

106TH CONGRESS  
2D SESSION

# H. R. 3378

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2000

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

To authorize certain actions to address the comprehensive treatment of sewage emanating from the Tijuana River in order to substantially reduce river and ocean pollution in the San Diego border region.

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 “Tijuana River Valley  
3 Estuary and Beach Sewage Cleanup Act of 2000”.

4 **SEC. 2. PURPOSE.**

5 The purpose of this Act is to authorize the United  
6 States to take actions to address comprehensively the  
7 treatment of sewage emanating from the Tijuana River  
8 area, Mexico, that flows untreated or partially treated into  
9 the United States causing significant adverse public health  
10 and environmental impacts.

11 **SEC. 3. DEFINITIONS.**

12 In this Act, the following definitions apply:

13 (1) ADMINISTRATOR.—The term “Adminis-  
14 trator” means the Administrator of the Environ-  
15 mental Protection Agency.

16 (2) COMMISSION.—The term “Commission”  
17 means the United States section of the International  
18 Boundary and Water Commission, United States  
19 and Mexico.

20 (3) IWTP.—The term “IWTP” means the  
21 South Bay International Wastewater Treatment  
22 Plant constructed under the provisions of the Fed-  
23 eral Water Pollution Control Act (33 U.S.C. 1251 et  
24 seq.), section 510 of the Water Quality Act of 1987  
25 (101 Stat. 80–82), and Treaty Minutes to the Trea-  
26 ty for the Utilization of Waters of the Colorado and

1 Tijuana Rivers and of the Rio Grande, dated Feb-  
2 ruary 3, 1944.

3 (4) SECONDARY TREATMENT.—The term “sec-  
4 ondary treatment” has the meaning such term has  
5 under the Federal Water Pollution Control Act and  
6 its implementing regulations.

7 (5) SECRETARY.—The term “Secretary” means  
8 the Secretary of State.

9 (6) MEXICAN FACILITY.—The term “Mexican  
10 facility” means a proposed public-private wastewater  
11 treatment facility to be constructed and operated  
12 under this Act within Mexico for the purpose of  
13 treating sewage flows generated within Mexico,  
14 which flows impact the surface waters, health, and  
15 safety of the United States and Mexico.

16 (7) MGD.—The term “mgd” means million gal-  
17 lons per day.

18 **SEC. 4. ACTIONS TO BE TAKEN BY THE COMMISSION AND**  
19 **THE ADMINISTRATOR.**

20 (a) SECONDARY TREATMENT.—

21 (1) IN GENERAL.—Subject to the negotiation  
22 and conclusion of a new Treaty Minute or the  
23 amendment of Treaty Minute 283 under section 5,  
24 and notwithstanding section 510(b)(2) of the Water  
25 Quality Act of 1987 (101 Stat. 81), the Commission

1 is authorized and directed to provide for the sec-  
2 ondary treatment of a total of not more than 50  
3 mgd in Mexico—

4 (A) of effluent from the IWTP if such  
5 treatment is not provided for at a facility in the  
6 United States; and

7 (B) of additional sewage emanating from  
8 the Tijuana River area, Mexico.

9 (2) ADDITIONAL AUTHORITY.—Subject to the  
10 results of the comprehensive plan developed under  
11 subsection (b) revealing a need for additional sec-  
12 ondary treatment capacity in the San Diego-Tijuana  
13 border region and recommending the provision of  
14 such capacity in Mexico, the Commission may pro-  
15 vide not more than an additional 25 mgd of sec-  
16 ondary treatment capacity in Mexico for treatment  
17 described in paragraph (1).

