

113TH CONGRESS
1ST SESSION

S. 571

To amend the Federal Water Pollution Control Act to establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2013

Mr. KIRK (for himself and Mr. DURBIN) 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 establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes.

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 “Great Lakes Water
5 Protection Act”.

1 **SEC. 2. PROHIBITION ON SEWAGE DUMPING INTO THE**
 2 **GREAT LAKES.**

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

6 “(s) PROHIBITION ON SEWAGE DUMPING INTO THE
 7 GREAT LAKES.—

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

9 “(A) BYPASS.—The term ‘bypass’ means
 10 an intentional diversion of waste streams to by-
 11 pass any portion of a treatment facility which
 12 results in a discharge into the Great Lakes.

13 “(B) DISCHARGE.—

14 “(i) IN GENERAL.—The term ‘dis-
 15 charge’ means a direct or indirect dis-
 16 charge of untreated sewage or partially
 17 treated sewage from a treatment works
 18 into the Great Lakes.

19 “(ii) INCLUSIONS.—The term ‘dis-
 20 charge’ includes a bypass and a combined
 21 sewer overflow.

22 “(C) GREAT LAKES.—The term ‘Great
 23 Lakes’ has the meaning given the term in sec-
 24 tion 118(a)(3).

25 “(D) PARTIALLY TREATED SEWAGE.—The
 26 term ‘partially treated sewage’ means any sew-

age, sewage and storm water, or sewage and wastewater, from domestic or industrial sources that—

“(i) is not treated to national secondary treatment standards for wastewater; or

“(ii) is treated to a level less than the level required by the applicable national pollutant discharge elimination system permit.

“(E) TREATMENT FACILITY.—The term ‘treatment facility’ includes all wastewater treatment units used by a publicly owned treatment works to meet secondary treatment standards or higher, as required to attain water quality standards, under any operating conditions.

“(F) TREATMENT WORKS.—The term ‘treatment works’ has the meaning given the term in section 212.

“(2) PROHIBITION.—A publicly owned treatment works is prohibited from performing a bypass unless—

“(A)(i) the bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

1 “(ii) there is not a feasible alternative to
2 the bypass, such as the use of auxiliary treat-
3 ment facilities, retention of untreated wastes, or
4 maintenance during normal periods of equip-
5 ment downtime; and

6 “(iii) the treatment works provides notice
7 of the bypass in accordance with this sub-
8 section; or

9 “(B) the bypass does not cause effluent
10 limitations to be exceeded, and the bypass is for
11 essential maintenance to ensure efficient oper-
12 ation of the treatment facility.

13 “(3) LIMITATION.—The requirement of para-
14 graph (2)(A)(ii) is not satisfied if—

15 “(A) adequate back-up equipment should
16 have been installed in the exercise of reasonable
17 engineering judgment to prevent the bypass;
18 and

19 “(B) the bypass occurred during normal
20 periods of equipment downtime or preventive
21 maintenance.

22 “(4) IMMEDIATE NOTICE REQUIREMENTS.—

23 “(A) IN GENERAL.—A publicly owned
24 treatment works shall provide to the entities de-
25 scribed in subparagraph (B)—

1 “(i) for any anticipated discharge,
 2 prior notice of that discharge; and

3 “(ii) for any unanticipated discharge,
 4 as soon as practicable, but not later
 5 than—

6 “(I) for a treatment works with
 7 an automated detection system, 2
 8 hours after the discharge begins; and

9 “(II) for a treatment works with-
 10 out an automated detection system,
 11 12 hours after the discharge begins.

12 “(B) NOTICE.—The entities referred to in
 13 subparagraph (A) are—

14 “(i) the Administrator or, in the case
 15 of a State that has a permit program ap-
 16 proved under this section, the State;

17 “(ii) each local health department or,
 18 if a local health department does not exist,
 19 the State health department;

20 “(iii) the municipality in which the
 21 discharge occurred and each municipality
 22 with jurisdiction over waters that may be
 23 affected by the discharge;

24 “(iv) a daily newspaper of general cir-
 25 culation in each county in which a munici-

1 pality described in clause (iii) is located;
 2 and

3 “(v) the general public through a
 4 prominent announcement on a publicly ac-
 5 cessible Internet site of the treatment
 6 works.

7 “(C) CONTENTS.—The notice under sub-
 8 paragraph (A) shall include a description of—

9 “(i) the volume and state of treatment
 10 of the discharge;

11 “(ii) the date and time of the dis-
 12 charge;

13 “(iii) the expected duration of the dis-
 14 charge;

15 “(iv) the steps being taken to contain
 16 the discharge, except for a discharge that
 17 is a wet weather combined sewer overflow
 18 discharge;

19 “(v) the location of the discharge,
 20 with the maximum level of specificity prac-
 21 ticable; and

22 “(vi) the cause for the discharge.

