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108TH CONGRESS
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S. 779

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2003

Mr. JEFFORDS (for himself, Mr. LAUTENBERG, Mr. GRAHAM of Florida, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Federal Water Pollution Control Act to improve protection of treatment works from terrorist and other harmful intentional acts, and for other purposes.

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 ''Wastewater Treatment Works Security and Safety Act''.

SEC. 2. PROTECTION FROM TERRORIST AND OTHER HARMFUL INTENTIONAL ACTS.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

"SEC. 222. PROTECTION FROM TERRORIST AND OTHER HARMFUL INTENTIONAL ACTS.

"(a) DEFINITIONS.—In this section:

"(1) COVERED TREATMENT WORKS.—

"(A) IN GENERAL.—The term 'covered treatment works' means a treatment works that—

"(i) serves at least 25,000 individuals; or

"(ii) as determined by the Administrator before October 1, 2003, based on the factors described in subparagraph (B), presents a sufficient security risk to remain subject to this section.

"(B) FACTORS FOR INCLUSION OF TREATMENT WORKS.—The factors referred to in subparagraph (A)(ii) are—

"(i) the likelihood that the treatment works will be the target of a harmful intentional act;

"(ii) the consequences that would result if the treatment works were the target of a harmful intentional act; and

"(iii) such other security factors as the Administrator determines to be necessary to protect—

"(I) public health, safety, and welfare;

"(II) critical infrastructure; and

"(III) national security.

"(2) EMERGENCY RESPONSE PLAN.—The term 'emergency response plan' means a plan that a covered treatment works is required to prepare or revise, and submit to the Administrator, under subsection (c).

"(3) HARMFUL INTENTIONAL ACT.—The term 'harmful intentional act' means a terrorist attack or other intentional act carried out with respect to a covered treatment works that is intended—

"(A) to substantially disrupt the ability of the covered treatment works to provide safe and reliable—

"(i) conveyance and treatment of wastewater;

"(ii) disposal of effluent; or

"(iii) storage of a potentially hazardous chemical used to treat wastewater;

"(B) to damage critical infrastructure;

"(C) to have an adverse effect on the environment; or

"(D) to otherwise pose a significant threat to public health or safety.

"(4) VULNERABILITY ASSESSMENT.—The term 'vulnerability assessment' means an assessment that a covered treatment works is required to conduct and submit to the Administrator under subsection (b)(1).

"(b) VULNERABILITY ASSESSMENTS.—

"(1) COVERED TREATMENT WORKS.—

"(A) IN GENERAL.—Using appropriate tools (such as available vulnerability self-assessment tools), each covered treatment works shall conduct and submit to the Administrator an assessment of the vulnerability of the covered treatment works to a harmful intentional act.

"(B) DEADLINE FOR SUBMISSION.—Each covered treatment works shall submit a vulnerability assessment to the Administrator—

"(i) in the case of a covered treatment works described in subsection (a)(1)(A)(i), by not later than April 1, 2004; and

"(ii) in the case of the covered treatment works described in subsection (a)(1)(A)(ii), by such date as shall be determined by the Administrator, but not later than December 1, 2004.

"(2) REQUIRED ELEMENTS.—At a minimum, the vulnerability assessment shall consist of a review of—

"(A) the pipes and constructed conveyances, physical barriers, treatment, storage, and disposal facilities, and electronic, computer, and other automated systems, that are used by the covered treatment works;

"(B) the use, storage, or handling of various chemicals at the covered treatment works;

"(C) plans and procedures of the covered treatment works, to ensure, to the maximum extent practicable, continued provision of service; and

"(D) critical records and documents of the covered treatment works.

"(c) EMERGENCY RESPONSE PLAN.—

"(1) IN GENERAL.—Not later than 180 days after a covered treatment works completes a vulnerability assessment in accordance with subsection (b), the covered treatment works shall prepare or revise, as necessary, and submit to the Administrator, an emergency response plan that incorporates the results of the vulnerability assessment.