18 (b) COMPREHENSIVE PLAN.—Not later than 24  
19 months after the date of the enactment of this Act, the  
20 Administrator shall develop a comprehensive plan with  
21 stakeholder involvement to address the transborder sanita-  
22 tion problems in the San Diego-Tijuana border region.  
23 The plan shall include, at a minimum—

24 (1) an analysis of the long-term secondary  
25 treatment needs of the region;

1           (2) an analysis of upgrades in the sewage col-  
2           lection system serving the Tijuana area, Mexico; and

3           (3) an identification of options, and rec-  
4           ommendations for preferred options, for additional  
5           sewage treatment capacity for future flows ema-  
6           nating from the Tijuana River area, Mexico.

7           (c) CONTRACT.—

8           (1) IN GENERAL.—Subject to the availability of  
9           appropriations to carry out this subsection and not-  
10          withstanding any provision of Federal procurement  
11          law, upon conclusion of a new Treaty Minute or the  
12          amendment of Treaty Minute 283 under section 5,  
13          the Commission may enter into a fee-for-services  
14          contract with the owner of a Mexican facility in  
15          order to carry out the secondary treatment require-  
16          ments of subsection (a) and make payments under  
17          such contract.

18          (2) TERMS.—Any contract under this sub-  
19          section shall provide, at a minimum, for the fol-  
20          lowing:

21                  (A) Transportation of the advanced pri-  
22                  mary effluent from the IWTP to the Mexican  
23                  facility for secondary treatment.

24                  (B) Treatment of the advanced primary ef-  
25                  fluent from the IWTP to the secondary treat-

1           ment level in compliance with water quality  
2           laws of the United States, California, and Mex-  
3           ico.

4           (C) Return conveyance from the Mexican  
5           facility of any such treated effluent that cannot  
6           be reused in either Mexico or the United States  
7           to the South Bay Ocean Outfall for discharge  
8           into the Pacific Ocean in compliance with water  
9           quality laws of the United States and Cali-  
10          fornia.

11          (D) Subject to the requirements of sub-  
12          section (a), additional sewage treatment capac-  
13          ity that provides for advanced primary and sec-  
14          ondary treatment of sewage described in sub-  
15          section (a)(1)(B) in addition to the capacity re-  
16          quired to treat the advanced primary effluent  
17          from the IWTP.

18          (E) A contract term of 30 years.

19          (F) Arrangements for monitoring,  
20          verification, and enforcement of compliance  
21          with United States, California, and Mexican  
22          water quality standards.

23          (G) Arrangements for the disposal and use  
24          of sludge, produced from the IWTP and the

1 Mexican facility, at a location or locations in  
2 Mexico.

3 (H) Payment of fees by the Commission to  
4 the owner of the Mexican facility for sewage  
5 treatment services with the annual amount pay-  
6 able to reflect all agreed upon costs associated  
7 with the development, financing, construction,  
8 operation, and maintenance of the Mexican fa-  
9 cility.

10 (I) Provision for the transfer of ownership  
11 of the Mexican facility to the United States,  
12 and provision for a cancellation fee by the  
13 United States to the owner of the Mexican fa-  
14 cility, if the Commission fails to perform its ob-  
15 ligations under the contract. The cancellation  
16 fee shall be in amounts declining over the term  
17 of the contract anticipated to be sufficient to  
18 repay construction debt and other amounts due  
19 to the owner that remain unamortized due to  
20 early termination of the contract.

21 (J) Provision for the transfer of ownership  
22 of the Mexican facility to the United States,  
23 without a cancellation fee, if the owner of the  
24 Mexican facility fails to perform the obligations  
25 of the owner under the contract.

1           (K) To the extent practicable, the use of  
2 competitive procedures by the owner of the  
3 Mexican facility in the procurement of property  
4 or services for the engineering, construction,  
5 and operation and maintenance of the Mexican  
6 facility.

7           (L) An opportunity for the Commission to  
8 review and approve the selection of contractors  
9 providing engineering, construction, and oper-  
10 ation and maintenance for the Mexican facility.

11           (M) The maintenance by the owner of the  
12 Mexican facility of all records (including books,  
13 documents, papers, reports, and other mate-  
14 rials) necessary to demonstrate compliance with  
15 the terms of this Act and the contract.

