

Calendar No. 1075

110TH CONGRESS
2D SESSION**S. 2080****[Report No. 110–497]**

To amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of raw sewage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2007

Mr. LAUTENBERG (for himself, Mr. MENENDEZ, Mr. CARDIN, Mr. WHITEHOUSE, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of raw sewage, 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 “Sewage Overflow
3 Right-to-Know Act”.

4 **SEC. 2. FINDINGS.**

5 Congress finds that—

6 (1) the Centers for Disease Control and Preven-
7 tion estimate that there are 7,100,000 cases of mild
8 to moderate, and 560,000 cases of moderate to se-
9 vere, infectious waterborne disease in the United
10 States each year;

11 (2) inadequately-treated sewage contains bae-
12 teria, viruses, parasites, and worms that make indi-
13 viduals ill;

14 (3) individuals who ingest or inhale inad-
15 equately-treated sewage can contract gastroenteritis,
16 hepatitis, giardiasis, cryptosporidiosis, dysentery,
17 and other gastrointestinal and respiratory diseases;

18 (4) the Administrator of the Environmental
19 Protection Agency has estimated that between
20 1,800,000 and 3,500,000 individuals in the United
21 States become ill every year just from swimming in
22 water contaminated by sanitary sewer overflows;

23 (5) many sewer systems do not routinely mon-
24 itor to detect sewer overflows;

1 (6) public health authorities are not routinely
2 notified of sewer overflows that threaten public
3 health;

4 (7) better monitoring, reporting, and public no-
5 tification of sewer overflows could prevent millions of
6 individuals in the United States from becoming ill
7 each year;

8 (8) sewage treatment operators perform an im-
9 portant job that—

10 (A) helps protect the public; and

11 (B) is critical in achieving the goals of the
12 Federal Water Pollution Control Act (33 U.S.C.
13 1251 et seq.);

14 (9) the wastewater systems of the United
15 States are aging and require significant investment
16 in traditional and green infrastructure to prevent
17 the occurrence of sewer overflows; and

18 (10) public notification of sewer overflows that
19 threaten public health will—

20 (A) protect the public; and

21 (B) increase recognition and support for
22 needed investment in infrastructure to address
23 contaminated stormwater and sewer overflows.

1 **SEC. 3. DEFINITIONS.**

2 Section 502 of the Federal Water Pollution Control
3 Act (~~33~~ U.S.C. 1362) is amended by adding at the end
4 the following:

5 “(25) **SANITARY SEWER OVERFLOW.**—

6 “(A) **IN GENERAL.**—The term ‘sanitary
7 sewer overflow’ means an overflow, spill, re-
8 lease, or diversion of wastewater from a sani-
9 tary sewer system.

10 “(B) **INCLUSIONS.**—The term ‘sanitary
11 sewer overflow’ includes—

12 “(i) an overflow or release of waste-
13 water that reaches waters of the United
14 States;

15 “(ii) an overflow or release of waste-
16 water that does not reach waters of the
17 United States; and

18 “(iii) a wastewater backup into a
19 building that is caused by a blockage or
20 flow conditions in a sanitary sewer other
21 than a building lateral.

22 “(C) **EXCLUSIONS.**—The term ‘sanitary
23 sewer overflow’ does not include—

24 “(i) a combined sewer overflow or
25 other discharge from the combined por-
26 tions of a combined sewer system; or

1 “(ii) a wastewater backup into a
2 building caused by a blockage or other
3 malfunction of a building lateral that is
4 privately owned.

5 “(26) COMBINED SEWER OVERFLOW.—The
6 term ‘combined sewer overflow’ means an overflow,
7 spill, release, or diversion of wastewater from a com-
8 bined sanitary system at a point prior to the publicly
9 owned treatment works treatment plant.

10 “(27) SEWER OVERFLOW.—The term ‘sewer
11 overflow’ means a sanitary sewer overflow or a com-
12 bined sewer overflow.”.