"(2) REQUIRED ELEMENTS.—The emergency response plan shall include plans, procedures, identification of equipment, and other activities that can—

"(A) be implemented or used in the event of a harmful intentional act carried out with respect to the covered treatment works; and

"(B) reduce or significantly lessen the impacts of a harmful intentional act carried out with respect to the covered treatment works.

"(3) COORDINATION WITH LOCAL EMERGENCY PLANS.—In preparing or revising emergency response plans under this subsection, a covered treatment works shall, to the maximum extent practicable, coordinate with local emergency plans.

"(4) RECORD MAINTENANCE.—Each covered treatment works shall maintain a copy of the emergency response plan prepared or revised under para-

graph (1), and any additional revisions to such a plan completed after the date referred to in paragraph (1), for a period of not less than 5 years after the date on which the plan or revisions are submitted to the Administrator.

"(d) REQUIREMENTS RELATING TO VULNERABILITY ASSESSMENTS AND EMERGENCY RESPONSE PLANS.—

"(1) PROVISION OF VULNERABILITY ASSESSMENTS TO STATE AND LOCAL GOVERNMENTS.—No covered treatment works shall be required under State or local law to provide a vulnerability assessment or emergency response plan to any State, regional, or local governmental entity unless the State or local government has in effect a law that requires submission of such an assessment or plan to the State, regional, or local governmental entity.

"(2) EXEMPTION OF INFORMATION FROM DISCLOSURE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Administrator under subsections (b) and (c), and all information derived from that information, shall be exempt from disclosure under section 552 of title 5, United States Code.

"(B) NO EXCEPTION.—Subparagraph (A) does not apply to information contained in a vulnerability assessment or emergency response plan that identifies—

"(i) the covered treatment works submitting the vulnerability assessment or emergency response plan; or

"(ii) the date of completion of the vulnerability assessment or emergency response plan.

"(3) PROTOCOLS TO PROTECT VULNERABILITY ASSESSMENTS AND EMERGENCY RESPONSE PLANS FROM UNAUTHORIZED DISCLOSURE.—

"(A) IN GENERAL.—Not later than April 1, 2004, the Administrator, in consultation with appropriate Federal law enforcement and intelligence officials, shall develop such protocols as are necessary to protect vulnerability assessments and emergency response plans from unauthorized disclosure.

"(B) PROTOCOLS.—The protocols shall ensure that—

"(i) each copy of a vulnerability assessment or emergency response plan, and all information contained in or derived

from the vulnerability assessment or emergency response plan, is kept in a secure location;

"(ii) only individuals designated by the Administrator have access to the copies of the vulnerability assessments and emergency response plans; and

"(iii) no copy of a vulnerability assessment or emergency response plan is available to any individual other than an individual designated by the Administrator under clause (ii).

"(C) EXCEPTIONS.—Any individual referred to in subparagraph (B)(ii)—

"(i) may disclose a copy of a vulnerability assessment or emergency response plan—

"(I) to any individual designated by the Administrator under paragraph (3)(B)(ii); or

"(II) for use under seal in any administrative or judicial proceeding relating to imposition of a penalty for failure to comply with this section; or

"(ii) if the individual is an officer or employee of the United States, may discuss the contents of a vulnerability assessment or emergency response plan with a State or local official who the Administrator determines needs to know those contents.

"(4) RECORDKEEPING; ENTRY.—

"(A) RECORDKEEPING.—A covered treatment works that is required to submit to the Administrator information under subsection (b) or (c) shall maintain on the premises of the treatment works a current copy of that information.

"(B) ENTRY.—In carrying out this section, the Administrator (or an authorized representative of the Administrator), on presentation of credentials—

"(i) shall have a right of entry to, on, or through any premises of an owner or operator of a covered treatment works, or any premises on which any records required to be maintained under subparagraph (A) are located; and

"(ii) may at reasonable times have access to, and may copy, any records, re-

ports, or other information described in subparagraph (A).