16           (N) Access by the Inspector General of the  
17 Department of State or the designee of the In-  
18 spector General for audit and examination of all  
19 records maintained pursuant to subparagraph  
20 (M) to facilitate the monitoring and evaluation  
21 required under subsection (d).

22           (3) LIMITATION.—The Contract Disputes Act  
23 of 1978 (41 U.S.C. 601–613) shall not apply to a  
24 contract executed under this section.

25           (d) IMPLEMENTATION.—



1           (1) IN GENERAL.—The Inspector General of  
2           the Department of State shall monitor the imple-  
3           mentation of any contract entered into under this  
4           section and evaluate the extent to which the owner  
5           of the Mexican facility has met the terms of this sec-  
6           tion and fulfilled the terms of the contract.

7           (2) REPORT.—The Inspector General shall  
8           transmit to Congress a report containing the evalua-  
9           tion under paragraph (1) not later than 2 years  
10          after the execution of any contract with the owner  
11          of the Mexican facility under this section, 3 years  
12          thereafter, and periodically after the second report  
13          under this paragraph.

14 **SEC. 5. NEGOTIATION OF NEW TREATY MINUTE.**

15          (a) CONGRESSIONAL STATEMENT.—In light of the  
16          existing threat to the environment and to public health  
17          and safety within the United States as a result of the river  
18          and ocean pollution in the San Diego-Tijuana border re-  
19          gion, the Secretary is requested to give the highest priority  
20          to the negotiation and execution of a new Treaty Minute,  
21          or a modification of Treaty Minute 283, consistent with  
22          the provisions of this Act, in order that the other provi-  
23          sions of this Act to address such pollution may be imple-  
24          mented as soon as possible.

25          (b) NEGOTIATION.—

1           (1) INITIATION.—The Secretary is requested to  
2       initiate negotiations with Mexico, within 60 days  
3       after the date of the enactment of this Act, for a  
4       new Treaty Minute or a modification of Treaty  
5       Minute 283 consistent with the provisions of this  
6       Act.

7           (2) IMPLEMENTATION.—Implementation of a  
8       new Treaty Minute or of a modification of Treaty  
9       Minute 283 under this Act shall be subject to the  
10      provisions of the National Environmental Policy Act  
11      of 1969 (42 U.S.C. 4321 et seq.).

12          (3) MATTERS TO BE ADDRESSED.—A new  
13      Treaty Minute or a modification of Treaty Minute  
14      283 under paragraph (1) should address, at a min-  
15      imum, the following:

16            (A) The siting of treatment facilities in  
17            Mexico and in the United States.

18            (B) Provision for the secondary treatment  
19            of effluent from the IWTP at a Mexican facility  
20            if such treatment is not provided for at a facil-  
21            ity in the United States.

22            (C) Provision for additional capacity for  
23            advanced primary and secondary treatment of  
24            additional sewage emanating from the Tijuana  
25            River area, Mexico, in addition to the treatment

1 capacity for the advanced primary effluent from  
2 the IWTP at the Mexican facility.

3 (D) Provision for any and all approvals  
4 from Mexican authorities necessary to facilitate  
5 water quality verification and enforcement at  
6 the Mexican facility.

7 (E) Any terms and conditions considered  
8 necessary to allow for use in the United States  
9 of treated effluent from the Mexican facility, if  
10 there is reclaimed water which is surplus to the  
11 needs of users in Mexico and such use is con-  
12 sistent with applicable United States and Cali-  
13 fornia law.

14 (F) Any other terms and conditions consid-  
15 ered necessary by the Secretary in order to im-  
16 plement the provisions of this Act.

17 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated such sums  
19 as may be necessary to carry out this Act.

Passed the House of Representatives September 12,  
2000.

Attest:

JEFF TRANDAHL,

*Clerk.*