

107TH CONGRESS
2^D SESSION

S. 3037

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2002

Mr. JEFFORDS introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, 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 “Wastewater Treatment
5 Works Security and Safety Act”.

1 **SEC. 2. PROTECTION FROM TERRORIST AND OTHER HARM-**
 2 **FUL INTENTIONAL ACTS.**

3 Title II of the Federal Water Pollution Control Act
 4 (33 U.S.C. 1281 et seq.) is amended by adding at the end
 5 the following:

6 **“SEC. 222. PROTECTION FROM TERRORIST AND OTHER**
 7 **HARMFUL INTENTIONAL ACTS.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) COVERED TREATMENT WORKS.—

10 “(A) IN GENERAL.—The term ‘covered
 11 treatment works’ means a treatment works
 12 that—

13 “(i) serves at least 25,000 individuals;

14 or

15 “(ii) as determined by the Adminis-
 16 trator before December 15, 2002, based on
 17 the factors described in subparagraph (B),
 18 presents a sufficient security risk to re-
 19 main subject to this section.

20 “(B) FACTORS FOR INCLUSION OF TREAT-
 21 MENT WORKS.—The factors referred to in sub-
 22 paragraph (A) are—

23 “(i) the likelihood that the treatment
 24 works will be the target of a harmful inten-
 25 tional act;

1 “(ii) the consequences that would re-
2 sult if the treatment works were the target
3 of a harmful intentional act; and

4 “(iii) such other security factors as
5 the Administrator determines to be nec-
6 essary to protect—

7 “(I) public health, safety, and
8 welfare;

9 “(II) critical infrastructure; and

10 “(III) national security.

11 “(2) EMERGENCY RESPONSE PLAN.—The term
12 ‘emergency response plan’ means a plan that a cov-
13 ered treatment works is required to prepare or re-
14 vise, and submit to the Administrator, under sub-
15 section (c).

16 “(3) HARMFUL INTENTIONAL ACT.—The term
17 ‘harmful intentional act’ means a terrorist attack or
18 other intentional act carried out with respect to a
19 covered treatment works that is intended—

20 “(A) to substantially disrupt the ability of
21 the covered treatment works to provide safe and
22 reliable—

23 “(i) conveyance and treatment of
24 wastewater; and

25 “(ii) disposal of effluent;

1 “(B) to damage critical infrastructure;

2 “(C) to have an adverse effect on the envi-
3 ronment; or

4 “(D) to otherwise pose a significant threat
5 to public health or safety.

6 “(4) VULNERABILITY ASSESSMENT.—The term
7 ‘vulnerability assessment’ means an assessment that
8 a covered treatment works is required to conduct
9 and submit to the Administrator under subsection
10 (b)(1).

11 “(b) VULNERABILITY ASSESSMENTS.—

12 “(1) COVERED TREATMENT WORKS.—

13 “(A) IN GENERAL.—Using appropriate
14 tools (such as available vulnerability self-assess-
15 ment tools), each covered treatment works shall
16 conduct and submit to the Administrator an as-
17 sessment of the vulnerability of the covered
18 treatment works to a harmful intentional act.

19 “(B) DEADLINE FOR SUBMISSION.—Each
20 covered treatment works shall submit a vulner-
21 ability assessment to the Administrator—

22 “(i) in the case of a covered treatment
23 works described in subsection (a)(1)(A)(i),
24 by not later than May 15, 2003; and

1 “(ii) in the case of a covered treat-
2 ment works described in subsection
3 (a)(1)(A)(ii), by such date as shall be de-
4 termined by the Administrator.

5 “(2) REQUIRED ELEMENTS.—At a minimum, a
6 vulnerability assessment shall consist of a review
7 of—

8 “(A) the pipes and constructed convey-
9 ances, physical barriers, treatment, storage, and
10 disposal facilities, and electronic, computer, and
11 other automated systems, that are used by the
12 covered treatment works;

13 “(B) the use, storage, or handling of var-
14 ious chemicals at the covered treatment works;

15 “(C) plans and procedures of the covered
16 treatment works, to ensure, to the maximum
17 extent practicable, continued provision of serv-
18 ice; and

19 “(D) critical records and documents of the
20 covered treatment works.

21 “(c) EMERGENCY RESPONSE PLAN.—

22 “(1) IN GENERAL.—Not later than 180 days
23 after a covered treatment works completes a vulner-
24 ability assessment in accordance with subsection (b),
25 the covered treatment works shall prepare or revise,

1 as necessary, and submit to the Administrator, an
2 emergency response plan that incorporates the re-
3 sults of the vulnerability assessment.

