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SEWAGE OVERFLOW COMMUNITY RIGHT-TO-KNOW ACT

JUNE 19, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 2452]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2452) 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, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sewage Overflow Community Right-to-Know Act".

SEC. 2. DEFINITIONS.

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

"(25) SANITARY SEWER OVERFLOW.—The term 'sanitary sewer overflow' means an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. Such term does not include municipal combined sewer overflows or other discharges from a municipal combined storm and sanitary sewer system and does not include wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned. Such term includes overflows or releases of wastewater that reach waters of the United States, overflows or releases of wastewater in the United States that do not reach waters of the United States, and wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral.

"(26) TREATMENT WORKS.—The term 'treatment works' has the meaning given that term in section 212.".

SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICATION OF SEWER OVERFLOWS.

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

"(r) SEWER OVERFLOW NOTIFICATIONS.—

69–006

"(1) GENERAL REQUIREMENTS.—Not later than one year after the date of enactment of this subsection, the Administrator shall take such action as may be necessary to ensure that each permit issued under this section before, on, or after the date of enactment of this subsection for a publicly owned treatment works shall require, at a minimum, that the owner or operator of the treatment works—

"(A) institute and utilize a feasible methodology, technology, or management program to alert the owner or operator to the occurrence of a sewer overflow in a timely manner;

"(B) notify the public of a sewer overflow as soon as practicable, but not later than 24 hours after the time the owner or operator becomes aware of such overflow, if such overflow has the potential to affect human health, except for overflows that are wastewater backups into single-family residences;

"(C) immediately notify public health authorities and other affected entities, such as public water systems, of any sewer overflow that may imminently and substantially endanger human health, except for overflows that are wastewater backups into single-family residences;

"(D) report each sewer overflow (other than a release of wastewater that occurs in the course of maintenance of the treatment works, is managed consistently with the treatment works' best management practices, and is intended to prevent overflows) on its monthly discharge monitoring report to the Administrator or the State, as the case may be, by describing—

"(i) the magnitude, duration, and suspected cause of the overflow;

"(ii) the steps taken or planned to reduce, eliminate, or prevent recurrence of the overflow; and

"(iii) the steps taken or planned to mitigate the impact of the overflow; and

"(E) report to the Administrator or the State, as the case may be, the total number of sewer overflows (other than a release of wastewater that occurs in the course of maintenance of the treatment works, is managed consistently with the treatment works' best management practices, and is intended to prevent 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.

"(2) REPORT TO EPA.—If a State receives a report under paragraph (1)(E), the State shall report to the Administrator annually, in summary, the details of reported sewer overflows that occurred in that State.

"(3) RULEMAKING BY EPA.—Not later than one year after the date of enactment of this subsection, the Administrator shall, after providing notice and the opportunity for public comment, issue regulations to—

"(A) establish a set of criteria to guide owners and operators of publicly owned treatment works in assessing whether a sewer overflow has the potential to affect human health or may imminently and substantially endanger human health; and

"(B) define the terms 'feasible' and 'timely' as such terms apply to paragraph (1)(A).

"(4) SITE SPECIFIC CONDITIONS.—The definitions under paragraph (3)(B) shall include site specific conditions.

"(5) DEFINITIONS.—

"(A) SEWER OVERFLOW.—In this subsection, the term 'sewer overflow' means a sanitary sewer overflow or a municipal combined sewer overflow.

"(B) SINGLE FAMILY RESIDENCE.—In this subsection, the term 'single-family residence' means an individual dwelling unit, including an apartment, condominium, house, or dormitory. Such term does not include the common areas of a multi-dwelling structure.".

SEC. 4. ELIGIBILITY FOR ASSISTANCE.

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

(1) by striking "and" the first place it appears; and

(2) by inserting after "section 320" the following: ", and (4) for the implementation of requirements to monitor for sewer overflows under section 402".

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

(1) by striking "and" the first place it appears; and

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

SEC. 5. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act, including any amendment made by this Act, shall be construed—

(1) to limit the ability of any State from implementing and enforcing more stringent monitoring and notification standards than those required by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

(2) to supplant or diminish obligations to comply with all other requirements of the Federal Water Pollution Control Act.

Amend the title so as to read:

A bill to amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of sewage, and for other purposes.

PURPOSE OF THE LEGISLATION

H.R. 2452, the "Sewage Overflow Community Right-to-Know Act", as amended, amends the Federal Water Pollution Control Act ("Clean Water Act") to provide a uniform, national standard for monitoring, reporting, and public notification of municipal combined sewer overflows and sanitary sewer overflows.

