

Calendar No. 355

111TH CONGRESS
2^D SESSION

S. 937

[Report No. 111–172]

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

APRIL 30, 2009

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

APRIL 20, 2010

Reported by Mrs. BOXER, without amendment

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 Com-
3 munity Right-to-Know Act”.

4 **SEC. 2. DEFINITIONS.**

5 Section 502 of the Federal Water Pollution Control
6 Act (33 U.S.C. 1362) is amended by adding at the end
7 the following:

8 “(26) TREATMENT WORKS.—The term ‘treat-
9 ment works’ has the meaning given the term in sec-
10 tion 212.”.

11 **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**
12 **TION OF SEWER OVERFLOWS.**

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

16 “(s) SEWER OVERFLOW MONITORING, REPORTING,
17 AND NOTIFICATIONS.—

18 “(1) DEFINITIONS.—In this subsection:

19 “(A) SANITARY SEWER OVERFLOW.—

20 “(i) IN GENERAL.—The term ‘sani-
21 tary sewer overflow’ means an overflow,
22 spill, release, or diversion of wastewater
23 from a sanitary sewer system.

24 “(ii) INCLUSIONS.—The term ‘sani-
25 tary sewer overflow’ includes—

1 “(I) overflows or releases of
2 wastewater that reach waters of the
3 United States;

4 “(II) overflows or releases of
5 wastewater in the United States that
6 do not reach waters of the United
7 States; and

8 “(III) wastewater backups into
9 buildings that are caused by blockages
10 or flow conditions in a sanitary sewer
11 other than a building lateral.

12 “(iii) EXCLUSIONS.—The term ‘sani-
13 tary sewer overflow’ does not include—

14 “(I) municipal combined sewer
15 overflows or other discharges from the
16 combined portion of a municipal com-
17 bined storm and sanitary sewer sys-
18 tem; or

19 “(II) wastewater backups into
20 buildings caused by a blockage or
21 other malfunction of a building lateral
22 that is privately owned.

23 “(B) SEWER OVERFLOW.—The term
24 ‘sewer overflow’ means a sanitary sewer over-
25 flow or a municipal combined sewer overflow.

1 “(C) SINGLE-FAMILY RESIDENCE.—

2 “(i) IN GENERAL.—The term ‘single-
3 family residence’ means an individual
4 dwelling unit.

5 “(ii) INCLUSIONS.—The term ‘single-
6 family residence’ includes—

7 “(I) an apartment;

8 “(II) a condominium;

9 “(III) a house; and

10 “(IV) a dormitory.

11 “(iii) EXCLUSIONS.—The term ‘single-
12 family residence’ does not include the com-
13 mon areas of a multidwelling structure.

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

23 “(A) institute and utilize a feasible meth-
24 odology, technology, or management program
25 for monitoring sewer overflows to alert the

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

3 “(B) in the case of a sewer overflow that
4 has the potential to affect human health, notify
5 the public of the overflow as soon as practicable
6 but not later than 24 hours after the time the
7 owner 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 the
15 discharge monitoring report of the owner or op-
16 erator to the Administrator or the State, as the
17 case may be, by describing—

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

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

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

“(E) annually report to the Administrator or the State, as the case may be, the total number 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.

“(3) EXCEPTIONS.—

“(A) NOTIFICATION REQUIREMENTS.—The notification requirements of subparagraphs (B) and (C) of paragraph (2) shall not apply to a sewer overflow that is a wastewater backup into a single-family residence.

“(B) REPORTING REQUIREMENTS.—The reporting requirements of subparagraphs (D) and (E) of paragraph (2) shall not apply to a sewer overflow that is a release of wastewater

1 that occurs in the course of maintenance of the
2 treatment works, is managed consistently with
3 the treatment works' best management prac-
4 tices, and is intended to prevent sewer over-
5 flows.

6 “(4) REPORT TO EPA.—Each State shall pro-
7 vide to the Administrator annually a summary of
8 sewer overflows that occurred in the State.

9 “(5) RULEMAKING BY EPA.—Not later than 1
10 year after the date of enactment of this subsection,
11 the Administrator, after providing notice and an op-
12 portunity for public comment, shall promulgate reg-
13 ulations to implement this subsection, including reg-
14 ulations—

15 “(A) to establish a set of criteria to guide
16 the owner or operator of a publicly owned treat-
17 ment works in—

18 “(i) assessing whether a sewer over-
19 flow may imminently and substantially en-
20 danger human health; and

21 “(ii) developing communication meas-
22 ures that are sufficient to give notice
23 under subparagraphs (B) and (C) of para-
24 graph (2); and

1 “(B) to define the terms ‘feasible’ and
 2 ‘timely’ as those terms apply to paragraph
 3 (2)(A), including site specific conditions.