4 “(2) REQUIRED ELEMENTS.—The emergency
5 response plan shall include plans, procedures, identi-
6 fication of equipment, and other activities that
7 can—

8 “(A) be implemented or used in the event
9 of a harmful intentional act carried out with re-
10 spect to the covered treatment works; and

11 “(B) reduce or significantly lessen the im-
12 pacts of a harmful intentional act carried out
13 with respect to the covered treatment works.

14 “(3) COORDINATION WITH LOCAL EMERGENCY
15 PLANS.—In preparing or revising emergency re-
16 sponse plans under this subsection, a covered treat-
17 ment works shall, to the maximum extent prac-
18 ticable, coordinate with local emergency plans.

19 “(4) RECORD MAINTENANCE.—Each covered
20 treatment works shall maintain a copy of the emer-
21 gency response plan prepared or revised under para-
22 graph (1), and any additional revisions to such a
23 plan completed after the date referred to in para-
24 graph (1), for a period of not less than 5 years after

1 the date on which the plan or revisions are sub-
2 mitted to the Administrator.

3 “(d) REQUIREMENTS RELATING TO VULNERABILITY
4 ASSESSMENTS AND EMERGENCY RESPONSE PLANS.—

5 “(1) PROVISION OF VULNERABILITY ASSESS-
6 MENTS TO STATE AND LOCAL GOVERNMENTS.—No
7 covered treatment works shall be required under
8 State or local law to provide a vulnerability assess-
9 ment or emergency response plan to any State, re-
10 gional, or local governmental entity unless the State
11 or local government has in effect a law that requires
12 submission of such an assessment or plan to the
13 State, regional, or local governmental entity.

14 “(2) EXEMPTION OF INFORMATION FROM DIS-
15 CLOSURE.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), all information provided to
18 the Administrator under subsections (b) and
19 (c), and all information derived from that infor-
20 mation, shall be exempt from disclosure under
21 section 552 of title 5, United States Code.

22 “(B) NO EXCEPTION.—Subparagraph (A)
23 does not apply to information contained in a
24 vulnerability assessment or emergency response
25 plan that identifies—

1 “(i) the covered treatment works sub-
2 mitting the vulnerability assessment or
3 emergency response plan; or

4 “(ii) the date of completion of the vul-
5 nerability assessment or emergency re-
6 sponse plan.

7 “(3) PROTOCOLS TO PROTECT VULNERABILITY
8 ASSESSMENTS AND EMERGENCY RESPONSE PLANS
9 FROM UNAUTHORIZED DISCLOSURE.—

10 “(A) IN GENERAL.—Not later than De-
11 cember 15, 2002, the Administrator, in con-
12 sultation with appropriate Federal law enforce-
13 ment and intelligence officials, shall develop
14 such protocols as are necessary to protect vul-
15 nerability assessments and emergency response
16 plans from unauthorized disclosure.

17 “(B) PROTOCOLS.—The protocols shall en-
18 sure that—

19 “(i) each copy of a vulnerability as-
20 sessment or emergency response plan, and
21 all information contained in or derived
22 from the vulnerability assessment or emer-
23 gency response plan, is kept in a secure lo-
24 cation;

1 “(ii) only individuals designated by
2 the Administrator have access to the copies
3 of the vulnerability assessments and emer-
4 gency response plans; and

5 “(iii) no copy of a vulnerability assess-
6 ment, part of a vulnerability assessment or
7 emergency response plan, or information
8 contained in or derived from a vulnerability
9 assessment or emergency response plan, is
10 available to any individual other than an
11 individual designated by the Administrator
12 under clause (ii).

13 “(4) CRIMINAL PENALTIES FOR UNAUTHORIZED
14 DISCLOSURE.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), any individual referred to in
17 paragraph (3)(B)(ii) who acquires a copy of a
18 vulnerability assessment or emergency response
19 plan, a part of a vulnerability assessment or
20 emergency response plan, or any information
21 contained in or derived from a vulnerability as-
22 sessment or emergency response plan, and who
23 knowingly or recklessly reveals the copy, part,
24 or information (other than in accordance with
25 subparagraph (B)) shall—

1 “(i) be imprisoned not more than 1
2 year, fined in accordance with chapter 227
3 of title 18, United States Code (applicable
4 to class A misdemeanors), or both; and

5 “(ii) if employed by the Federal Gov-
6 ernment, be removed from Federal employ-
7 ment for the lifetime of the individual.