BACKGROUND AND NEED FOR LEGISLATION

Municipal wastewater collection systems collect domestic sewage and other wastewater from homes and other buildings and convey it to wastewater treatment plants for proper treatment and disposal. These collection systems and treatment facilities are an extensive, valuable, and complex part of the nation's infrastructure. Sewage treatment operators perform an important job that helps protect the public, and are critical in achieving the goals of the Clean Water Act. The collection and treatment of domestic sewage and other wastewater is vital to the nation's economic and public health and the protection of the environment.

Two types of public sewer systems predominate in the United States—combined sewer systems and separate sanitary sewer systems. Municipal combined sewer systems utilize a joint-conveyance for the movement of wastewater (e.g., domestic sewage) and stormwater to wastewater treatment facilities. Separate sanitary sewer systems have individual (separated) conveyances for the movement of domestic sewage and for stormwater.

COMBINED SEWER SYSTEMS

Combined sewer systems were among the earliest sewer systems constructed in the United States, and were built until the first part of the 20th century. During wet weather events (e.g., rainfall or snowmelt), the combined volume of wastewater and stormwater runoff entering a combined sewer system often exceeds its conveyance capacity. To prevent damage to the infrastructure during wet weather events, combined sewer systems were intentionally designed to flow directly to surface waters when their capacity is exceeded, often discharging large volumes of untreated or partially treated sewage wastes—an estimated 850 billion gallons annu-

ally—directly into local waters. These discharges are called combined sewer overflows, or CSOs.

CSOs are point source discharges, and are prohibited under the Clean Water Act unless authorized by a National Pollutant Discharge Elimination System ("NPDES") permit under section 402 of the Clean Water Act. Section 402(q) requires that any permit issued for the discharge from a combined sewer system conform to the Combined Sewer Overflow Control Policy (59 Fed. Reg. 18688), dated April 1994, including the implementation of the nine minimum controls outlined in the policy and the development of a long-term CSO control plan ("long-term control plan").

Combined sewers are found in 33 States across the United States and the District of Columbia. The majority of combined sewers are located in communities in the Northeast or Great Lakes regions—where much of the oldest water infrastructure in the nation is found. However, combined sewer overflows have also occurred in the western United States, including the States of Washington, Oregon, and California. To eliminate combined sewer overflows, communities often must redesign their sewer systems to separate sewage flows from stormwater flows or provide significant additional capacity to eliminate the possibility that combined flows will exceed the limits of the infrastructure.

SANITARY SEWER SYSTEMS

Since the first part of the 20th century, municipalities in the United States have generally constructed separate sanitary and stormwater sewer systems. Sanitary sewer systems are specifically designed to carry domestic sewage flows and stormwater runoff from precipitation events through different conveyances.

While sanitary sewer systems are designed to separate sewage from stormwater, sewer overflows from separated systems still may occur. These untreated or partially treated discharges from sanitary sewer systems are commonly referred to as sanitary sewer overflows, or SSOs.

Unlike CSOs, which are typically designed with a specific outfall for overflows, SSOs can occur at any point in a separate sewer system and during dry or wet weather. In its 2004 Report to Congress on the Impacts and Control of CSOs and SSOs ("Report to Congress"), EPA defines SSOs to include those overflows that reach waters of the United States, as well as overflows out of manholes and onto city streets, sidewalks, and other terrestrial locations. EPA estimates that 72 percent of all SSOs reach the waters of the United States, but SSOs also include overflows that remain entirely within terrestrial locations, including streets, parks, and sewage backups into buildings and private residences.

SSOs that reach the waters of the United States are point source discharges, and are prohibited under the Clean Water Act unless authorized by a NPDES permit under section 402 of the Act. In addition, all SSOs, including those that do not reach the waters of the United States, may be indicative of improper operation and maintenance of the sewer system, and thus may violate existing NPDES permit conditions (40 CFR § 122.41 (2006)).

SSOs have a variety of causes including sewer line blockages, line breaks, or sewer defects that allow excess stormwater and groundwater to infiltrate and overload the system (also called infil-

tration and inflow), lapses in sewer operation and maintenance, inadequate sewer design and construction, power failures, and vandalism.

When sewage backups are caused by problems in the publicly owned portion of a sanitary sewer system, they are considered SSOs. Generally speaking, sewage backups that are caused by blockages or other malfunctions of privately-owned building laterals do not fall within EPA's definition of an SSO.

EPA estimates that between 23,000 and 75,000 SSOs occur per year in the United States, discharging a total volume of three to 10 billion gallons per year. According to EPA, this estimate does not account for discharges occurring after the headworks of the treatment plant or discharges into buildings caused by problems in the publicly owned portion of a sanitary sewer system, both of which would increase the annual total volume of SSOs.

Individual SSOs can range in volume from one gallon to millions of gallons. The majority of SSO events are caused by sewer blockages that can occur at any time, but the majority of SSO volume appears to be related to events caused by wet weather events and excessive inflow and infiltration.

