

106TH CONGRESS
2D SESSION

H. R. 3570

To amend the Federal Water Pollution Control Act to establish nationally consistent requirements for controlling urban wet weather flows, to provide additional funds to municipalities to meet those requirements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2000

Mr. LATOURETTE (for himself and Mr. PASCRELL) 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 establish nationally consistent requirements for controlling urban wet weather flows, to provide additional funds to municipalities to meet those requirements, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Urban Wet Weather
5 Priorities Act of 2000”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Wet weather flows, including combined
2 sewer overflows, sanitary sewer overflows,
3 stormwater runoff, and nonpoint source discharges
4 constitute the largest remaining challenge to achiev-
5 ing the goals of the Federal Water Pollution Control
6 Act.

7 (2) To effectively control wet weather flows, na-
8 tional regulatory requirements must be in place to
9 provide municipalities with clear and achievable
10 goals that allow them to prioritize the expenditure of
11 limited local funds, and that are consistent within
12 and among the regions of the United States and the
13 States.

14 (3) The Combined Sewer Overflow Control Pol-
15 icy signed by the Administrator of the Environ-
16 mental Protection Agency on April 11, 1994, has
17 not been fully recognized as binding authority, leav-
18 ing those affected municipalities unsure of the ap-
19 propriate control standards.

20 (4) In the absence of a national policy clarifying
21 the appropriate control standard for sanitary sewer
22 overflows, municipalities are being subject to the in-
23 consistent exercise of enforcement discretion of each
24 region or State without the benefit of a clearly de-
25 fined control standard.

1 (5) In recognition of the unique nature of mu-
2 nicipal stormwater runoff, Congress established a
3 distinct compliance standard for municipal separate
4 storm sewer system control programs which is to be
5 based on the implementation of best management
6 practices and the reduction of pollutants to the max-
7 imum extent practicable.

8 (6) An effective solution to the problems associ-
9 ated with wet weather flows can be attained through
10 a coordinated urban watershed management ap-
11 proach to rules, policies, and guidelines for wet
12 weather flows.

13 (7) Current funding sources for the construc-
14 tion and modernization of publicly owned treatment
15 works are insufficient to assist municipalities in
16 meeting wet weather control mandates.

17 (b) PURPOSES.—The purposes of this Act are—

18 (1) to achieve national consistency in the regu-
19 lation of urban wet weather flows;

20 (2) to codify the Combined Sewer Overflow
21 Control Policy signed by the Administrator of the
22 Environmental Protection Agency on April 11, 1994,
23 to establish a clear and nationally consistent ap-
24 proach;

1 (3) to direct the Environmental Protection
2 Agency to develop, through direct consultation with
3 municipalities and others, a national sanitary sewer
4 overflow program which is uniformly adopted in all
5 regions of the United States and all States;

6 (4) to clarify that the original intent of Con-
7 gress with respect to the appropriate compliance
8 standard for municipalities subject to such Act's mu-
9 nicipal separate storm sewer system control require-
10 ments was to require the implementation of best
11 management practices and not to impose numerical
12 discharge standards;

13 (5) to develop information to exhibit the effec-
14 tiveness of managing urban wet weather flows using
15 a watershed management framework and to evaluate
16 the effectiveness of available best management prac-
17 tices to control stormwater runoff; and

18 (6) to establish a wet weather grants program
19 to assist municipalities in addressing the impacts of
20 urban wet weather discharges.

21 **SEC. 3. COMBINED SEWER OVERFLOWS.**

22 Section 402 of the Federal Water Pollution Control
23 Act (33 U.S.C. 1342) is amended by adding at the end
24 the following:

25 “(q) COMBINED SEWER OVERFLOWS.—

1 “(1) REQUIREMENT FOR PERMITS, ORDERS,
2 AND DECREES.—Each permit, order, or decree
3 issued pursuant to this section for a discharge from
4 a combined storm and sanitary sewer shall conform
5 to the Combined Sewer Overflow Control Policy
6 signed by the Administrator on April 11, 1994, as
7 amended by this Act.

8 “(2) TERM OF PERMIT, ORDER, OR DECREE.—

9 “(A) AUTHORITY TO ISSUE.—Notwith-
10 standing any schedule for compliance under sec-
11 tion 301(b) or any permit limitation authorized
12 by subsection (b)(1)(B), the Administrator or a
13 State with a program approved under sub-
14 section (b) may issue or execute a permit,
15 order, or decree consistent with this section for
16 a discharge from a combined storm and sani-
17 tary sewer.