"(5) 5-YEAR REVIEW.—Not later than 5 years after the date of submission of an emergency response plan by a covered treatment works under subsection (c), and not less often than every 3 years thereafter, the owner or operator of the covered treatment works, in coordination with local law enforcement and first responders, shall—

"(A) review the adequacy of the emergency response plan; and

"(B)(i) certify to the Administrator that the covered treatment works has implemented the emergency response plan; and

"(ii) as appropriate, submit to the Administrator any changes to the emergency response plan.

"(6) PROVISION OF INFORMATION TO CONGRESS.—Nothing in this subsection authorizes any person to withhold any information from Congress or from any committee or subcommittee of Congress.

"(e) ABATEMENT ACTION.—

"(1) IN GENERAL.—If the Administrator, in consultation with local law enforcement officials and first responders, determines that a threat of a ter-

rorist attack exists that is beyond the scope of a submitted emergency response plan, or that current implementation of an emergency response plan is insufficient to address the results of an assessment of a treatment works or the threat of a harmful intentional act, the Administrator shall notify each treatment works of the elevated threat.

"(2) INSUFFICIENT RESPONSE.—If the Administrator determines that a treatment works has not taken appropriate action in response to a notification under paragraph (1), the Administrator shall notify the treatment works and the Attorney General that actions taken by the treatment works in response to the notification are insufficient.

"(3) RELIEF.—

"(A) IN GENERAL.—On submission of a notification under paragraph (2), the Administrator or the Attorney General may secure such relief as is necessary to abate a threat described in paragraph (1), including such orders as are necessary to protect public health or welfare.

"(B) JURISDICTION.—The district court of the United States for the district in which a threat described in paragraph (1) occurs shall have jurisdiction to grant such relief as the Ad-

ministrator or Attorney General requests under subparagraph (A).

"(f) GRANTS FOR COMPLIANCE AND BASIC SECURITY ENHANCEMENTS.—

"(1) IN GENERAL.—The Administrator, in coordination with State and local governments, may make grants to covered treatment works—

"(A) to assist in compliance with subsections (b) and (c); and

"(B) to pay the costs of implementing basic security enhancements of critical importance, and otherwise addressing significant threats of harmful intentional acts, identified under a vulnerability assessment.

"(2) TYPES OF BASIC SECURITY ENHANCEMENTS.—The basic security enhancements referred to in paragraph (1)(B) are—

"(A) purchase and installation of equipment for detection of intruders;

"(B) purchase and installation of fencing, gating, lighting, or security cameras;

"(C) tamperproofing of manhole covers and valve boxes;

"(D) rekeying of doors and locks;

"(E) improvements to electronic, computer, and other automated systems and remote security systems;

"(F) participation in training programs, and purchase of training manuals and guidance materials, relating to security against harmful intentional acts;

"(G) improvements in the use, storage, or handling of chemicals;

"(H) security screening of employees of the covered treatment works or employees of contractor support services; and

"(I) such other equipment and activities as the Administrator determines to be appropriate.

"(3) PROHIBITED EXPENDITURES.—The basic security enhancements referred to in paragraph (1)(B) do not include expenditures for—

"(A) personnel costs; or

"(B) monitoring, operation, or maintenance of facilities, equipment, or systems.

"(g) GRANTS TO ADDRESS IMMEDIATE AND URGENT SECURITY NEEDS.—The Administrator may make grants to covered treatment works to assist in responding to and alleviating any vulnerability to a harmful intentional act

that the Administrator determines presents an immediate and urgent security need.

"(h) ASSISTANCE TO SMALL COVERED TREATMENT WORKS.—

"(1) GUIDANCE.—The Administrator shall provide guidance to covered treatment works serving a population of fewer than 10,000 individuals on how—

"(A) to conduct vulnerability assessments;

"(B) to prepare emergency response plans; and

"(C) to address threats posed by harmful intentional acts.

"(2) GRANTS.—The Administrator may make grants to covered treatment works described in paragraph (1) to carry out activities in accordance with the guidance provided under paragraph (1).