IMPACTS OF SEWER OVERFLOWS

Sewer overflows, whether from municipal combined sewer systems or sanitary sewer systems, can pose significant environmental impacts, as well as cause or contribute to human health impacts.

According to its 2000 National Water Quality Inventory Report, EPA has determined that three pollutants are most often associated with impaired waters in the United States—solids, pathogens, and nutrients. Under the Clean Water Act, a waterbody is impaired if it fails to meet water quality standards for a particular use for the water (e.g., drinking, fishing, recreation).

All three pollutants are contained in CSO and SSO discharges. Therefore, according to EPA, at a minimum, CSOs and SSOs contribute to the loadings of these pollutants in the receiving waters where they occur. Although EPA was not able to quantify a direct relationship in every State, in those States where EPA could identify an assessed segment of a particular waterbody located within one mile downstream of a CSO outfall, 75 percent of these waterbodies were listed as impaired.

States have identified CSOs and SSOs as the direct or a contributing cause of documented environmental impacts, including aquatic life impairments, fish kills, shellfish bed closures, and continuing discharges of toxic chemicals, such as polychlorinated biphenyls ("PCBs") and other priority pollutants.

In addition, CSOs and SSOs often contain microbial pathogens (e.g., bacteria, viruses, and parasites) that cause or contribute to human health impacts, including gastroenteritis, hepatitis, giardiasis, cryptosporidiosis, dysentery, and other gastrointestinal and respiratory diseases, and, in rare cases, death. The Centers for Disease Control and Prevention estimates that there are 7,100,000 cases of mild to moderate, and 560,000 cases of moderate to severe, infectious waterborne disease in the United States each year, though exactly how many of these are attributable to sewer overflows remains uncertain.

Although the potential for human exposure can come in many forms, EPA and public drinking water agencies have expressed specific concern about the potential for direct contamination of public drinking water sources from sewer overflows. For example, EPA has identified 59 CSO outfalls in seven states located within one mile upstream of a drinking water intake. However, public health authorities are not routinely notified of sewer overflows that threaten public health.

One recent example of the potential for drinking water contamination by a sewer overflow occurred in the spring of 1993, when more than 400,000 people in Milwaukee, Wisconsin, were infected by a microscopic parasite, *Cryptosporidium parvum*, which entered the public drinking water supply for the city. This outbreak resulted in over 100 deaths. Although the exact source of the parasite was not discovered, studies suggest that untreated wastewater leaks in the Milwaukee area may have discharged the parasite to Lake Michigan, which serves as the primary drinking water source for the metropolitan region. Although impacts as large as the Milwaukee *Cryptosporidium* outbreak are rare, similar parasitic outbreaks have contaminated drinking water sources in other U.S. cities, such as Brushy Creek, Texas (1998), Island Park, Idaho (1995), Las Vegas, Nevada (1993), Cabool, Missouri (1990), and Braun Station, Texas (1985).

Finally, EPA estimates that CSOs and SSOs cause between 3,448 and 5,576 individual cases of illness annually from direct exposure to pollutants at the nation's recognized recreational beaches. Yet, in its 2004 Report to Congress on the Impacts and Control of CSOs and SSOs, EPA stated that this range underrepresents the likely number of annual illnesses (estimated by EPA to be between 1,800,000 and 3,500,000 individuals annually) attributable to CSO and SSO contamination of recreational beaches, and that a significant number of additional illnesses not captured in this range occur for exposed swimmers at inland and other coastal beaches.

PUBLIC NOTIFICATION

The most reliable way to prevent human illness from waterborne diseases and pathogens is to eliminate the potential for human exposure to the discharge of pollutants from CSOs and SSOs. This can occur either through the elimination of the discharge, or, in the event that a release does occur, to minimize the potential human contact to pollutants. Currently, Federal law does not provide a uniform, national standard for public notification of combined and sanitary sewer overflows. Public notification of sewer overflows is governed by a variety of Federal regulations, state laws, and local initiatives aimed at limiting human exposure to discharges.

Potential human exposure to the pollutants found in sewer overflows can occur through several pathways. According to EPA, the most common pathways include direct contact with waters receiving CSO or SSO discharges, drinking water contaminated by sewer discharges, and consuming or handling contaminated fish or shellfish. However, humans are also at risk of direct exposure to sewer overflows, including sewer backups into residential buildings, city streets, and sidewalks.

The cost of eliminating CSOs and SSOs throughout the nation is staggering. The wastewater systems of the United States are aging

and require significant investment in traditional infrastructure and innovative, non-structural infrastructure to prevent the occurrence of sewer overflows. In its most recent Clean Water Needs Survey (2000), EPA estimated the future capital needs to address existing CSOs at $50.6 billion. In addition, EPA estimated that it would require an additional $88.5 billion in capital improvements to reduce the frequency of SSOs caused by wet weather and other conditions (e.g., blockages, line breaks, and mechanical/power failures).

