

105TH CONGRESS
1ST SESSION

H.R. 2138

To amend the Federal Water Pollution Control Act to provide for the use of biological monitoring and whole effluent toxicity tests in connection with publicly owned treatment works, municipal separate storm sewer systems, and municipal combined sewer overflows, including control facilities, and other wet weather control facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 1997

Mr. HEFLEY (for himself, Mr. PASTOR, and Mr. GALLEGLY) 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 provide for the use of biological monitoring and whole effluent toxicity tests in connection with publicly owned treatment works, municipal separate storm sewer systems, and municipal combined sewer overflows, including control facilities, and other wet weather control facilities, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Municipal Biological
3 Monitoring Use Act”.

4 **SEC. 2. BIOLOGICAL MONITORING AT PUBLICLY OWNED**
5 **TREATMENT WORKS, MUNICIPAL SEPARATE**
6 **STORM SEWER SYSTEMS, AND MUNICIPAL**
7 **COMBINED SEWER OVERFLOWS, INCLUDING**
8 **CONTROL FACILITIES, AND OTHER WET**
9 **WEATHER CONTROL FACILITIES.**

10 (a) BIOLOGICAL MONITORING CRITERIA.—Section
11 303(c)(2) of the Federal Water Pollution Control Act (33
12 U.S.C. 1313(c)(2)) is amended—

13 (1) in subparagraph (B)—

14 (A) by striking the period at the end and
15 inserting the following: “: *Provided*, That for
16 publicly owned treatment works, municipal sep-
17 arate storm sewer systems, and municipal com-
18 bined sewer overflows, including control facili-
19 ties, and other wet weather control facilities,
20 nothing in this Act shall be construed to au-
21 thorize the use of water quality standards or
22 permit effluent limitations which result in the
23 finding of a violation upon failure of whole ef-
24 fluent toxicity tests or biological monitoring
25 tests.”; and

1 (B) by inserting after the third sentence
2 the following: “Criteria for biological monitor-
3 ing or whole effluent toxicity shall employ an
4 aquatic species that is indigenous to the type of
5 waters, a species that is representative of such
6 species, or such other appropriate species as
7 will indicate the toxicity of the effluent in the
8 specific receiving waters. Such criteria shall
9 take into account the natural biological varia-
10 bility of the species, and shall ensure that the
11 accompanying test method accurately represents
12 actual in-stream conditions, including condi-
13 tions associated with dry and wet weather.”;
14 and

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

16 “(C) Where the permitting authority determines that
17 the discharge from a publicly owned treatment works, a
18 municipal separate storm sewer system, or municipal com-
19 bined sewer overflows, including control facilities, or other
20 wet weather control facilities causes, has the reasonable
21 potential to cause, or contributes to an in-stream excur-
22 sion above a narrative or numeric criterion for whole efflu-
23 ent toxicity, the permit may contain terms, conditions, or
24 limitations requiring further analysis, identification eval-
25 uation, or reduction evaluation of such effluent toxicity.

1 Such terms, conditions, or limitations meeting the require-
2 ments of this section may be utilized in conjunction with
3 a municipal separate storm sewer system, or municipal
4 combined sewer overflows, including control facilities, or
5 other wet weather control facilities only upon a demonstra-
6 tion that such terms, conditions, or limitations are tech-
7 nically feasible, accurately represent toxicity associated
8 with wet weather conditions, and can materially assist in
9 an identification evaluation or reduction evaluation of such
10 toxicity.”.

11 (b) INFORMATION ON WATER QUALITY CRITERIA.—
12 Section 304(a)(8) of the Federal Water Pollution Control
13 Act (33 U.S.C. 1314(a)(8)) is amended by inserting “,
14 consistent with subparagraphs (B) and (C) of section
15 303(c)(2),” after “publish”.

16 (c) USE OF BIOLOGICAL MONITORING OR WHOLE
17 EFFLUENT TOXICITY TESTING AT PUBLICLY OWNED
18 TREATMENT WORKS, MUNICIPAL SEPARATE STORM
19 SEWER SYSTEMS, OR MUNICIPAL COMBINED SEWER
20 OVERFLOWS, INCLUDING CONTROL FACILITIES, OR
21 OTHER WET WEATHER CONTROL FACILITIES.—Section
22 402 of the Federal Water Pollution Control Act (33
23 U.S.C. 1342) is amended by adding at the end the follow-
24 ing:

1 “(q) USE OF BIOLOGICAL MONITORING OR WHOLE
2 EFFLUENT TOXICITY TESTING AT PUBLICLY OWNED
3 TREATMENT WORKS, MUNICIPAL SEPARATE STORM
4 SEWER SYSTEMS, OR MUNICIPAL COMBINED SEWER
5 OVERFLOWS, INCLUDING CONTROL FACILITIES, OR
6 OTHER WET WEATHER CONTROL FACILITIES.—

7 “(1) IN GENERAL.—Where the Administrator
8 determines that it is necessary in accordance with
9 subparagraphs (B) and (C) of section 303(c)(2) to
10 include biological monitoring, whole effluent toxicity
11 testing, or assessment methods as a term, condition,
12 or limitation in a permit issued to a publicly owned
13 treatment works, a municipal separate storm sewer
14 system, or a municipal combined sewer overflow, in-
15 cluding a control facility, or other wet weather con-
16 trol facility pursuant to this section, such permit
17 term, condition, or limitation shall be in accordance
18 with such subparagraphs.

19 “(2) RESPONDING TO TEST FAILURES.—If a
20 permit issued under this section contains terms, con-
21 ditions, or limitations requiring biological monitoring
22 or whole effluent toxicity testing designed to meet
23 criteria for biological monitoring or whole effluent
24 toxicity, the permit may establish procedures for fur-
25 ther analysis, identification evaluation, or reduction

1 evaluation of such toxicity. The permit shall allow
2 the permittee to discontinue such procedures, subject
3 to future reinitiation of such procedures upon a
4 showing by the permitting authority of changed con-
5 ditions, if the source of such toxicity cannot, after
6 thorough investigation, be identified.

7 “(3) TEST FAILURE NOT A VIOLATION.—The
8 failure of a biological monitoring test or a whole ef-
9 fluent toxicity test at a publicly owned treatment
10 works, a municipal separate storm sewer system, or
11 a municipal combined sewer overflow, including a
12 control facility, or other wet weather control facility
13 shall not result in a finding of a violation under this
14 Act.”.

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