

112TH CONGRESS
2D SESSION

S. 3388

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

JULY 16, 2012

Mr. LAUTENBERG (for himself, Mr. SCHUMER, Mr. CARDIN, and Mr. WHITEHOUSE) 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sewage Overflow Com-
5 munity Right-to-Know Act”.

6 **SEC. 2. DEFINITIONS.**

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

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

4 **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**
 5 **TION OF SEWER OVERFLOWS.**

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

9 “(s) SEWER OVERFLOW MONITORING, REPORTING,
 10 AND NOTIFICATIONS.—

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

12 “(A) SANITARY SEWER OVERFLOW.—

13 “(i) IN GENERAL.—The term ‘sani-
 14 tary sewer overflow’ means an overflow,
 15 spill, release, or diversion of wastewater
 16 from a sanitary sewer system.

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

19 “(I) overflows or releases of
 20 wastewater that reach waters of the
 21 United States;

22 “(II) overflows or releases of
 23 wastewater in the United States that
 24 do not reach waters of the United
 25 States; and

1 “(III) wastewater backups into
 2 buildings that are caused by blockages
 3 or flow conditions in a sanitary sewer
 4 other than a building lateral.

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

7 “(I) municipal combined sewer
 8 overflows or other discharges from the
 9 combined portion of a municipal com-
 10 bined storm and sanitary sewer sys-
 11 tem; or

12 “(II) wastewater backups into
 13 buildings caused by a blockage or
 14 other malfunction of a building lateral
 15 that is privately owned.

16 “(B) SEWER OVERFLOW.—The term
 17 ‘sewer overflow’ means a sanitary sewer over-
 18 flow or a municipal combined sewer overflow.

19 “(C) SINGLE-FAMILY RESIDENCE.—

20 “(i) IN GENERAL.—The term ‘single-
 21 family residence’ means an individual
 22 dwelling unit.

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

25 “(I) an apartment;

1 “(II) a condominium;

2 “(III) a house; and

3 “(IV) a dormitory.

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

7 “(2) GENERAL REQUIREMENTS.—After the last
8 day of the 180-day period beginning on the date on
9 which regulations are promulgated under paragraph
10 (5), a permit issued, renewed, or modified under this
11 section by the Administrator or the State, as appli-
12 cable, for a publicly owned treatment works shall re-
13 quire, at a minimum, beginning on the date of the
14 issuance, modification, or renewal, that the owner or
15 operator of the treatment works—

16 “(A) institute and use a feasible method-
17 ology, technology, or management program for
18 monitoring sewer overflows to alert the owner
19 or operator to the occurrence of a sewer over-
20 flow in a timely manner;

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

1 “(C) in the case of a sewer overflow that
2 may imminently and substantially endanger
3 human health, notify public health authorities
4 and other affected entities, such as public water
5 systems, of the overflow immediately after the
6 owner or operator knows of the overflow;

7 “(D) report each sewer overflow on the
8 discharge monitoring report of the owner or op-
9 erator to the Administrator or the State, as ap-
10 plicable, by describing—

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

13 “(ii) the steps taken or planned to re-
14 duce, eliminate, or prevent recurrence of
15 the overflow; and

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

18 “(E) annually report to the Administrator
19 or the State, as applicable, the total number of
20 sewer overflows in a calendar year, including—

21 “(i) the details of how much waste-
22 water was released per incident;

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

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

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 “(3) EXCEPTIONS.—

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

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

19 “(i) occurs in the course of mainte-
20 nance of the treatment works;

21 “(ii) is managed consistently with the
22 best management practices of the treat-
23 ment works; and

24 “(iii) is intended to prevent sewer
25 overflows.

1 “(4) REPORT TO EPA.—Each State shall pro-
 2 vide to the Administrator annually a summary of
 3 sewer overflows that occur in the State.

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

10 “(A) to establish a set of criteria to guide
 11 the owner or operator of a publicly owned treat-
 12 ment works in—

13 “(i) assessing whether a sewer over-
 14 flow may imminently and substantially en-
 15 danger human health; and

16 “(ii) developing communication meas-
 17 ures that are sufficient to give notice
 18 under subparagraphs (B) and (C) of para-
 19 graph (2); and

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

23 “(6) APPROVAL OF STATE NOTIFICATION PRO-
 24 GRAMS.—

25 “(A) REQUESTS FOR APPROVAL.—

1 “(i) IN GENERAL.—After the date on
 2 which regulations are promulgated under
 3 paragraph (5), a State may submit to the
 4 Administrator evidence that the State has
 5 in place a legally enforceable notification
 6 program that is substantially equivalent to
 7 the requirements of subparagraphs (B)
 8 and (C) of paragraph (2).

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

18 “(iii) FACTORS FOR DETERMINING
 19 SUBSTANTIAL EQUIVALENCY.—In carrying
 20 out a review of a State notification pro-
 21 gram under clause (ii), the Administrator
 22 shall take into account—

23 “(I) the scope of sewer overflows
 24 for which notification is required;

1 “(II) the length of time during
2 which notification must be made;

3 “(III) the number of persons
4 that must be notified of sewer over-
5 flows;

6 “(IV) the scope of enforcement
7 activities ensuring that notifications of
8 sewer overflows are made; and

9 “(V) such other factors as the
10 Administrator considers to be appro-
11 priate.

12 “(B) REVIEW PERIOD.—If a State submits
13 evidence with respect to a notification program
14 under subparagraph (A)(i) in the 30-day period
15 beginning on the date of promulgation of regu-
16 lations under paragraph (5), the requirements
17 of subparagraphs (B) and (C) of paragraph (2)
18 shall not apply to a publicly owned treatment
19 works located in the State until the date on
20 which the Administrator completes a review of
21 the notification program under subparagraph
22 (A)(ii).

23 “(C) WITHDRAWAL OF AUTHORIZATION.—
24 If the Administrator, after conducting a public
25 hearing, determines that a State is not admin-

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

11 “(7) SPECIAL RULES CONCERNING APPLICA-
12 TION OF NOTIFICATION REQUIREMENTS.—Beginning
13 on the day after the 30-day period that begins on
14 the date of promulgation of regulations under para-
15 graph (5), the requirements of subparagraphs (B)
16 and (C) of paragraph (2) shall—

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

20 “(B) supersede any notification require-
21 ments contained in a permit issued under this
22 section for the treatment works to the extent
23 that the notification requirements are less strin-
24 gent than the notification requirements of sub-
25 paragraphs (B) and (C) of paragraph (2), until

1 such date as a permit is issued, renewed, or
2 modified under this section for the treatment
3 works in accordance with paragraph (2).”.

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

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

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

10 (2) by inserting after “section 320” the fol-
11 lowing: “, and (4) for the implementation of require-
12 ments to monitor for sewer overflows under section
13 402”.

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

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

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

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

24 Nothing in this Act or an amendment made by this
25 Act—

1 (1) limits the ability of any State to implement
2 or enforce a more stringent monitoring or notifica-
3 tion standard than the applicable standard under
4 the Federal Water Pollution Control Act (33 U.S.C.
5 1251 et seq.);

6 (2) authorizes any sewer overflow; or

7 (3) supplants or diminishes any obligation to
8 comply with any requirement of the Federal Water
9 Pollution Control Act (33 U.S.C. 1251 et seq.) or
10 any other Federal or State law.

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