In the 110th Congress, the U.S. House of Representatives has approved two bills that originated in the Committee on Transportation and Infrastructure—H.R. 720, the Water Quality Financing Act and H.R. 569, the Water Quality Investment Act—to reauthorize appropriations for the construction, repair, and rehabilitation of wastewater infrastructure. H.R. 720 authorizes appropriations of $14 billion over four years for the Clean Water State Revolving Fund, which is the primary source of Federal funds for wastewater infrastructure. H.R. 569 authorizes appropriations of $1.7 billion in Federal grants over five years to specifically target combined sewers and sanitary sewers.

However, in the event that a release does occur, the most effective way to prevent illness is to provide timely and adequate public notice to minimize human exposure to pollutants.

Although public notification of sewer overflows is not uniformly required, some Federal statutes do provide specific requirements for the timely public notification of potential human health risks from waterborne contaminants.

For example, section 1414 of the Safe Drinking Water Act requires public water systems to notify the persons served by the system of any failure to comply with applicable Federal or state drinking water standards, the existence of any drinking water variance to safe drinking water standards, and the presence of any "unregulated contaminants" that pose a public health threat. The Act also requires public water systems to implement notification procedures to ensure that any violation of a drinking water standard with potential serious adverse effects on human health be made public as soon as practicable, but not later than 24 hours after the violation. Finally, the Act requires public water systems to provide written notice and annual reports to Federal and State agencies, as well as to the public.

Similarly, section 406 of the Clean Water Act authorizes funding for state and local governments to implement coastal recreational water quality monitoring and notification programs. This authority, enacted as part of the Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000, requires as a Federal grant condition that state and local governments identify measures for the prompt communication of contamination of coastal water quality, as well as measures for the posting of appropriate public notice (e.g., beach signs) that the coastal waters fail to meet water quality standards.

Typically, the presence of waterborne contaminants in drinking water and surface waters utilized for recreation is detected through direct water quality sampling or national reports of waterborne illness outbreaks, coordinated through the Centers for Disease Control and Prevention's National Center for Infectious Diseases. The likelihood for detection of potential waterborne contaminants in

drinking water and recreational waters would dramatically increase if local governmental officials and the public were provided with direct notification in the event of a sewer overflow, rather than waiting for the results of local water sampling or epidemiological studies.

Over the past decade, EPA has taken several administrative steps to encourage local governmental agencies, including sewerage agencies, to report sewer overflows to Federal and State agencies and the public.

In April 1994, EPA issued the Combined Sewer Overflow Control Policy (59 Fed. Reg. 18688), which established a national framework for control of CSOs through the Clean Water Act's permitting program. This policy requires owners and operators of combined sewer systems to implement minimum technology-based controls (the "nine minimum controls") that can reduce the prevalence and impacts of CSOs without significant engineering studies or major construction. These controls include a requirement for the public disclosure of CSOs. The policy does not require any particular methodology for notification, but identifies potential methods, including posting appropriate notices in affected use areas or public places, newspaper, radio, or television news programs, and direct mail contact for affected residents. The requirements of the control policy are limited to CSOs.

In 2001, the Clean Water Act was amended to require that permits for combined sewer systems conform to the Combined Sewer Overflow Control Policy. Section 402(q) of the Clean Water Act requires that each permit issued for a discharge from a municipal combined sewer system conform to the Combined Sewer Overflow Control Policy. This amendment to the Clean Water Act was enacted as part of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554).

For SSOs, there is no consistent Federal requirement for public notification of sewer overflows. Under existing EPA regulations (40 CFR 122.41(l)(6)), NPDES permits should establish a process for requiring a permittee to report any noncompliance with the permit that may endanger health or the environment. However, EPA regulations do not specifically require notification of the public in the event of a sanitary sewer overflows.

To address this lack of a consistent Federal requirement for public notification, in January 2001, EPA issued a draft SSO rule that, among other issues, would have implemented a formal program for reporting, public notification, and recordkeeping for sanitary sewer systems and SSOs.

This draft rule would have required owners and operators of sanitary sewer systems to develop an overflow emergency plan describing how the owner or operator would immediately notify the public, public health agencies, and other similar entities (e.g., drinking water suppliers and beach monitoring authorities), of overflows that may imminently and substantially endanger human health. In addition, the draft SSO rule would have required owners or operators of publicly owned treatment works to provide the appropriate Federal or state agencies with information on the magnitude, duration, and suspected cause of the overflow, as well as actions necessary to avoid future overflows.

EPA's draft SSO rule was never finalized, and was later withdrawn. No additional regulatory proposals for public notification of SSOs have been issued.