4 “(6) APPROVAL OF STATE NOTIFICATION PRO-
 5 GRAMS.—

6 “(A) REQUESTS FOR APPROVAL.—

7 “(i) IN GENERAL.—After the date of
 8 promulgation of regulations under para-
 9 graph (5), a State may submit to the Ad-
 10 ministrator evidence that the State has in
 11 place a legally enforceable notification pro-
 12 gram that is substantially equivalent to the
 13 requirements of subparagraphs (B) and
 14 (C) of paragraph (2).

15 “(ii) PROGRAM REVIEW AND AUTHOR-
 16 IZATION.—If the evidence submitted by a
 17 State under clause (i) shows the notifica-
 18 tion program of the State to be substan-
 19 tially equivalent to the requirements of
 20 subparagraphs (B) and (C) of paragraph
 21 (2), the Administrator shall authorize the
 22 State to carry out that program instead of
 23 those requirements.

24 “(iii) FACTORS FOR DETERMINING
 25 SUBSTANTIAL EQUIVALENCY.—In carrying

1 out a review of a State notification pro-
2 gram under clause (ii), the Administrator
3 shall take into account—

4 “(I) the scope of sewer overflows
5 for which notification is required;

6 “(II) the length of time during
7 which notification must be made;

8 “(III) the scope of persons that
9 must be notified of sewer overflows;

10 “(IV) the scope of enforcement
11 activities ensuring that notifications of
12 sewer overflows are made; and

13 “(V) such other factors as the
14 Administrator considers to be appro-
15 priate.

16 “(B) REVIEW PERIOD.—If a State submits
17 evidence with respect to a notification program
18 under subparagraph (A)(i) on or before the last
19 day of the 30-day period beginning on the date
20 of promulgation of regulations under paragraph
21 (5), the requirements of subparagraphs (B) and
22 (C) of paragraph (2) shall not begin to apply to
23 a publicly owned treatment works located in the
24 State until the date on which the Administrator

1 completes a review of the notification program
2 under subparagraph (A)(ii).

3 “(C) WITHDRAWAL OF AUTHORIZATION.—

4 If the Administrator, after conducting a public
5 hearing, determines that a State is not admin-
6 istering and enforcing a State notification pro-
7 gram authorized under subparagraph (A)(ii) in
8 accordance with the requirements of this para-
9 graph, the Administrator shall so notify the
10 State and, if appropriate corrective action is not
11 taken within a reasonable time, not to exceed
12 90 days, the Administrator shall withdraw au-
13 thorization of such program and enforce the re-
14 quirements of subparagraphs (B) and (C) of
15 paragraph (2) with respect to the State.

16 “(7) SPECIAL RULES CONCERNING APPLICA-

17 TION OF NOTIFICATION REQUIREMENTS.—After the
18 last day of the 30-day period beginning on the date
19 of promulgation of regulations under paragraph (5),
20 the requirements of subparagraphs (B) and (C) of
21 paragraph (2) shall—

22 “(A) apply to the owner or operator of a
23 publicly owned treatment works and be subject
24 to enforcement under section 309; and

1 “(B) supersede any notification require-
2 ments contained in a permit issued under this
3 section for the treatment works to the extent
4 that the notification requirements are less strin-
5 gent than the notification requirements of sub-
6 paragraphs (B) and (C) of paragraph (2), until
7 such date as a permit is issued, renewed, or
8 modified under this section for the treatment
9 works in accordance with paragraph (2).”.

10 **SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

11 (a) PURPOSE OF STATE REVOLVING FUND.—Section
12 601(a) of the Federal Water Pollution Control Act (33
13 U.S.C. 1381(a)) is amended—

14 (1) by striking “and” the first place it appears;
15 and

16 (2) by inserting after “section 320” the fol-
17 lowing: “, and (4) for the implementation of require-
18 ments to monitor for sewer overflows under section
19 402”.

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

23 (1) by striking “and” the first place it appears;
24 and

1 (2) by inserting after “section 320 of this Act”
2 the following: “, and (4) for the implementation of
3 requirements to monitor for sewer overflows under
4 section 402”.

5 **SEC. 5. EFFECT OF ACT.**

6 Nothing in this Act or an amendment made by this
7 Act—

8 (1) limits the ability of any State to implement
9 or enforce a more stringent monitoring or notifica-
10 tion standard than the applicable standard under
11 the Federal Water Pollution Control Act (33 U.S.C.
12 1251 et seq.); or

13 (2) authorizes any sewer overflow, or supplants
14 or diminishes any obligation to comply with any
15 other requirement under this chapter or any other
16 Federal or State law.

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