values based on non-cancer health effects, and technical guidance on health effects, test methods, and treatment technologies. In 2015, EPA plans to issue advisories for those cyanotoxins for which it has sufficient health effects data, microcystin-LR and cylindrospermopsin. Also in 2015, EPA plans to finalize analytical methods for microcystins-LR and the other targeted cyanotoxins. These methods will allow more specific measurement of the toxins at lower concentrations and with greater accuracy and precision.¹⁰

To pursue enforceable drinking water regulations under SDWA, EPA must engage in a multi-step process. First, EPA must regularly prepare contaminant candidate lists (CCLs), which identify and prioritize contaminants that may require regulation. In 1998, EPA first listed cyanobacteria and their toxins as candidates for regulation.

Second, to satisfy SDWA criteria to begin drafting enforceable regulation of a contaminant, EPA must make a determination that the contaminant requires national regulation to provide a “meaningful opportunity for health risk reduction for persons served by public water systems” based on the contaminant’s occurrence in public water systems and health risks.¹¹ To meet SDWA requirements for a regulatory determination, EPA needs additional health effects and occurrence data for each of the toxins. EPA is conducting health effects research and developing analytical testing methods for the cyanotoxins. Additionally, EPA could employ section 1445 of SDWA to help it better understand the occurrence of cyanotoxins in drinking water by establishing a rule targeted monitoring of unregulated contaminants (UCMR).

HEARINGS

The Subcommittee on Environment and the Economy held a hearing on November 19, 2014 entitled “Microcystin in Drinking Water: What We Know, What We Don’t, and How We Get There.” The Subcommittee received testimony from:

- Dr. Peter Grevatt, Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency;
- The Honorable Craig W. Butler, Director, Ohio Environmental Protection Agency;
- Mr. John Donahue, General Manager, North Park (IL) Public Water District, *on behalf of the American Water Works Association*; and
- Ms. Lynn Thorp, National Campaigns Director, Clean Water Action

⁹ *Ibid.*

¹⁰ <http://water.epa.gov/drink/standards/hascience.cfm>.

¹¹ SDWA section 1412(b)(1).

The Subcommittee on Environment and the Economy held a hearing on H.R. 212 on February 5, 2015. The Subcommittee received testimony from:

- Dr. Peter Grevatt, Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency;
- Mr. Mike Baker, Chief, Division of Drinking Water and Ground Waters, Ohio Environmental Protection Agency, on behalf of the Association of State Drinking Water Administrators;
- Mr. Aurel Arndt, Chief Executive Officer, Lehigh County (PA) Authority, on behalf of the American Water Works Association; and,
- Ms. Kristi Meyer, Ohio Environmental Council.

COMMITTEE CONSIDERATION

On February 5, the Subcommittee on Environment and the Economy met in open markup session and forwarded H.R. 212 to the full Committee, as amended, by a voice vote. On February 11 and 12, 2015, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 212 reported to the House, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 212 reported. A motion by Mr. Upton to order H.R. 212 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals and objectives of H.R. 212 are to create a strategic plan, including steps and timelines, for the assessment and management of the risks posed by algal toxins in drinking water.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 212, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

earmark, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 212 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 18, 2015.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 212, the Drinking Water Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 212—Drinking Water Protection Act

H.R. 212 would require the Environmental Protection Agency (EPA), not later than 90 days after enactment, to develop a strategic plan for assessing and managing risks associated with algal toxins in drinking water. (Algal toxins form in waters with certain conditions such as high levels of nitrogen and phosphorous.) The plan would include steps EPA would take in performing various activities including evaluating risks to human health, identifying factors that make toxins become harmful, and recommending feasible treatment options for mitigating any adverse health effects. EPA also would be required, as appropriate, to update and submit the strategic plan to the Congress. Finally, the bill would require the Government Accountability Office to inventory and report to the Congress on the amount of federal spending that occurred between 2010 and 2014 related to addressing the health concerns stemming from algal toxins.

CBO estimates that implementing H.R. 212 would cost less than \$500,000 annually over the next two years, assuming the availability of appropriated funds. That funding would provide for additional personnel and related administrative expenses to meet the bill's requirements. To the extent EPA would update the strategic plan in future years, additional funding would be required; however, CBO estimates costs would not exceed \$500,000 annually.

Enacting the bill would not affect direct spending and revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 212 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 212 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 212 specifically directs to be completed no rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by H.R. 212.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title. Section 1 provides the short title of “Drinking Water Protection Act.”

Section 2. Amendment to the Safe Drinking Water Act. Section 2(a) would create a new Section 1459 of the Safe Drinking Water Act.

Section 1459(a) would require that the EPA, within 90 days of enactment of H.R. 212 and subject to later updates, to develop and submit to Congress a strategic plan for assessing and managing risks associated with algal toxins in drinking water provided by public water systems. The strategic plan must include steps EPA plans to take as well as its timelines for:

- evaluating the risks to human health from drinking water provided by public water systems contaminated with algal toxins;
- publishing a comprehensive list of algal toxins that the Administrator determines may have an adverse effect on human health when present in that drinking water, taking into account likely exposure levels;
- summarizing both the known adverse human health effects of algal toxins identified on the Administrator’s list, when

present in drinking water systems, as well as the factors that make toxin producing cyanobacteria and algae grow and become harmful;

- determining whether to publish health advisories on specific algal toxins, establishing guidance for feasible analytical methods to quantify the presence of algal toxins, and setting guidance on the frequency of monitoring necessary to determine if identified algal toxins are present in drinking water provided by public water systems;
- recommending feasible treatment options to mitigate any adverse public health effects caused by identified algal toxins; and
- entering into cooperative agreements and providing technical assistance to affected States and public water systems to aid in managing risks associated with identified algal toxins in drinking water.

