

THE MARCHING SEASON IN
NORTHERN IRELAND

HON. SUE W. KELLY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, July 11, 1997

Mrs. KELLY. Mr. Speaker, I rise today to speak out against the unfairness of Britain's decision to allow the Orange Order to march through Northern Ireland's Garvaghy Road area this past weekend. Thousands of residents were barricaded in their homes by 1,500 riot police and troops, which were reinforced by more than 100 armored cars. This choice was tragic, and today's headlines bear solemn witness to this fact.

This is the third year that British authorities have allowed the Orange Order to march through this predominantly Catholic neighborhood. In justifying this fatal decision, Northern Ireland Secretary Mo Mowlam said, "Had the Orange Order not been permitted to march through the Garvaghy Road Community, the Protestants would have committed widespread mayhem." The mere fact that Secretary Mowlam, admitted that by allowing the Protestants to march through the Garvaghy Road area was her least worst option, to me is quite disturbing. In fact, her decision led to severe rioting, and has made the Irish Peace process that much more difficult to achieve. Clearly, this march should not have been allowed to take place in the first place. All marches in the future should be cancelled, until Ireland can reach a peace agreement.

I call upon the British and Irish Governments to work together, and encourage all parties to resume their efforts toward a just and lasting peace. Violence, under any circumstance, is not the answer.

TRIBUTE TO ILC DOVER FOR
THEIR CONTRIBUTION TO THE
PATHFINDER MISSION

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Friday, July 11, 1997

Mr. CASTLE. Mr. Speaker, I proudly rise today to call your attention to a great contribution to science, technology, and progress made by the people of ILC Dover in Dover, DE. I offer my appreciation to the hard work and dedication of this company which developed the airbag system that allowed Pathfinder to land on Mars and reduced the cost of the Mars mission.

ILC's success in aerospace technology dates back to their development of the Extra Vehicular Activity spacesuits used for space walks during the Apollo missions. ILC Dover's reputation as a cost-effective engineering firm with its core technology of developing high-tech inflatable systems, made them a logical contractor to team with NASA's Jet Propulsion Laboratory. ILC designed, tested, and produced the material development used in this highly visible project.

ILC Dover has proved themselves a leader and model in the aerospace industry by providing technology in accordance with NASA's new focus: better, faster, cheaper. I am confident that ILC Dover will continue to provide

innovative and cost-effective aerospace technology necessary to continue important missions such as Pathfinder in exploring our world. I applaud the people of ILC Dover and wish them continued success in their endeavors.

THE MUNICIPAL BIOLOGICAL
MONITORING USE ACT

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 11, 1997

Mr. HEFLEY. Mr. Speaker, I am pleased to join my colleague, Mr. PASTOR, in introducing H.R. 2138, the Municipal Biological Monitoring Use Act. The purpose of this legislation is to establish for the Environmental Protection Agency new criteria for biomonitoring or whole effluent toxicity tests at local government sewage treatment plants, also known as publicly owned treatment works, or POTW's.

Similar legislation applicable to POTW's was introduced in previous Congresses. In recent months, the EPA has also sought to apply WET test limitations to municipal separate storm sewer systems, combined sewer overflows and other wet weather discharges and control facilities. Therefore, this updated version of our bill is also applicable to these storm water-related discharges owned by local governments.

Enforcement of biomonitoring test failures is a concern of POTW's nationwide and particularly in the arid West because of the unique water quality characteristics of low flow and ephemeral streams located in that region.

The bill we introduce today would retain the use of biomonitoring tests as a management or screening tool for toxicity, while shifting fine and penalty liability for test failures to liability for failure to implement permit-required procedures for identifying and reducing the source of WET when detected.

BACKGROUND

The EPA regulates wastewater discharges from POTW's through the National Pollutant Discharge Elimination System, or NPDES, permit program. NPDES permits include narrative or numeric limitations on the discharge of specifically named chemicals. Treatment facilities for these named chemicals can be designed and built in order to assure compliance with such limitations before a violation occurs. Compliance is determined by conducting specific tests for these named chemicals.