8 “(B) EXCEPTIONS.—Any individual re-
9 ferred to in paragraph (3)(B)(ii)—

10 “(i) may disclose a copy, a part, or in-
11 formation referred to in subparagraph
12 (A)—

13 “(I) to any individual designated
14 by the Administrator under paragraph
15 (3)(B)(ii); or

16 “(II) for use under seal in any
17 administrative or judicial proceeding
18 relating to imposition of a penalty for
19 failure to comply with this section; or

20 “(ii) if the individual is an officer or
21 employee of the United States, may discuss
22 the contents of a vulnerability assessment
23 or emergency response plan with a State or
24 local official who the Administrator deter-
25 mines needs to know those contents.

1 “(5) PROVISION OF INFORMATION TO CON-
2 GRESS.—Nothing in this subsection authorizes any
3 person to withhold any information from Congress
4 or from any committee or subcommittee of Congress.

5 “(e) GRANTS FOR COMPLIANCE AND BASIC SECU-
6 RITY ENHANCEMENTS.—

7 “(1) IN GENERAL.—The Administrator, in co-
8 ordination with State and local governments, may
9 make grants to covered treatment works—

10 “(A) to assist in compliance with sub-
11 sections (b) and (c); and

12 “(B) to pay the costs of implementing
13 basic security enhancements of critical impor-
14 tance, and otherwise addressing significant
15 threats of harmful intentional acts, identified
16 under a vulnerability assessment.

17 “(2) TYPES OF BASIC SECURITY ENHANCE-
18 MENTS.—The basic security enhancements referred
19 to in paragraph (1)(B) are—

20 “(A) purchase and installation of equip-
21 ment for detection of intruders;

22 “(B) purchase and installation of fencing,
23 gating, lighting, or security cameras;

24 “(C) tamperproofing of manhole covers,
25 fire hydrants, and valve boxes;

1 “(D) rekeying of doors and locks;

2 “(E) improvements to electronic, computer,
3 and other automated systems and remote secu-
4 rity systems;

5 “(F) participation in training programs,
6 and purchase of training manuals and guidance
7 materials, relating to security against harmful
8 intentional acts;

9 “(G) improvements in the use, storage, or
10 handling of chemicals;

11 “(H) security screening of employees of
12 the covered treatment works or employees of
13 contractor support services; and

14 “(I) such other equipment and activities as
15 the Administrator determines to be appropriate.

16 “(3) PROHIBITED EXPENDITURES.—The basic
17 security enhancements referred to in paragraph
18 (1)(B) do not include expenditures for—

19 “(A) personnel costs; or

20 “(B) monitoring, operation, or mainte-
21 nance of facilities, equipment, or systems.

22 “(f) GRANTS TO ADDRESS IMMEDIATE AND URGENT
23 SECURITY NEEDS.—The Administrator may make grants
24 to covered treatment works to assist in responding to and
25 alleviating any vulnerability to a harmful intentional act

1 that the Administrator determines presents an immediate
2 and urgent security need.

3 “(g) ASSISTANCE TO SMALL COVERED TREATMENT
4 WORKS.—

5 “(1) GUIDANCE.—The Administrator shall pro-
6 vide guidance to covered treatment works serving a
7 population of fewer than 10,000 individuals on
8 how—

9 “(A) to conduct vulnerability assessments;

10 “(B) to prepare emergency response plans;

11 and

12 “(C) to address threats posed by harmful
13 intentional acts.

14 “(2) GRANTS.—The Administrator may make
15 grants to covered treatment works described in para-
16 graph (1) to carry out activities in accordance with
17 the guidance provided under paragraph (1).

18 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
19 is authorized to be appropriated to carry out this section
20 \$185,000,000 for the period of fiscal years 2003 through
21 2007, of which not more than—

22 “(1) \$125,000,000 for fiscal year 2003, and
23 such sums as are necessary for each of fiscal years
24 2004 through 2007, may be used to carry out sub-
25 section (e);

1 “(2) \$20,000,000 for the period of fiscal years
2 2003 and 2004 may be used to carry out subsection
3 (f); and

4 “(3) \$15,000,000 for fiscal year 2003 and such
5 sums as are necessary for each of fiscal years 2004
6 through 2007, may be used to carry out subsection
7 (g)(2).”.

8 **SEC. 3. RESEARCH AND REVIEW.**

9 Title II of the Federal Water Pollution Control Act
10 (33 U.S.C. 1281 et seq.) (as amended by section 2) is
11 amended by adding at the end the following:

12 **“SEC. 223. RESEARCH AND REVIEW.**

13 “(a) DEFINITIONS.—In this section, the terms ‘cov-
14 ered treatment works’ and ‘harmful intentional act’ have
15 the meanings given the terms in section 222(a).