SUMMARY OF THE LEGISLATION

Section 1. Short title

This section designates the title of the bill as the "Sewage Overflow Community Right-to-Know Act".

Section 2. Definitions

This section amends the definitions section of the Clean Water Act (section 502) to include definitions for the terms "sanitary sewer overflows" and "treatment works".

The definition for "sanitary sewer overflows" is modeled after the definition for such term in EPA's proposed rule for "National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, and Sanitary Sewer Overflows," signed by the Administrator on January 4, 2001.

The definition for "treatment works" makes the existing Clean Water Act definition for the term, found in section 212 of the Act, applicable to the entire Act.

Section 3. Monitoring, reporting, and public notification of sewer overflows

This section amends section 402 of the Clean Water Act by adding a new subsection (r) to provide a uniform, national standard for monitoring, reporting, and public notification of combined sewer overflows and sanitary sewer overflows. The monitoring, notification, and reporting requirements of this section are important steps to protect human health and the environment by ensuring that public health authorities (and other affected entities) and the public are aware of sewer overflows, may take steps to avoid contact with overflows, and that sewer overflows are addressed in an expedited manner. In addition, the availability of comprehensive information on the number, frequency, and location of sewer overflows may provide additional support for increased investment in the nation's water related infrastructure to reduce sewer overflows.

New subsection (r)(1) requires that, not later than one year after the date of enactment of this subsection, the Administrator shall take such action as may be necessary to ensure that each permit issued under this subsection for a publicly owned treatment works shall require, at a minimum, that the owner or operator of the treatment works implement the monitoring, notification, and reporting requirements described in this subsection.

The Committee intends the term "publicly owned treatment works" to include those devices and systems included within the term "treatment works", as defined by section 212 of the Act, that are under the ownership or operational control of the Federal Government, or a state or a municipality as such terms are defined in section 502 of the Act. New subsection (r)(1) does not include treatment works that are not owned or under the operational control of the Federal Government, a state, or a municipality. New subsection (r)(1) also does not require a publicly owned treatment works to as-

sume monitoring, notification, and reporting responsibility for satellite collection systems (portions of a sanitary sewer system) that may be connected to, but are not owned or operated by the publicly owned treatment works. The Committee notes that EPA's draft SSO rule (January 2001) would have included satellite collection systems within the scope of its authority. Satellite collection systems account for a majority of sanitary sewer overflows that occur throughout the nation. Although H.R. 2452 does not require a publicly owned treatment works to assume monitoring, notification, and reporting responsibility for a satellite collection system which is not owned or operated by the treatment works, the Committee believes that implementation of a monitoring, notification, and reporting program for satellite collection systems would further the goals of the Clean Water Act and the Sewage Overflow Community Right-to-Know Act.

New subsection (r)(1)(A) requires the owner or operator of a publicly owned treatment works to institute and utilize a feasible methodology, technology, or management program to alert the owner or operator of the publicly owned treatment works to the occurrence of a sewer overflow in a timely manner.

The Sewage Overflow Community Right-to-Know Act does not define the terms "feasible" and "timely", but directs the Administrator to conduct a formal rulemaking to define such terms under new subsection (r)(3). The Committee expects that the implementation monitoring methodologies, technologies, or management programs that meet the "feasible" and "timely" requirements will be reasonably sufficient to provide the owner or operator with actual or constructive knowledge of the presence of a sewer overflow.

The Committee does not intend new subsection (r)(1)(A) to require the implementation of a technology-based system at every treatment works to monitor for potential sewer overflows, but allows individual publicly owned treatment works to utilize appropriate methodologies, technologies, or management programs that will alert the owner or operator of sewer overflows, consistent with the Agency's regulations under new subsection (r)(3). The Committee does intend that whatever approved methodology, technology, or management program is utilized for monitoring, that such methodology, technology, or management program is fully-implemented and adequately maintained, funded, or staffed, to ensure that the owner or operator is alerted to the occurrence of a sewer overflow.

New subsection (r)(1)(B) and (C) require the owner or operator of a publicly owned treatment works to provide notice in the event of a sewer overflow. New subsection (r)(1)(B) requires owners and operators to notify the public of a sewer overflow that has the "potential to affect human health" as soon as practicable, but not later than 24 hours after the time the owner or operator knows of the overflow. New subsection (r)(1)(C) requires owners or operators to immediately notify public health authorities and other affected entities, such as public water systems, of a sewer overflow that may imminently and substantially endanger human health.