Section 1459(b) would require that EPA identify gaps in its understanding of the human health effects of cyanobacteria and algae that produce toxins, and methods and means of testing and monitoring for the presence of harmful algal blooms in the source water of or drinking water provided by public water systems. EPA then would be asked to consult, as appropriate, with other Federal agencies that examine or analyze cyanobacteria or algal toxins or address public health concerns related to harmful algal blooms; and with States, operators of public water systems, multinational agencies, foreign governments, research and academic institutions, and companies that provide drinking water treatment options. Section 1459(b) also would call on EPA to assemble and publish information from each Federal agency that has examined or analyzed cyanobacteria or algal toxins or addressed public health concerns related to harmful algal blooms.

As EPA implements paragraphs (2) and (3) of section 1459(b), the Committee encourages the Agency to consult with the Department of Energy's Joint Genome Institute. The Committee believes that this collaboration could help the Agency and others better understand the biological factors that cause certain blooms to produce harmful toxins.

Proposed section 1459(c) requires that, in carrying out the provisions of the new section, the Administrator comply with section 1412(b)(3)(A), as applicable, of the Safe Drinking Water Act, which provides that, to the degree that an Agency action is based on science, the Administrator use (i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

Finally, section 1459(d) would define "feasible" as provided in SDWA section 1412(b)(4)(D).

Section 2(b) is a free-standing provision that requires the Government Accountability Office to inventory and report to Congress on Federal spending, between fiscal years 2010 and 2014, on analyses and public health efforts on toxins producing cyanobacteria and algae, including the specific purpose for which the funds were made available, the law under which the funds were authorized, the Federal agency that received or spent the funds, and rec-

ommended steps to reduce any duplication, and improve inter-agency coordination, of such expenditures.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SAFE DRINKING WATER ACT

TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

* * * * *

PART E—GENERAL PROVISIONS

* * * * *

SEC. 1459. ALGAL TOXIN RISK ASSESSMENT AND MANAGEMENT.

(a) *STRATEGIC PLAN.*—

(1) *DEVELOPMENT.*—*Not later than 90 days after the date of enactment of this section, the Administrator shall develop and submit to Congress a strategic plan for assessing and managing risks associated with algal toxins in drinking water provided by public water systems. The strategic plan shall include steps and timelines to—*

(A) *evaluate the risk to human health from drinking water provided by public water systems contaminated with algal toxins;*

(B) *establish, publish, and update a comprehensive list of algal toxins which the Administrator determines may have an adverse effect on human health when present in drinking water provided by public water systems, taking into account likely exposure levels;*

(C) *summarize—*

(i) *the known adverse human health effects of algal toxins included on the list published under subparagraph (B) when present in drinking water provided by public water systems; and*

(ii) *factors that cause toxin-producing cyanobacteria and algae to proliferate and express toxins;*

(D) *with respect to algal toxins included on the list published under subparagraph (B), determine whether to—*

(i) *publish health advisories pursuant to section 1412(b)(1)(F) for such algal toxins in drinking water provided by public water systems;*

(ii) *establish guidance regarding feasible analytical methods to quantify the presence of algal toxins; and*

(iii) *establish guidance regarding the frequency of monitoring necessary to determine if such algal toxins are present in drinking water provided by public water systems;*

(E) *recommend feasible treatment options, including procedures, equipment, and source water protection practices, to mitigate any adverse public health effects of algal toxins*

included on the list published under subparagraph (B); and

(F) enter into cooperative agreements with, and provide technical assistance to, affected States and public water systems, as identified by the Administrator, for the purpose of managing risks associated with algal toxins included on the list published under subparagraph (B).

(2) UPDATES.—The Administrator shall, as appropriate, update and submit to Congress the strategic plan developed under paragraph (1).

(b) INFORMATION COORDINATION.—In carrying out this section the Administrator shall—

(1) identify gaps in the Agency’s understanding of algal toxins, including—

(A) the human health effects of algal toxins included on the list published under subsection (a)(1)(B); and

(B) methods and means of testing and monitoring for the presence of harmful algal toxins in source water of, or drinking water provided by, public water systems;

(2) as appropriate, consult with—

(A) other Federal agencies that—

(i) examine or analyze cyanobacteria or algal toxins;

or

(ii) address public health concerns related to harmful algal blooms;

(B) States;

(C) operators of public water systems;

(D) multinational agencies;

(E) foreign governments;

(F) research and academic institutions; and

(G) companies that provide relevant drinking water treatment options; and

(3) assemble and publish information from each Federal agency that has—

(A) examined or analyzed cyanobacteria or algal toxins;

or

(B) addressed public health concerns related to harmful algal blooms.

(c) USE OF SCIENCE.—The Administrator shall carry out this section in accordance with the requirements described in section 1412(b)(3)(A), as applicable.

(d) FEASIBLE.—For purposes of this section, the term “feasible” has the meaning given such term in section 1412(b)(4)(D).

* * * * *