NPDES permits may also include limits on the unspecified toxicity of the entire sewage plant effluent which is known as whole effluent toxicity. Compliance with these limitations is determined by the results of biomonitoring or whole effluent toxicity, or WET tests. The authority for biomonitoring tests was added to the Clean Water Act by the 1987 amendments. Since then, EPA has issued biomonitoring test methods, permit requirements, and enforcement policies for the use of WET tests as a monitoring requirement or as a permit effluent limitation at POTW's.

Biomonitoring or WET tests are conducted on treated plant effluent in laboratories using small aquatic species similar to shrimp or minnows. The death of these species or their failure to grow as expected in the laboratory is considered by EPA to be a test failure.

Where such tests are included in permits as effluent limits, these test failures are subject to administrative and civil penalties under the Clean Water Act of up to \$25,000 per day of violation. Test failures also expose local governments to enforcement by third parties under the citizen suit provision of the act.

WET test failures can also trigger toxicity identification and reduction evaluations that include additional testing, thus exposing local governments to additional penalties if these additional tests also fail.

WET TEST ACCURACY CANNOT BE DETERMINED

The EPA recognizes that the accuracy of biomonitoring tests cannot be determined. An October 16, 1995, Federal Register preamble document issued by the agency in promulgating guidelines establishing test procedures for the analysis of pollutants determined that: "Accuracy of toxicity test results cannot be ascertained, only the precision of toxicity can be estimated." (EPA, Guidelines for Establishing Test Procedures for the Analysis of Pollutants, 40 CFR part 136, 60 FR 53535, October 16, 1995.)

While the agency cannot determine the accuracy of such tests, the EPA still requires local governments to certify that WET test results are "true, accurate and complete" in discharge monitoring reports required by NPDES permits. This is a true catch-22 requirement.

Laboratory biomonitoring tests are known to be highly variable in performance and results. Aquatic species used as test controls often died during test performance. False positive tests occur frequently. Yet test failures are the basis for assessing administrative and civil penalties to enforce permit limitations for WET.

The EPA also recognized that WET is episodic and usually results from unknown sources until they are detected and located through WET tests. These unknown sources can include synergistic effects of chemicals, household products such as cleaning fluids or pesticides and illegal discharges to sewer systems. Even a well-managed municipal pretreatment program for municipal users cannot assure against WET test failures.

POTW's are designed to control specific chemical pollutants. Treatment facilities are not designed, however, to control WET before detection by biomonitoring test failures because POTW's cannot be assured of knowing the specific nature of sewage influent discharged to the treatment plant. To guarantee against these test failures before they occur, local governments would have to build sewage treatment facilities using reverse osmosis, microfiltration, carbon filtration, ion exchange or ozone at great expense to citizen rate payers.

The Clean Water Act and EPA regulations (40 CFR 122.44(d)(1)(iv)) require that toxicity be determined based on actual stream conditions. An EPA administrative law judge decision issued in October 1996 confirmed this interpretation in ruling:

Although some form of WET monitoring may be legally permissible, there must be a reasonable basis to believe the permittee discharge could be or become acutely toxic. In addition, the proposed tests must be reasonably related to determining whether the discharge could lead to real world toxic effects. The CWA objective to prohibit the discharge of "toxic pollutants in toxic amounts" concerns toxicity in the receiving waters of the United States, not the laboratory tanks.

IN THE MATTER OF METROPOLITAN-DADE COUNTY, MIAMI-DADE WATER AND SEWER AUTHORITY

In practice however, NPDES permits often restrict species for WET tests to a limited, nationally recognized number which may not be representative of the stream-specific conditions to which local facilities discharge. This situation can result in false test results. The failure to allow the use of indigenous test species is a particular concern to POTW's discharging to ephemeral streams located in Western States where nationally uniform species could not survive in any case.

POTW's cannot be assured of knowing what substances are discharged to their plants, as can industrial dischargers. They are community systems with thousands or even millions of connections, absolute control over which is not feasible. Requiring POTW's to know the cause of WET failures so that the appropriate controls can be installed before test failures is fundamentally unfair because the local governments owning these plants do not have notice of what they must do to conform their behavior to the requirements of law.