23 “(5) FOLLOW-UP NOTICE REQUIREMENTS.—

24 Each publicly owned treatment works that provides
 25 notice under paragraph (4)(B) shall provide to the

Administrator (or to the State in the case of a State that has a permit program approved under this section), not later than 5 days after the date on which the publicly owned treatment works provides initial notice, a follow-up notice containing—

“(A) a more full description of the cause of the discharge;

“(B) the reason for the discharge;

“(C) the period of discharge, including the exact dates and times;

“(D) if the discharge has not been corrected, the anticipated time the discharge is expected to continue;

“(E) the volume of the discharge resulting from the bypass;

“(F) a description of any public access areas that has or may be impacted by the bypass; and

“(G) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the discharge.

“(6) PUBLIC AVAILABILITY OF NOTICES.—

“(A) IN GENERAL.—Not later than 48 hours after providing or receiving a follow-up notice under paragraph (5), as applicable, a

1 publicly owned treatment works and the Admin-
2 istrator (or the State, in the case of a State
3 that has a permit program approved under this
4 section) shall each post the follow-up notice on
5 a publicly accessible, searchable database on the
6 Internet.

7 “(B) ANNUAL PUBLICATION.—The Admin-
8 istrator (or the State, in the case of a State
9 that has a permit program approved under this
10 section) shall annually publish and make avail-
11 able to the public a list of each of the treatment
12 works from which the Administrator or the
13 State, as applicable, received a follow-up notice
14 under paragraph (5).

15 “(7) SEWAGE BLENDING.—Bypasses prohibited
16 by this section include bypasses resulting in dis-
17 charges from a publicly owned treatment works that
18 consist of effluent routed around treatment units
19 and thereafter blended together with effluent from
20 treatment units prior to discharge.

21 “(8) IMPLEMENTATION.—Not later than 180
22 days after the date of enactment of this subsection,
23 the Administrator shall establish procedures to en-
24 sure that permits issued under this section (or under
25 a State permit program approved under this section)

to a publicly owned treatment works include requirements to implement this subsection.

“(9) INCREASE IN MAXIMUM CIVIL PENALTY FOR VIOLATIONS OCCURRING AFTER JANUARY 1, 2033.—Notwithstanding section 309, in the case of a violation of this subsection occurring on or after January 1, 2033, or any violation of a permit limitation or condition implementing this subsection occurring after that date, the maximum civil penalty that shall be assessed for the violation shall be \$100,000 per day for each day the violation occurs.

“(10) APPLICABILITY.—This subsection shall apply to a bypass occurring after the last day of the 1-year period beginning on the date of enactment of this subsection.”.

SEC. 3. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

(a) IN GENERAL.—Title V of the Federal Water Pollution Control Act (33 U.S.C. 1361 et seq.) is amended—

(1) by redesignating section 519 (33 U.S.C. 1251 note) as section 520; and

(2) by inserting after section 518 (33 U.S.C. 1377) the following:

“SEC. 519. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.

“(a) DEFINITIONS.—In this section:

1 “(1) FUND.—The term ‘Fund’ means the Great
2 Lakes Cleanup Fund established by subsection (b).

3 “(2) GREAT LAKES; GREAT LAKES STATES.—
4 The terms ‘Great Lakes’ and ‘Great Lakes States’
5 have the meanings given the terms in section
6 118(a)(3).

7 “(b) ESTABLISHMENT OF FUND.—There is estab-
8 lished in the Treasury of the United States a trust fund
9 to be known as the ‘Great Lakes Cleanup Fund’ (referred
10 to in this section as the ‘Fund’).

11 “(c) TRANSFERS TO FUND.—Effective January 1,
12 2033, there are authorized to be appropriated to the Fund
13 amounts equivalent to the penalties collected for violations
14 of section 402(s).

15 “(d) ADMINISTRATION OF FUND.—The Adminis-
16 trator shall administer the Fund.

17 “(e) USE OF FUNDS.—The Administrator shall—
18 “(1) make the amounts in the Fund available
19 to the Great Lakes States for use in carrying out
20 programs and activities for improving wastewater
21 discharges into the Great Lakes, including habitat
22 protection and wetland restoration; and

23 “(2) allocate those amounts among the Great
24 Lakes States based on the proportion that—

1 “(A) the amount attributable to a Great
2 Lakes State for penalties collected for violations
3 of section 402(s); bears to

4 “(B) the total amount of those penalties
5 attributable to all Great Lakes States.

6 “(f) PRIORITY.—In selecting programs and activities
7 to be funded using amounts made available under this sec-
8 tion, a Great Lakes State shall give priority consideration
9 to programs and activities that address violations of sec-
10 tion 402(s) resulting in the collection of penalties.”.

11 (b) CONFORMING AMENDMENT TO STATE REVOLV-
12 ING FUND PROGRAM.—Section 607 of the Federal Water
13 Pollution Control Act (33 U.S.C. 1387) is amended—

14 (1) by striking “There is” and inserting “(a) IN
15 GENERAL.—There is”; and

16 (2) by adding at the end the following:

17 “(b) TREATMENT OF GREAT LAKES CLEANUP
18 FUND.—For purposes of this title, amounts made avail-
19 able from the Great Lakes Cleanup Fund under section
20 519 shall be treated as funds authorized to be appro-
21 priated to carry out this title and as funds made available
22 under this title, except that the funds shall be made avail-
23 able to the Great Lakes States in accordance with section
24 519.”.

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