The Sewage Overflow Community Right-to-Know Act does not define the terms "potential to affect human health" or "imminently and substantially endanger human health", but directs the Administrator to conduct a formal rulemaking to define such terms under

new subsection (r)(3). The Committee intends that the regulations promulgated by the Environmental Protection Agency with respect to notification not preclude States, municipalities, or individual publicly owned treatment works from adopting more stringent notification requirements than called for in H.R. 2452. The Committee intends to provide States, municipalities, and individual publicly owned treatment works with the maximum amount of flexibility for the adoption of individually tailored notification programs, provided that such programs meet the minimum standards called for in H.R. 2452, including any regulations promulgated pursuant to the Sewage Overflow Community Right-to-Know Act.

Both subsections (r)(1)(B) and (r)(1)(C) provide a limited exemption from the notice requirement for a sewer overflow that is limited to a wastewater backup into a single-family residence (as this term is defined in new subsection (r)(5)(B)). The Committee has provided this limited exemption because, in practice, it is likely that residents of the single-family residence will already know of the backup into the residence, and in many cases, will likely have provided notice to the owner or operator of the publicly owned treatment works. The Committee felt that a limited exemption from the notice was warranted to avoid the likelihood that the residents of the single-family residence will notify the publicly owned treatment works, only to be later notified by the same treatment works as to the presence of the sewer overflow. This exemption, however, does not apply to a sanitary sewer overflow or municipal combined sewer overflow that is released outside of a single-family residence, or to such overflows in a residence that does not meet the definition of a single-family residence found in new subsection (r)(5(B). For example, if a sewer overflow occurs in a multi-family structure, such as an apartment building, condominium, or dormitory, and the overflow reaches the common areas of such structure (e.g., a common hallway, laundry facility, foyer, or entryway), the owner or operator of the treatment works is required to provide notice to appropriate persons under subsections (r)(1)(B) and (r)(1)(C).

New subsections (r)(1)(D) and (r)(1)(E) require the owner or operator of a publicly owned treatment works to report sewer overflows to the Administrator or the State. New subsection (r)(1)(D) requires an owner or operator to report each sewer overflow on its discharge monitoring report, including information on the magnitude, duration, and suspected cause of the overflow, the steps taken or planned to reduce, eliminate, or prevent the recurrence of the overflow, and the steps taken or planned to mitigate the impact of the overflow. New subsection (r)(1)(E) requires the owner or operator to report the total number of sewer overflows that occur in a calendar year, including specific details on the volume of wastewater released per incident, the duration of each sewer overflow, the location of the overflow and any potentially affected receiving waters, the responses taken to clean up the overflow, and any actions taken to mitigate the impacts of the overflow and to avoid further future overflows at the site.

Both subsections (r)(1)(D) and (r)(1)(E) provide a limited exemption from the reporting requirements for the release of wastewater that: (1) occurs in the course of maintenance of the treatment works; (2) is managed consistently with the treatment works' best

management practices; and (3) is intended to prevent overflows. The Committee has provided this limited exemption to address routine maintenance of sewer systems, such as activities to clear our sewer lines. The Committee intends this exemption to be read narrowly, that it be limited to releases that are both de minimus in terms of both duration and volume, and meet all of the requirements listed in the exemption. The reporting requirement exemption in both subsections (r)(1)(D) and (r)(1)(E) does not include releases in connection with a "bypass" or "upset", as those terms are defined in the Code of Federal Regulations (40 CFR § 122.41(m) and (n) (2006)).

New subsection (r)(2) requires individual States to provide an annual summary report to the Administrator on sewer overflows that occurred within the State.

New subsection (r)(3) directs the Administrator, within one year of the date of enactment of the Sewage Overflow Community Right-to-Know Act, to finalize and issue regulations to implement new subsection (r), including regulations to provide additional clarity on the terms "feasible", "timely", "potential to affect human health", and "imminently and substantially endanger human health".

In defining the term "feasible", the Committee expects the Administrator to consider: (1) the availability of a monitoring technology, methodology, or management program; (2) the ability of a technology, methodology, or management program to reasonably detect the occurrence of a sewer overflow; (3) the cost of implementing the technology, methodology, or management program; (4) the designated use of potential receiving waters; (5) the proximity of an overflow to a source of drinking water or a recreation water; (6) the potential public health implications of an overflow to the public, with particular emphasis on susceptible populations; (7) the size of the publicly owned treatment works (in terms of population served and the treatment capacity of the treatment works); (8) the nature or quality of pollutants contained in the raw waste load of the treatment works wastewater; (9) the frequency, volume, and duration of past sewer overflows by a particular publicly owned treatment works; and (10) other factors that the Administrator considers appropriate.

In defining the term "timely", the Committee expects the Administrator to ensure that the owner or operator of the publicly owned treatment work has knowledge of the sewer overflow as quickly as practicable, depending upon the monitoring technology, methodology, or management program implemented by the owner or operator, and consistent with the public health goals of the Sewage Overflow Community Right-to-Know Act and goals of the Clean Water Act "to restore and maintain the chemical, and physical, and biological integrity of the Nation's waters."