There is less basis for making WET test failures subject to fines and penalties for storm water-related discharges because local governments are able to exercise even less control over such systems.

The EPA may say that WET test failures often are not enforced under the agency's exercise of administrative discretion. However, the opportunity for such enforcement remains particularly where an enforcement action is based on one or more permit violations. More importantly, the credibility of any legal requirement that is not built on the principal of fair notice is damaged whether enforcement occurs once or many times. Additionally, third party suits are not subject to the exercise of EPA review and discretion.

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The EPA may say that WET test failures often are not enforced under the agency's exercise of administrative discretion. However, the opportunity for such enforcement remains, especially as more permittees are faced for the first time with enforceable WET permit limits and where an enforcement action is based on one or more alleged permit violations. More importantly, any legal requirement that is not based on fair notice lacks credibility and undermines due process principles whether enforcement occurs once or many times. Additionally, third-party suits are not subject to the exercise of EPA review and discretion.

Procedures for locating and reducing the source toxicity can require accelerated testing which would expose local governments to additional penalty liability. Thus, the agency's insistence on making WET tests subject to penalties has become counterproductive to preventing toxicity.

Nothing in the Clean Water Act requires the EPA to make WET testing an enforceable permit limitation. As originally conceived, these tests should be used as a screening or management tool for detecting WET, rather than for enforcement purposes. Since the 1987 amendments, however, the EPA has persisted in making WET test failures violations of permit limitations even though these tests are technically unsound and fundamentally unfair for enforcement purposes.

It is for these reasons a legislative solution is necessary.

ALTERNATIVE LEGISLATIVE SOLUTION NEEDED

One legislative alternative would make WET testing a monitoring only permit requirement. Another alternative would shift the enforceability of WET permit requirements from WET test failures to local government failure to implement a tiered compliance process and schedule for locating and reducing the source of toxicity.

Our bill, H.R. 2138, adopts the second alternative and retains use of WET as an enforceable part of the Clean Water Act by:

Amending sections 303 and 402 of the Clean Water Act to prohibit the finding of a violation of the act in the case of a biomonitoring or WET test conducted at publicly owned treatment works, municipal separate storm sewer systems and municipal combined sewer overflows, including control facilities, and other wet weather control facilities;

Requiring that criteria for WET must employ an aquatic species that is indigenous to the type of waters, a species that is representative of such species or such other appropriate species as will indicate the toxicity of the effluent in the specific receiving waters. Such criteria must take into account the natural biological variability of the species and must ensure that the accompanying test method accurately represents actual instream conditions, including conditions associated with dry and wet weather;

Authorizing NPDES permit terms, conditions or limitations to include enforceable procedures requiring further analysis, toxicity identification evaluation [TIE] or toxicity reduction evaluation [TRE] for WET where an NPDES permit authority determines that the discharge from the applicable facility causes, has the reasonable potential to cause or contributes to an instream excursion above a narrative or numeric criterion for WET. The bill would also direct that the NPDES permit must allow the permittee to discontinue such procedures, subject the future reinitiation of such procedures upon a showing by the permitting authority of changed conditions, if the source of such toxicity cannot, after thorough investigation, be identified; and requiring the use of such NPDES permit terms, conditions or limitations only upon determination that such terms, conditions or limitations are technically feasible, accurately represent toxicity associated with wet weather conditions and can materially assist in an identification evaluation or reduction evaluation of such toxicity.

WET testing should be used as a management tool to locate and reduce WET. The assessment of penalties for test failures or the potential for assessment has become a recognized disincentive for the use of WET tests including accelerated testing to local and reduce toxicity.

Our bill, H.R. 2138, would assure the use of these tests as tools to prevent pollution by respecting their technical limitations, eliminating penalties for test failures, preserving the enforceability of procedures to locate and reduce whole effluent toxicity when detected and thereby eliminate the disincentive for their use.

We urge your support and cosponsorship of this legislation.