18 “(B) SCHEDULE FOR COMPLIANCE.—A
19 permit, order, or decree issued or executed
20 under subparagraph (A) shall include a sched-
21 ule for compliance, within a period of not to ex-
22 ceed 15 years, with a long-term control plan
23 under the policy referred to in paragraph (1).”.

1 **SEC. 4. SANITARY SEWER OVERFLOWS.**

2 Section 402 of the Federal Water Pollution Control
3 Act (33 U.S.C. 1342) is further amended by adding at
4 the end the following:

5 “(r) SANITARY SEWER OVERFLOWS.—

6 “(1) DEVELOPMENT OF REGULATIONS.—Not
7 later than May 29, 2001, the Administrator, in con-
8 sultation with State, municipal, and wastewater au-
9 thorities, shall issue regulations which establish a
10 comprehensive program to control discharges from
11 municipal separate sanitary sewer overflows.

12 “(2) PROGRAM ELEMENTS.—The program shall
13 provide for the following:

14 “(A) GENERAL PROHIBITION.—A prohibi-
15 tion on sanitary sewer overflows, except those
16 overflows which are unavoidable. Municipal sep-
17 arate sanitary sewer systems shall not be liable
18 for those overflows which are unavoidable.

19 “(B) MINIMUM PROCEDURES.—Develop-
20 ment by the Administrator, in consultation with
21 municipalities and wastewater authorities, of
22 minimum operational procedures as guidance
23 for use by operators of municipal separate sani-
24 tary sewer systems for identification of sanitary
25 sewer overflows, immediate overflow response,

proper operation and maintenance, and new sewer and service lateral installation.

“(C) REMEDIATION.—

“(i) SYSTEM-SPECIFIC CONTROL PLANS.—If avoidable and repeated sanitary sewer overflows occur following implementation of the minimum operational procedures under subparagraph (B), a system-specific control plan that establishes priorities for addressing such overflows shall be developed and implemented by the permittee, after approval by the permitting authority. The control plan shall provide for short-term and long-term remediation in accordance with this subparagraph.

“(ii) SHORT-TERM REMEDIATION.—

The control plan under this subparagraph shall provide for short-term remediation of those sanitary sewer overflows that pose immediate and significant health risks or environmental impacts or which can be addressed without conducting a complex analysis of the system, including procedures for dry weather operation and maintenance, dry weather capacity, wet weather

1 operation and maintenance, wet weather
2 preventative maintenance and minor cap-
3 ital improvement, and wet weather capac-
4 ity and rapid solution.

5 “(iii) LONG-TERM REMEDIATION.—
6 The control plan under this subparagraph
7 shall provide for any other chronic wet
8 weather or avoidable and repeated dry
9 weather sanitary sewer overflow, long-term
10 remediation, including a combination of ac-
11 tivities to remove extraneous peak flow
12 sources, improve conveyance capacity, im-
13 prove treatment plant capacity, and pro-
14 vide additional storage.

15 “(iv) GUIDANCE.—The Administrator
16 shall develop guidance for determining the
17 type of short-term and long-term remedi-
18 ation necessary based on the relative im-
19 pacts to public health and environment.

20 “(v) WET WEATHER TREATMENT.—
21 Under the control plan, discharges from
22 the sanitary sewer collection system via
23 wet weather facilities, at less than the
24 equivalent of secondary treatment that
25 meets technology-based standards of this

1 Act, are authorized in accordance with
2 clauses (vi) and (vii).

3 “(vi) TEMPORARY MEASURES.—Under
4 clause (v), a temporary discharge (which is
5 part of an interim measure before comple-
6 tion of the long-term control plan) from a
7 wet weather facility is authorized if such
8 discharge reduces health risks by strategi-
9 cally locating discharges to lower risk areas
10 in a way that reduces or eliminates the oc-
11 currence of overflows to sensitive receiving
12 waters and the occurrence of sewage spills
13 and basement backups in other parts of
14 the collection system until other steps to
15 rehabilitate the collection system are taken.
16 If temporary discharges from a wet weath-
17 er facility are approved by the permitting
18 authority, either a permit or an enforce-
19 ment order must provide interim mile-
20 stones for constructing, operating, and ter-
21 minating the discharges.