13 **SEC. 4. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**
14 **TION OF SEWER OVERFLOWS.**

15 Section 402 of the Federal Water Pollution Control
16 Act (~~33~~ U.S.C. ~~1342~~) is amended by adding at the end
17 the following:

18 “(r) SEWER OVERFLOW NOTIFICATIONS.—

19 “(1) GENERAL REQUIREMENTS.—Not later
20 than 1 year after the date of enactment of this sub-
21 section, the owner or operator of a publicly owned
22 treatment works (as defined in section 403.3 of title
23 40, Code of Federal Regulations (as in effect on
24 March 1, 2007)) under a permit issued under this
25 section shall—

1 “(A) institute and use a methodology,
2 technology, or management program that will
3 alert the owner or operator to the occurrence of
4 a sewer overflow in a timely manner;

5 “(B) notify the public of a sewer overflow
6 in any area in which the overflow has the po-
7 tential to affect human health;

8 “(C) notify the public as soon as prac-
9 ticable, but not later than 24 hours, after the
10 time at which the owner or operator becomes
11 aware of the overflow;

12 “(D) immediately notify public health au-
13 thorities and other affected entities, such as
14 public water systems, of any sewer overflow
15 that may imminently and substantially endan-
16 ger human health;

17 “(E) provide to the Administrator (or the
18 State, in the case of a State that has a permit
19 program approved under this section) an oral or
20 electronic report as soon as practicable, but not
21 later than 24 hours, after the time at which the
22 owner or operator becomes aware of the over-
23 flow;

24 “(F) provide to the Administrator or the
25 State, as the case may be, not later than 5 days

1 after the time at which the owner or operator
2 becomes aware of the overflow a written report
3 describing—

4 “(i) the magnitude, duration, and sus-
5 pected cause of the overflow;

6 “(ii) the steps taken or planned to re-
7 duce, eliminate, and prevent recurrence of
8 the overflow; and

9 “(iii) the steps taken or planned to
10 mitigate the impact of the overflow;

11 “(G) report all sewer overflows to waters
12 of the United States on the monthly discharge
13 monitoring report of the owner or operator to
14 the Administrator or the State, as the case may
15 be; and

16 “(H) report to the Administrator or the
17 State, as the case may be, the total number of
18 sewer overflows (including sewer overflows that
19 do not reach any waters of the United States)
20 in a calendar year, including a detailed descrip-
21 tion of—

22 “(i) the quantity of wastewater that
23 was released per incident;

24 “(ii) the duration of each sewer over-
25 flow;

1 ~~“(iii) the location of the overflow and~~
 2 ~~any potentially affected receiving water;~~
 3 ~~“(iv) the responses taken to clean up~~
 4 ~~the overflow; and~~
 5 ~~“(v) the actions taken to mitigate im-~~
 6 ~~pacts and avoid further sewer overflows at~~
 7 ~~the site.~~

8 ~~“(2) REPORT TO EPA.—If a State receives a re-~~
 9 ~~port under paragraph (1)(H), the State shall report~~
 10 ~~to the Administrator annually, in summary, the de-~~
 11 ~~tails of reported sewer overflows that occurred in the~~
 12 ~~State.”.~~

13 **SEC. 5. ELIGIBILITY FOR ASSISTANCE.**

14 Section 603(c) of the Federal Water Pollution Con-
 15 trol Act (33 U.S.C. 1383(c)) is amended—

16 (1) by striking “and” the first place it appears;
 17 and

18 (2) by inserting after “320 of this Act” the fol-
 19 lowing: “, and (4) for the implementation of require-
 20 ments to monitor, report, and notify the public of
 21 sewer overflows under section 402(r)”.

22 **SECTION 1. SHORT TITLE.**

23 *This Act may be cited as the “Sewage Overflow Com-*
 24 *munity Right-to-Know Act”.*

1 **SEC. 2. DEFINITIONS.**

2 *Section 502 of the Federal Water Pollution Control Act*
 3 *(33 U.S.C. 1362) is amended by adding at the end the fol-*
 4 *lowing:*

5 “(26) *TREATMENT WORKS.*—*The term ‘treatment*
 6 *works’ has the meaning given that term in section*
 7 *212.’”.*

8 **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**
 9 **TION OF SEWER OVERFLOWS.**

10 *Section 402 of the Federal Water Pollution Control Act*
 11 *(33 U.S.C. 1342) is amended by adding at the end the fol-*
 12 *lowing:*

13 “(s) *SEWER OVERFLOW MONITORING, REPORTING,*
 14 *AND NOTIFICATIONS.*—

15 “(1) *GENERAL REQUIREMENTS.*—*After the last*
 16 *day of the 180-day period beginning on the date on*
 17 *which regulations are issued under paragraph (4), a*
 18 *permit issued, renewed, or modified under this section*
 19 *by the Administrator or the State, as the case may*
 20 *be, for a publicly owned treatment works shall re-*
 21 *quire, at a minimum, beginning on the date of the*
 22 *issuance, modification, or renewal, that the owner or*
 23 *operator of the treatment works—*

24 “(A) *institute and utilize a feasible method-*
 25 *ology, technology, or management program for*
 26 *monitoring sewer overflows to alert the owner or*