H.R. 2138

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Municipal Biological Monitoring Use Act".

SEC. 2. BIOLOGICAL MONITORING AT PUBLICLY OWNED TREATMENT WORKS, MUNICIPAL SEPARATE STORM SEWER SYSTEMS, AND MUNICIPAL COMBINED SEWER OVERFLOWS, INCLUDING CONTROL FACILITIES, AND OTHER WET WEATHER CONTROL FACILITIES.

(a) BIOLOGICAL MONITORING CRITERIA.—Section 303(c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)(2)) is amended—

(1) in subparagraph (B)—

(A) by striking the period at the end and inserting the following: "": *Provided*, That for publicly owned treatment works, municipal separate storm sewer systems, and municipal combined sewer overflows, including control facilities, and other wet weather control facilities, nothing in this Act shall be construed to authorize the use of water quality standards or permit effluent limitations which result in the finding of a violation upon failure of whole effluent toxicity tests or biological monitoring tests."; and

(B) by inserting after the third sentence the following: "Criteria for biological monitoring or whole effluent toxicity shall employ an aquatic species that is indigenous to the type of waters, a species that is representative of such species, or such other appropriate species as will indicate the toxicity of the effluent in the specific receiving waters. Such criteria shall take into account the natural biological variability of the species, and shall ensure that the accompanying test method accurately represents actual instream conditions, including conditions associated with dry and wet weather."; and

(2) by adding at the end the following:

"(C) Where the permitting authority determines that the discharge from a publicly owned treatment works, a municipal separate storm sewer system, or municipal combined sewer overflows, including control facilities, or other wet weather control facilities causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criterion for whole effluent toxicity, the permit may contain terms, conditions, or limitations requiring further analysis, identification evaluation, or reduction evaluation of such effluent toxicity. Such terms, conditions, or limitations meeting the requirements of this section may be utilized in conjunction with a municipal separate storm sewer system, or municipal combined sewer overflows, including control facilities, or other wet weather control facilities only upon a demonstration that such terms, conditions, or limitations are technically feasible, accurately represent toxicity associated with wet weather conditions, and can materially assist in an identification evaluation or reduction evaluation of such toxicity."

(b) INFORMATION ON WATER QUALITY CRITERIA.—Section 304(a)(8) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(8)) is amended by inserting " ", consistent with subparagraphs (B) and (C) of section 303(c)(2)," after "publish".

(c) USE OF BIOLOGICAL MONITORING OR WHOLE EFFLUENT TOXICITY TESTING AT PUBLICLY OWNED TREATMENT WORKS, MUNICIPAL SEPARATE STORM SEWER SYSTEMS, OR MUNICIPAL COMBINED SEWER OVERFLOWS, INCLUDING CONTROL FACILITIES, OR OTHER WET WEATHER CONTROL FACILITIES.—Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(q) USE OF BIOLOGICAL MONITORING OR WHOLE EFFLUENT TOXICITY TESTING AT PUBLICLY OWNED TREATMENT WORKS, MUNICIPAL

SEPARATE STORM SEWER SYSTEMS, OR MUNICIPAL COMBINED SEWER OVERFLOWS, INCLUDING CONTROL FACILITIES, OR OTHER WET WEATHER CONTROL FACILITIES.—

"(1) IN GENERAL.—Where the Administrator determines that it is necessary in accordance with subparagraphs (B) and (C) of section 303(c)(2) to include biological monitoring, whole effluent toxicity testing, or assessment methods as a term, condition, or limitation in a permit issued to a publicly owned treatment works, a municipal separate storm sewer system, or a municipal combined sewer overflow, including a control facility, or other wet weather control facility pursuant to this section, such permit term, condition, or limitation shall be accordance with such subparagraphs.

"(2) RESPONDING TO TEST FAILURES.—If a permit issued under this section contains terms, conditions, or limitations requiring biological monitoring or whole effluent toxicity testing designed to meet criteria for biological monitoring or whole effluent toxicity, the permit may establish procedures for further analysis, identification evaluation, or reduction evaluation of such toxicity. The permit shall allow the permittee to discontinue such procedures, subject to future reinitiation of such procedures upon a showing by the permitting authority of changed conditions, if the source of such toxicity cannot, after thorough investigation, be identified.