New subsection (r)(4) directs the Administrator to include site specific conditions within its regulatory definition for the terms "feasible" and "timely".

New subsection (r)(5) defines the terms "sewer overflow" and "single family residence" as such terms are utilized in new subsection (r). The term "sewer overflow" is defined to include both sanitary sewer overflows (as such term is defined in new section 502(25) of the Act), and municipal combined sewer overflows.

The term "single-family residence" is defined as an individual dwelling unit, including an apartment, condominium, house, or dormitory, but specifically excludes common areas from multi-dwelling structures. The definition for "single-family residence" is utilized to define the scope of the limited exemption for notice of sewer overflows found in subsections (r)(1)(B) and (r)(1)(C).

Section 4. Eligibility for assistance

This section amends sections 601(a) and 606(c) of the Clean Water Act to authorize funding from the Clean Water State Revolving Fund to be utilized for carrying out the monitoring, notification, and reporting requirements of the Sewage Overflow Community Right-to-Know Act.

Section 5. Limitation on statutory construction

This section provides that nothing in this Act, including any amendments made by this Act, shall be construed (1) to limit the ability of any State from implementing and enforcing more stringent monitoring and notification standards than those required by the Clean Water Act; or (2) to supplant or diminish obligations to comply with all other requirements of the Act.

ADDITIONAL MATTERS

The monitoring, notification, and reporting requirements of the Sewage Overflow Community Right-to-Know Act are not intended to preclude or deny any right of a State, municipality, or individual publicly owned treatment works from implementing monitoring, notification, or reporting requirements that are more stringent or comprehensive than those contained in H.R. 2452 or the regulations promulgated by the Environmental Protection Agency to implement this Act. Accordingly, States, municipalities, and individual publicly owned treatment works may adopt or enforce any regulation, requirement, or permit condition with respect to the monitoring, notification, and reporting that is more stringent than a regulation, requirement, or permit condition issued under the Sewage Overflow Community Right-to-Know Act.

In addition, the additional monitoring, notification, and reporting requirements made by H.R. 2452 do not explicitly or implicitly authorize sanitary sewer overflows or municipal combined sewer overflows outside of the existing statutory requirements of the Clean Water Act.

Finally, the Committee intends that the amendments to the Clean Water Act made by the Sewage Overflow Community Right-to-Know Act will continue to allow for the utilization of the Combined Sewer Overflow Control Policy (under § 402(q) of the Clean Water Act) to the extent that the monitoring, notification, and reporting requirements contained in the nine minimum controls and long term control plan of an individual publicly owned treatment works are not inconsistent with the monitoring, notification, and reporting requirements of H.R. 2452. To the extent that an individual publicly owned treatment works' nine minimum controls or long-term control plan either does not include monitoring, notification, or reporting requirements, or such monitoring, notification, or reporting requirements are inconsistent with the requirements of H.R. 2452, the monitoring, notification, or reporting requirements

contained in H.R. 2452, and the implementing regulations promulgated by the Environmental Protection Agency shall apply.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On May 23, 2007, Representative Timothy H. Bishop introduced H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act". In the 109th Congress, a similar bill (H.R. 1720) was introduced, but no action was taken on that legislation.

On October 16, 2007, the Subcommittee on Water Resources and Environment held a hearing on the "Raw Sewage Overflow Community Right-to-Know Act" in which representatives from the Environmental Protection Agency, state and local government officials, public health officials, and other stakeholders testified on the issue of public notification of sewer overflow.

On May 7, 2008, the Subcommittee on Water Resources and Environment met to consider H.R. 2452. The Subcommittee adopted, by voice vote, an amendment in the nature of a substitute that made several technical and clarifying changes to the bill. First, the amendment modified the short title of the bill to be the "Sewage Overflow Community Right-to-Know Act". Second, the amendment deleted section 2 of the introduced bill that included legislative findings. Third, the amendment made technical changes to the definitions for "sanitary sewer overflow" and "sewer overflow", struck the definition of "combined sewer overflow", and added a definition of "treatment works". Finally, the amendment modified the requirements for monitoring, reporting, and public notification of sewer overflows by: (1) adding "feasible" and "timely" considerations for implementation of approved monitoring methodologies, technologies, and management programs; (2) consolidating the notification requirements for sewer overflows; (3) creating a narrow exemption for public notification of sewer basement backups; and (4) creating a new section directing the Environmental Protection Agency to conduct a formal rulemaking to define the terms "feasible", "timely", "potential to affect public health", and "imminently and substantially endanger public health".

The Subcommittee approved H.R. 2452, as amended, and favorably recommended it to the Committee on Transportation and Infrastructure by voice vote.