1 operator to the occurrence of a sewer overflow in
2 a timely manner;

3 “(B) in the case of a sewer overflow that has
4 the potential to affect human health, notify the
5 public of the overflow as soon as practicable but
6 not later than 24 hours after the time the owner
7 or operator knows of the overflow;

8 “(C) in the case of a sewer overflow that
9 may imminently and substantially endanger
10 human health, notify public health authorities
11 and other affected entities, such as public water
12 systems, of the overflow immediately after the
13 owner or operator knows of the overflow;

14 “(D) report each sewer overflow on its dis-
15 charge monitoring report to the Administrator or
16 the State, as the case may be, by describing—

17 “(i) the magnitude, duration, and sus-
18 pected cause of the overflow;

19 “(ii) the steps taken or planned to re-
20 duce, eliminate, or prevent recurrence of the
21 overflow; and

22 “(iii) the steps taken or planned to
23 mitigate the impact of the overflow; and

24 “(E) annually report to the Administrator
25 or the State, as the case may be, the total num-

ber of sewer overflows in a calendar year, including—

“(i) the details of how much wastewater was released per incident;

“(ii) the duration of each sewer overflow;

“(iii) the location of the overflow and any potentially affected receiving waters;

“(iv) the responses taken to clean up the overflow; and

“(v) the actions taken to mitigate impacts and avoid further sewer overflows at the site.

“(2) *EXCEPTIONS.*—

“(A) *NOTIFICATION REQUIREMENTS.*—The notification requirements of paragraphs (1)(B) and (1)(C) shall not apply a sewer overflow that is a wastewater backup into a single-family residence.

“(B) *REPORTING REQUIREMENTS.*—The reporting requirements of paragraphs (1)(D) and (1)(E) shall not apply to a sewer overflow that is a release of wastewater that occurs in the course of maintenance of the treatment works, is managed consistently with the treatment works’

1 *best management practices, and is intended to*
 2 *prevent sewer overflows.*

3 “(3) *REPORT TO EPA.—Each State shall provide*
 4 *to the Administrator annually a summary of sewer*
 5 *overflows that occurred in the State.*

6 “(4) *RULEMAKING BY EPA.—Not later than one*
 7 *year after the date of enactment of this subsection, the*
 8 *Administrator, after providing notice and an oppor-*
 9 *tunity for public comment, shall issue regulations to*
 10 *implement this subsection, including regulations to—*

11 “(A) *establish a set of criteria to guide the*
 12 *owner or operator of a publicly owned treatment*
 13 *works in—*

14 “(i) *assessing whether a sewer overflow*
 15 *has the potential to affect human health or*
 16 *may imminently and substantially endan-*
 17 *ger human health; and*

18 “(ii) *developing communication meas-*
 19 *ures that are sufficient to give notice under*
 20 *paragraphs (1)(B) and (1)(C); and*

21 “(B) *define the terms ‘feasible’ and ‘timely’*
 22 *as such terms apply to paragraph (1)(A), includ-*
 23 *ing site specific conditions.*

24 “(5) *APPROVAL OF STATE NOTIFICATION PRO-*
 25 *GRAMS.—*

1 “(A) *REQUESTS FOR APPROVAL.*—

2 “(i) *IN GENERAL.*—*After the date of*
3 *issuance of regulations under paragraph*
4 *(4), a State may submit to the Adminis-*
5 *trator evidence that the State has in place*
6 *a legally enforceable notification program*
7 *that is substantially equivalent to the re-*
8 *quirements of paragraphs (1)(B) and*
9 *(1)(C).*

10 “(ii) *PROGRAM REVIEW AND AUTHOR-*
11 *IZATION.*—*If the evidence submitted by a*
12 *State under clause (i) shows the notification*
13 *program of the State to be substantially*
14 *equivalent to the requirements of para-*
15 *graphs (1)(B) and (1)(C), the Adminis-*
16 *trator shall authorize the State to carry out*
17 *such program instead of the requirements of*
18 *paragraphs (1)(B) and (1)(C).*

19 “(iii) *FACTORS FOR DETERMINING*
20 *SUBSTANTIAL EQUIVALENCY.*—*In carrying*
21 *out a review of a State notification pro-*
22 *gram under clause (ii), the Administrator*
23 *shall take into account the scope of sewer*
24 *overflows for which notification is required,*
25 *the length of time during which notification*

1 *must be made, the scope of persons who*
2 *must be notified of sewer overflows, the*
3 *scope of enforcement activities ensuring that*
4 *notifications of sewer overflows are made,*
5 *and such other factors as the Administrator*
6 *considers appropriate.*