16 “(b) REVIEW BY ADMINISTRATOR.—Not later than
17 2 years after the date of enactment of this section, the
18 Administrator, in coordination with appropriate Federal
19 agencies, shall research and review (or enter into a con-
20 tract or cooperative agreement to provide for research and
21 review of)—

22 “(1) means by which terrorists or other individ-
23 uals or groups could carry out harmful intentional
24 acts; and

1 “(2) means by which alternative processes of
2 conveying, treating, and disposing of wastewater
3 could be provided in the event of the destruction, im-
4 pairment, or disruption of covered treatment works
5 as the result of harmful intentional acts.

6 “(c) MEANS OF CARRYING OUT HARMFUL INTEN-
7 TIONAL ACTS.—Means referred to in subsection (b)(1)
8 include—

9 “(1) means by which pipes and other con-
10 structed conveyances used in covered treatment
11 works could be destroyed or otherwise prevented
12 from providing adequate conveyance, pretreatment,
13 treatment, and disposal of wastewater meeting appli-
14 cable public health standards;

15 “(2) means by which conveyance, pretreatment,
16 treatment, storage, and disposal facilities used by, or
17 in connection with, covered treatment works could be
18 destroyed or otherwise prevented from providing
19 adequate treatment of wastewater meeting applicable
20 public health standards;

21 “(3) means by which pipes, constructed convey-
22 ances, pretreatment, treatment, storage, and dis-
23 posal systems that are used in connection with treat-
24 ment works could be altered or affected so as to

1 pose a threat to public health, public safety, or the
2 environment;

3 “(4) means by which pipes, constructed convey-
4 ances, pretreatment, treatment, storage, and dis-
5 posal systems that are used in connection with cov-
6 ered treatment works could be reasonably protected
7 from harmful intentional acts;

8 “(5) means by which pipes, constructed convey-
9 ances, pretreatment, treatment, storage, and dis-
10 posal systems could be reasonably secured from use
11 as a means of transportation by terrorists or other
12 individuals or groups who intend to threaten public
13 health or safety; and

14 “(6) means by which information systems, in-
15 cluding process controls and supervisory control,
16 data acquisition, and cyber systems, at covered
17 treatment works could be disrupted by terrorists or
18 other individuals or groups.

19 “(d) CONSIDERATIONS.—In carrying out the review
20 under this section, the Administrator—

21 “(1) shall ensure that the review reflects the
22 needs of covered treatment works of various sizes
23 and various geographic areas of the United States;
24 and

1 “(2) may consider the vulnerability of, or poten-
2 tial for forced interruption of service for, a region or
3 service area, including the National Capital Area.

4 “(e) INFORMATION SHARING.—As soon as prac-
5 ticable after the review carried out under this section has
6 been evaluated by the Administrator, the Administrator
7 shall disseminate to covered treatment works information
8 on the results of the review through the Information Shar-
9 ing and Analysis Center or other appropriate means.

10 “(f) FUNDING.—There is authorized to be appro-
11 priated to carry out this section \$15,000,000 for the pe-
12 riod of fiscal years 2003 through 2007.”.

13 **SEC. 4. REFINEMENT OF VULNERABILITY ASSESSMENT**
14 **TOOLS FOR PUBLICLY OWNED TREATMENT**
15 **WORKS.**

16 Title II of the Federal Water Pollution Control Act
17 (33 U.S.C. 1281 et seq.) (as amended by section 3) is
18 amended by adding at the end the following:

19 **“SEC. 224. REFINEMENT OF VULNERABILITY ASSESSMENT**
20 **TOOLS FOR PUBLICLY OWNED TREATMENT**
21 **WORKS.**

22 “(a) GRANTS.—The Administrator may make grants
23 to 1 or more nonprofit organizations for the improvement
24 of vulnerability self-assessment tools for publicly owned
25 treatment works.

1 “(b) ELIGIBLE ACTIVITIES.—

2 “(1) IN GENERAL.—Grants provided under this
3 section may be used for—

4 “(A) developing and distributing vulner-
5 ability self-assessment software upgrades;

6 “(B) improving and enhancing critical
7 technical and user support functions;

8 “(C) expanding libraries of information ad-
9 dressing both threats and countermeasures; and

10 “(D) implementing user training initia-
11 tives.

12 “(2) SERVICES.—Services described in para-
13 graph (1) shall be provided at no cost to recipients.

14 “(c) AUTHORIZATION OF APPROPRIATIONS.—There
15 is authorized to be appropriated to carry out this section
16 \$500,000 for each of fiscal years 2003 through 2007, to
17 remain available until expended.”.

○