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $180,000,000 for the period of fiscal years 2004 through 2008, of which not more than—

"(1) $125,000,000 for fiscal year 2004, and such sums as are necessary for each of fiscal years 2005 through 2008, may be used to carry out subsection (f);

"(2) $20,000,000 for the period of fiscal years 2004 and 2005 may be used to carry out subsection (g); and

"(3) $15,000,000 for fiscal year 2004 and such sums as are necessary for each of fiscal years 2005 through 2008, may be used to carry out subsection (h)(2).".

SEC. 3. RESEARCH AND REVIEW.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) (as amended by section 2) is amended by adding at the end the following:

"SEC. 223. RESEARCH AND REVIEW.

"(a) DEFINITIONS.—In this section, the terms 'covered treatment works' and 'harmful intentional act' have the meanings given the terms in section 222(a).

"(b) REVIEW BY ADMINISTRATOR.—Not later than 2 years after the date of enactment of this section, the Administrator, in coordination with appropriate Federal agencies, shall research and review (or enter into a contract or cooperative agreement to provide for research and review of)—

"(1) means by which terrorists or other individuals or groups could carry out harmful intentional acts; and

"(2) means by which alternative processes of conveying, treating, and disposing of wastewater could be provided in the event of the destruction, impairment, or disruption of covered treatment works as the result of harmful intentional acts.

"(c) MEANS OF CARRYING OUT HARMFUL INTENTIONAL ACTS.—Means referred to in subsection (b)(1) include—

"(1) means by which pipes and other constructed conveyances used in covered treatment works could be destroyed or otherwise prevented from providing adequate conveyance, pretreatment, treatment, and disposal of wastewater meeting applicable public health standards;

"(2) means by which conveyance, pretreatment, treatment, storage, and disposal facilities used by, or in connection with, covered treatment works could be destroyed or otherwise prevented from providing adequate treatment of wastewater meeting applicable public health standards;

"(3) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with treatment works could be altered or affected so as to

pose a threat to public health, public safety, or the environment;

"(4) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with covered treatment works could be reasonably protected from harmful intentional acts;

"(5) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems could be reasonably secured from use as a means of transportation by terrorists or other individuals or groups who intend to threaten public health or safety; and

"(6) means by which information systems, including process controls and supervisory control, data acquisition, and cyber systems, at covered treatment works could be disrupted by terrorists or other individuals or groups.

"(d) CONSIDERATIONS.—In carrying out the review under this section, the Administrator—

"(1) shall ensure that the review reflects the needs of covered treatment works of various sizes and various geographic areas of the United States; and

"(2) may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including the National Capital Area.

"(e) INFORMATION SHARING.—As soon as practicable after the review carried out under this section has been evaluated by the Administrator, the Administrator shall disseminate to covered treatment works information on the results of the review through the Information Sharing and Analysis Center or other appropriate means.

"(f) FUNDING.—There is authorized to be appropriated to carry out this section $15,000,000 for the period of fiscal years 2004 through 2008.".

SEC. 4. REFINEMENT OF VULNERABILITY ASSESSMENT TOOLS FOR PUBLICLY OWNED TREATMENT WORKS.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) (as amended by section 3) is amended by adding at the end the following:

"SEC. 224. REFINEMENT OF VULNERABILITY ASSESSMENT TOOLS FOR PUBLICLY OWNED TREATMENT WORKS.

"(a) GRANTS.—The Administrator may make grants to 1 or more nonprofit organizations for the improvement of vulnerability self-assessment tools for publicly owned treatment works.

"(b) ELIGIBLE ACTIVITIES.—

"(1) IN GENERAL.—Grants provided under this section may be used for—

"(A) developing and distributing vulnerability self-assessment software upgrades;

"(B) improving and enhancing critical technical and user support functions;

"(C) expanding libraries of information addressing both threats and countermeasures; and

"(D) implementing user training initiatives.

"(2) SERVICES.—Services described in paragraph (1) shall be provided at no cost to recipients.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000 for each of fiscal years 2004 through 2008, to remain available until expended.".

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