7 “(B) *REVIEW PERIOD.*—*If a State submits*
8 *evidence with respect to a notification program*
9 *under subparagraph (A)(i) on or before the last*
10 *day of the 30-day period beginning on the date*
11 *of issuance of regulations under paragraph (4),*
12 *the requirements of paragraphs (1)(B) and*
13 *(1)(C) shall not begin to apply to a publicly*
14 *owned treatment works located in the State until*
15 *the date on which the Administrator completes a*
16 *review of the notification program under sub-*
17 *paragraph (A)(ii).*

18 “(C) *WITHDRAWAL OF AUTHORIZATION.*—*If*
19 *the Administrator, after conducting a public*
20 *hearing, determines that a State is not admin-*
21 *istering and enforcing a State notification pro-*
22 *gram authorized under subparagraph (A)(ii) in*
23 *accordance with the requirements of this para-*
24 *graph, the Administrator shall so notify the*
25 *State and, if appropriate corrective action is not*

1 *taken within a reasonable time, not to exceed 90*
 2 *days, the Administrator shall withdraw author-*
 3 *ization of such program and enforce the require-*
 4 *ments of paragraphs (1)(B) and (1)(C) with re-*
 5 *spect to the State.*

6 “(6) *SPECIAL RULES CONCERNING APPLICATION*
 7 *OF NOTIFICATION REQUIREMENTS.—After the last day*
 8 *of the 30-day period beginning on the date of issuance*
 9 *of regulations under paragraph (4), the requirements*
 10 *of paragraphs (1)(B) and (1)(C) shall—*

11 “(A) *apply to the owner or operator of a*
 12 *publicly owned treatment works and be subject to*
 13 *enforcement under section 309, and*

14 “(B) *supersede any notification require-*
 15 *ments contained in a permit issued under this*
 16 *section for the treatment works to the extent that*
 17 *the notification requirements are less stringent*
 18 *than the notification requirements of paragraphs*
 19 *(1)(B) and (1)(C),*

20 *until such date as a permit is issued, renewed, or*
 21 *modified under this section for the treatment works in*
 22 *accordance with paragraph (1).*

23 “(7) *DEFINITIONS.—In this subsection, the fol-*
 24 *lowing definitions apply:*

1 “(A) *SANITARY SEWER OVERFLOW.*—*The*
2 *term ‘sanitary sewer overflow’ means an over-*
3 *flow, spill, release, or diversion of wastewater*
4 *from a sanitary sewer system. Such term does*
5 *not include municipal combined sewer overflows*
6 *or other discharges from a municipal combined*
7 *storm and sanitary sewer system and does not*
8 *include wastewater backups into buildings*
9 *caused by a blockage or other malfunction of a*
10 *building lateral that is privately owned. Such*
11 *term includes overflows or releases of wastewater*
12 *that reach waters of the United States, overflows*
13 *or releases of wastewater in the United States*
14 *that do not reach waters of the United States,*
15 *and wastewater backups into buildings that are*
16 *caused by blockages or flow conditions in a sani-*
17 *tary sewer other than a building lateral.*

18 “(B) *SEWER OVERFLOW.*—*The term ‘sewer*
19 *overflow’ means a sanitary sewer overflow or a*
20 *municipal combined sewer overflow.*

21 “(C) *SINGLE-FAMILY RESIDENCE.*—*The*
22 *term ‘single-family residence’ means an indi-*
23 *vidual dwelling unit, including an apartment,*
24 *condominium, house, or dormitory. Such term*

1 *does not include the common areas of a multi-*
 2 *dwelling structure.”.*

3 **SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

4 (a) *PURPOSE OF STATE REVOLVING FUND.*—Section
 5 601(a) of the Federal Water Pollution Control Act (33
 6 U.S.C. 1381(a)) is amended—

7 (1) by striking “and” the first place it appears;
 8 and

9 (2) by inserting after “section 320” the fol-
 10 lowing: “, and (4) for the implementation of require-
 11 ments to monitor for sewer overflows under section
 12 402”.

13 (b) *WATER POLLUTION CONTROL REVOLVING LOAN*
 14 *FUNDS.*—Section 603(c) of the Federal Water Pollution
 15 Control Act (33 U.S.C. 1383(c)) is amended—

16 (1) by striking “and” the first place it appears;
 17 and

18 (2) by inserting after “section 320 of this Act”
 19 the following: “, and (4) for the implementation of re-
 20 quirements to monitor for sewer overflows under sec-
 21 tion 402”.

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