"(3) TEST FAILURE NOT A VIOLATION.—The failure of a biological monitoring test or a whole effluent toxicity test at a publicly owned treatment works, a municipal separate storm sewer system, or a municipal combined sewer overflow, including a control facility, or other wet weather control facility shall not result in a finding of a violation under this Act."

MUHAMMAD ALI—"STILL THE GREATEST"

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, July 11, 1997

Mr. STOKES. Mr. Speaker, I recently read an inspiring article which appeared in the Washington Post's national weekly edition. The article is entitled, "Still the Greatest." In the article, David Maraniss, a staff writer for the Post, reminds us of the struggle, perseverance, and success of one of the world's greatest boxers—Muhammad Ali.

Muhammad Ali, the once Olympic boxing medal winner and past world's heavyweight champion, is considered by some to be the "Greatest of All Time." But, he has always been more than just an exceptional athlete. He was, and still is an exceptional man. Muhammad Ali, as Maraniss points out, "is universally recognized as a man who stood for what he believed in and paid the price and prevailed." As champion, Ali converted to the Islamic religious belief, took a stand against the Vietnam war, and donated time and money to charitable organizations. After his boxing career ended, he continued to spread goodwill and associate himself with worthy causes.

Today, Ali maintains his commitment to the funding of research for Parkinson's disease, a disease he himself was diagnosed with in the early 1980's. He travels frequently, doing good deeds, visiting schools, and campaigning against child abuse, as well as "promoting universal understanding and tolerance."

Mr. Speaker, this article shows the strength of the human spirit when coupled with the will to survive and drive to succeed. Muhammad Ali is an inspiration to all of us, young and old, rich or poor, athlete or spectator. He not only stands for what he believes in, but he also backs it up. Whether the fight was in the ring, with American policy, or with a debilitating disease, Muhammad Ali never backed down. It pleases me that Mr. Maraniss decided to pay tribute to the "Greatest of All Time." I take pride in sharing "Still the Greatest" with my colleagues and others across the Nation.

[From the Washington Post, June 16, 1997]

STILL THE GREATEST—MUHAMMAD ALI'S LATEST COMEBACK HAS MADE HIM A BELOVED FIGURE ALL OVER THE WORLD

(By David Maraniss)

BERRIEN SPRINGS, MICH.—No words at first. The greeting comes from his eyes, then a handshake, light as a butterfly, followed by a gesture that says, "Follow me." He has just popped out the back door of his farmhouse wearing green pants and a light brown wool pullover with sunglasses tucked coolly into the mock turtle-neck collar. He is carrying an old black briefcase. His hair is longer than usual and a bit uncombed. He starts walking toward his office, a converted barn on the lower end of the circular driveway.

He moves slowly, hunching slightly forward as he goes, never a stumble but sometimes seeming on the verge of one, as though his world slopes downhill. He opens the door and stand aside, following, not leading, on the way upstairs to his second-floor office. Halfway up, it becomes clear why. He sticks out a hand and catches his visitor's foot from behind. The old trip-up-the-stairs trick. Muhammad Ali loves tricks.

At the top of the stairs is the headquarters of GOAT. Another trick. It is the playfully ironic acronym for Greatest of All Time, Incorporated. Ali wants the world to know that he is just another goat, one living thing in this vast and miraculous universe. But also the greatest there ever was. He is 55, his mouth and body slowed by Parkinson's disease, yet still arguably the best known and most beloved figure in the world. Who else? The Pope? Nelson Mandela? Michael Jordan? Ali might win in a split decision.

Even the most dramatic lives move in cycles of loss and recovery. Last summer in Atlanta, when Ali stood alone in the spotlight, the world watching, his hands trembling, and lit the Olympic flame, he began another cycle, perhaps his ultimate comeback, as emotional as any he had staged in the ring against Joe Frazier or George Foreman. For 16 years he had been retired from boxing. During that time he had gone through periods of boredom and uncertainty. Not that he was passe, but the world tends to forget its old kings when new ones come around.