22 “(vii) LONG-TERM FACILITIES.—
23 Under clause (v), a discharge from a long-
24 term wet weather facility is authorized if
25 the discharge is part of a comprehensive

1 remediation plan. The plan shall include
2 measures to manage peak flow (such as re-
3 moval of sources of peak flows, improved
4 conveyance and treatment plant capacity,
5 management of future system deteriora-
6 tion, or additional storage) if the munici-
7 pality demonstrates to the permitting au-
8 thority that additional peak flow reduction
9 measures are not feasible on the basis of
10 the technical limitations of control tech-
11 niques, financial capability of the munici-
12 pality, or cost effectiveness of the meas-
13 ures. The plan shall demonstrate that wet
14 weather discharges will not interfere with
15 the attainment or maintenance of the
16 water quality based requirements of this
17 Act and that future system deterioration
18 will be adequately addressed. The plan
19 shall provide the public with an oppor-
20 tunity to review alternatives before a deci-
21 sion is made.

22 “(D) JURISDICTIONAL ISSUES.—If a col-
23 lection system is connected to a publicly-owned
24 treatment works and the collection system and
25 treatment works are not operated by the same

1 municipal entity, a description of acceptable
2 mechanisms (other than permits under this sec-
3 tion), that assign responsibilities for proper op-
4 eration and maintenance of the collection sys-
5 tem, shall be developed by the Administrator.
6 Such mechanisms may include interagency or
7 intrajurisdictional agreements, permits, local or-
8 dinances, or similar enforceable instruments.
9 Such an approved operation and maintenance
10 instrument shall be obtained by the collection
11 system within a specified time. If such instru-
12 ment has not been obtained after sufficient time
13 has elapsed, the Administrator may issue a sep-
14 arate permit to the collection system under this
15 section. In addition, the treatment works may,
16 at any time, petition the Administrator for 2
17 separate permits, one for discharges from the
18 treatment works and one for discharges from
19 the collection system.

20 “(3) COMPLIANCE DEADLINE.—Notwith-
21 standing any compliance schedule under section
22 301(b), or any permit limitation under subsection
23 (b)(1)(B), the Administrator or a State with a pro-
24 gram approved under subsection (b) may issue a
25 permit pursuant to this section for a discharge from

1 a municipal separate sanitary sewer due to
2 stormwater inflows or infiltration. The permit shall
3 include, at a minimum, a schedule for compliance
4 with a system-specific control plan under the regula-
5 tions issued under paragraph (1), for a term not to
6 exceed 15 years; except that the Administrator or
7 the State (as the case may be) may grant a compli-
8 ance schedule of longer than 15 years if compliance
9 within 15 years is not within the economic capability
10 of the owner or operator.

11 “(4) UNAVOIDABLE OVERFLOWS DEFINED.—In
12 this section, the term ‘unavoidable overflows’
13 means—

14 “(A) discharges that are necessary to pre-
15 vent loss of life, personal injury, or severe prop-
16 erty damage; and

17 “(B) discharges that are temporary, excep-
18 tional incidents beyond the reasonable control
19 of the operator, such as exceptional acts of na-
20 ture, wet weather conditions beyond a system-
21 specific control plan in an approved facility plan
22 or other remediation plan that is currently ap-
23 proved by the Administrator, third party ac-
24 tions that could not be reasonably prevented,
25 blockages that could not be avoided through

1 reasonable measures, and unforeseen sudden
2 structural, mechanical, or electrical failure that
3 is beyond the control of the permittee.”.

4 **SEC. 5. MUNICIPAL STORMWATER DISCHARGES.**

5 Section 402(p) of the Federal Water Pollution Con-
6 trol Act (33 U.S.C. 1342(p)) is amended by adding at the
7 end the following:

8 “(7) SPECIAL RULES.—

9 “(A) MAXIMUM EXTENT PRACTICABLE DE-
10 FINED.—For the purposes of paragraph
11 (3)(B)(iii), the term ‘maximum extent prac-
12 ticable’ means the greatest degree of pollutant
13 reduction achievable through the application of
14 the best available, technically feasible, cost ef-
15 fective, and economically achievable storm water
16 control practices, technologies, processes, siting
17 criteria, operating methods, or other alter-
18 natives that do not require the construction of
19 treatment works. This definition applies to any
20 discharges covered under paragraphs (2)(C),
21 (2)(D), and (2)(E) of this subsection or as a re-
22 sult of a regulation issued under paragraph (6).