He kept going as best he could, his health deteriorating, spreading goodwill with his smiling eyes, trying to keep his name alive.

Then, finally, his moment arrived again, first at the Olympics, then at the Academy Awards, where he bore silent witness to "When We Were Kings," the Oscar-winning documentary about his dramatic heavyweight championship fight in October 1974 against Foreman in what was then Zaire.

The shimmering house of movie stars seemed diminished, their egos preposterous, when Ali rose and stood before them. Yet some saw in that appearance a hint of the maulin; poor Ali, enfeebled and paunchy, dragged out as another melodramatic Hollywood gimmick. Was he real or was he memory? What was left of him if he could no longer float and sting?

Quite a bit, it turns out, no sorrow and pity from the champ. He says he cherished

his performances at the Olympics and Academy Awards more than anyone could know. Publicity is his lifeblood, more important to him than any medicine he is supposed to take. "Press keeps me alive, man," he says, with an honesty that softens the edge of his ego. "Press keeps me alive. Press and TV. The Olympics. Academy Awards. 'When We Were Kings.' Keeps me alive."

When the producers sent him a videotape of "When We Were Kings," he stuck it into his VCR at home and watched it day after day. At a recent autograph extravaganza in Las Vegas, he conducted his own poll by comparing his line to those for Jim Brown, Paul Hornung, Bobby Hull and Ernie Banks. Twice as long as any of them. Staying alive. And the biggest life-saver of all: that night in Atlanta last July, 36 years after he had first danced onto the world scene as the brash young Olympic champion Cassius Marcellus Clay.

Long after the torch scene was over, Ali would not let go. He went back to his suite with his wife, Lonnie, and a few close friends. They were tired, emotionally drained from the surprise, anxiety and thrill of the occasion, but Ali would not go to sleep. He was still holding the long white and gold torch, which he had kept as a prized memento. He cradled it in his arms, turning it over and over, just looking at it, not saying much, sitting in a big chair, smiling, hour after hour.

"I think the man was just awed. Just completely awed by the whole experience," Lonnie Ali recalls. "He was so excited. It took forever for him to go to bed, he was on such a high. He found it very hard to come back down to earth. There was just such a fabulous response. No one expected that. None of us did."

By the time he and Lonnie returned to their farmhouse here in southern Michigan, the mail was already backing up, flooding in at tenfold the previous pace. Letters from everywhere. The return of a trembling Ali had unleashed powerful feelings in people. They said they cried at his beauty and perseverance. They said he reminded them of what it means to stand up for something you believe in. Disabled people. Old '60's activists. Republicans. Black. White. Christian. Jewish. Muslim. A little boy from Germany, a boxing fan from England, a radiologist from Sudan, a secretary from Saudi Arabia—the multitudes thanked him for giving them hope.

When Ali reaches his office, he takes his customary chair against the side wall. There is work to be done, the room is overcrowded with mementos to be signed for charity, and his assistant, Kim Forburger, is waiting for him with a big blue felt pen. But Ali has something else in mind right now.

"Mmmmmmm. Watch this, man," he says. His voice sounds like the soft, slurred grumble-whisper of someone trying to clear his throat on the way out of a deep sleep. Conversing with him for the first time, one unavoidably has to say, "I'm sorry, what?" now and then, or simply pretend to understand him, but soon enough one adjusts, and it becomes obvious that Parkinson's has not slowed his brain, only his motor skills.

Ali walks toward the doorway and looks back with a smile.

"Oh, have you seen Muhammad levitate yet?" Forburger asks. She suddenly becomes the female assistant in a Vegas act. With a sweep of her hand, she says, "Come over here. Stand right behind him. Now watch his feet. Watch his feet."

Ali goes still and silent, meditating. His hands stop shaking. He seems to radiate something. A mystical aura? Ever so slowly, his feet rise from the floor, one inch, three inches, six inches. His hands are not touching anything. "Ehhhh. Pretty heavy,