23 “(B) COMPLIANCE WITH CERTAIN RE-
24 QUIREMENTS.—Implementation of stormwater
25 best management practices shall be the basis on

1 which to determine compliance with the water
2 quality and technology based requirements of
3 this Act. If continuing water quality impair-
4 ments directly associated with municipal wet
5 weather discharges continue to occur after the
6 implementation of best management practices,
7 adjustments to the plans and practices may be
8 required to further reduce the impacts of these
9 discharges. Neither the Administrator nor the
10 State, in the case of a State with authority to
11 issue permits under this section, may require,
12 in a permit issued for discharges from munic-
13 ipal separate storm sewers, compliance with nu-
14 meric effluent limitations, or fixed numeric pol-
15 lutant load reductions.”.

16 **SEC. 6. URBAN WET WEATHER GRANT PROGRAM.**

17 The Federal Water Pollution Control Act (33 U.S.C.
18 1251 et seq.) is amended by adding at the end the fol-
19 lowing new title:

1 **“TITLE VII—URBAN WET**
2 **WEATHER GRANT PROGRAMS**

3 **“SEC. 701. URBAN WET WEATHER WATERSHED DEM-**
4 **ONSTRATION PROJECTS.**

5 “(a) IN GENERAL.—The Administrator shall conduct
6 municipal demonstration projects relating to the following
7 areas of wet weather discharge control:

8 “(1) WATERSHED MANAGEMENT OF WET
9 WEATHER DISCHARGES.—The management of urban
10 wet weather flows, such as combined sewer over-
11 flows, sanitary sewer overflows, and urban
12 stormwater runoff, on a watershed or subwatershed
13 basis.

14 “(2) STORMWATER BEST MANAGEMENT PRAC-
15 TICES.—The control of pollutants from separate
16 storm sewer systems for the purpose of dem-
17 onstrating and determining controls that are cost-ef-
18 fective in reducing such pollutants from urban
19 stormwater runoff.

20 “(b) ADMINISTRATION.—The Administrator shall af-
21 ford those participating municipalities the maximum flexi-
22 bility possible to engage in innovative practices, including
23 the ability to unify separate wet weather control efforts
24 under one coordinated approach. Projects should utilize a

1 watershed approach to control the cumulative wet weather
2 flows from an urban area.

3 “(c) FUNDING.—There is authorized to be appro-
4 priated to carry out this section \$10,000,000 for fiscal
5 year 2000, \$15,000,000 for fiscal year 2001, and
6 \$20,000,000 for fiscal year 2002. Such funds shall remain
7 available until expended.

8 **“SEC. 702. WET WEATHER GRANTS.**

9 “(a) IN GENERAL.—The Administrator may make
10 grants to any municipality or local government entity for
11 the following:

12 “(1) WET WEATHER FACILITIES.—Planning,
13 design, construction of facilities to intercept, trans-
14 port, or control flows from separate storm sewer sys-
15 tems, combined sewers, and sanitary sewers.

16 “(2) WET WEATHER MANAGEMENT PRAC-
17 TICES.—Planning and implementation of urban wet
18 weather control measures and management prac-
19 tices.

20 “(3) URBAN WATERSHED MANAGEMENT
21 PLANS.—Development and implementation of urban
22 watershed management plans.

23 “(b) RECIPIENTS.—The grants may only be awarded
24 to a municipality or local government, intermunicipal
25 agency, regional sewer district, or interstate agency.

1 “(c) FEDERAL SHARE.—The Federal share of the
2 cost of activities carried out using amounts from a grant
3 made under this section shall be at least 55 percent. The
4 non-Federal share of the cost may include, in any amount,
5 public and private funds and in-kind services.

6 “(d) AUTHORIZED FUNDING.—There is authorized to
7 be appropriated to carry out this section \$500,000,000 for
8 fiscal year 2000, \$1,000,000,000 for fiscal year 2001, and
9 \$1,500,000,000 for fiscal year 2002. Such sums shall re-
10 main available until expended.

11 “(e) REPORT TO CONGRESS.—On or before January
12 1, 2002, and once every 2 years thereafter, the Adminis-
13 trator shall transmit to Congress a report containing rec-
14 ommended funding levels for the 2 fiscal years following
15 the date of the report for activities under subsection (a).”.