On May 15, 2008, the Committee on Transportation and Infrastructure met in open session, and ordered H.R. 2452, as amended, reported to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 2452 or ordering it reported. A motion to order H.R. 2452, as amended, reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT AND FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.
2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to provide a uniform, national standard for monitoring, reporting, and public notification of combined sewer overflows and sanitary sewer overflows.
3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2452 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington. DC, June 11, 2008.

Hon. JAMES L. OBERSTAR,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2452, a bill to amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of sewage, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs) and Neil Hood (for the state and local impact).

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 2452—A bill to amend the Federal Water Pollution Control Act to ensure that sewage treatment plants monitor for and report discharges of sewage, and for other purposes

H.R. 2452 would require owners and operators of publicly owned sewage treatment plants to notify federal and state agencies and the public in a timely manner of any sewer overflows. Under this

legislation, the Environmental Protection Agency (EPA) would be required to develop regulations establishing guidelines for the notifications. The legislation also would expand the types of activities that are eligible to receive funds from the Clean Water State Revolving Fund.

Based on information from EPA, CBO estimates that implementing this legislation would cost about $1 million in 2009 and less than $500,000 in subsequent years, subject to the availability of appropriations. Enacting the bill would not affect direct spending or receipts.

H.R. 2452 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Specifically, the bill would direct EPA to implement new permit requirements that would mandate treatment plants to:

- Institute and utilize a monitoring program for sewer overflows, including combined sewer overflows and sanitary sewer overflows;
- Notify the public of a sewer overflow within 24 hours if there are potential effects on human health;
- Notify public health authorities and other affected entities, such as public water systems, if there is a potential risk to human health due to a sewer overflow;
- Submit an annual report to EPA or the state on the number of overflows in a calendar year, including the details of magnitude, duration, location, potentially affected receiving waters, and mitigation efforts. If a state receives a report under this requirement, that state must submit to EPA a summary of the report.

Without knowing the precise nature of the regulations that EPA would issue as a result of this bill, CBO cannot make a precise estimate of the costs of the mandates. Based on information from affected entities, however, we estimate that the costs of the mandates could exceed the threshold established in UMRA. The bill's new requirements would involve additional personnel costs and could necessitate new infrastructure and engineering expertise. According to EPA and the National Association of Clean Water Agencies (NACWA), over 16,000 treatment plants operate in the United States, and each of those entities could be affected by the permitting requirements in H.R. 2452. Infrastructure changes, if required by the regulations, could be particularly expensive. Given the large number of affected entities, even a small increase in additional costs (less than $4,500 per entity annually) would result in costs that exceed the threshold for intergovernmental mandates ($68 million in 2008, adjusted annually for inflation). The bill also would expand the types of activities eligible to receive funds from the Clean Water State Revolving Fund to include the monitoring requirements discussed above.

The bill contains no new private-sector mandates as defined in UMRA.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Neil Hood (for the state and local impact). This estimate was approved by Theresa Grillo, Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2452, the Sewage Overflow Community Right-to-Know Act, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 2452 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATION BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

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TITLE IV—PERMITS AND LICENSES

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a) * * *

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(r) SEWER OVERFLOW NOTIFICATIONS.—

(1) GENERAL REQUIREMENTS.—Not later than one year after the date of enactment of this subsection, the Administrator shall take such action as may be necessary to ensure that each permit issued under this section before, on, or after the date of enactment of this subsection for a publicly owned treatment works shall require, at a minimum, that the owner or operator of the treatment works—

(A) institute and utilize a feasible methodology, technology, or management program to alert the owner or operator to the occurrence of a sewer overflow in a timely manner;

(B) notify the public of a sewer overflow as soon as practicable, but not later than 24 hours after the time the owner or operator becomes aware of such overflow, if such overflow has the potential to affect human health, except for overflows that are wastewater backups into single-family residences;

(C) immediately notify public health authorities and other affected entities, such as public water systems, of any sewer overflow that may imminently and substantially endanger human health, except for overflows that are wastewater backups into single-family residences;

(D) report each sewer overflow (other than a release of wastewater that occurs in the course of maintenance of the treatment works, is managed consistently with the treatment works' best management practices, and is intended to prevent overflows) on its monthly discharge monitoring report to the Administrator or the State, as the case may be, by describing—

(i) the magnitude, duration, and suspected cause of the overflow;

(ii) the steps taken or planned to reduce, eliminate, or prevent recurrence of the overflow; and

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

(E) report to the Administrator or the State, as the case may be, the total number of sewer overflows (other than a release of wastewater that occurs in the course of maintenance of the treatment works, is managed consistently with the treatment works' best management practices, and is intended to prevent 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.

(2) REPORT TO EPA.—If a State receives a report under paragraph (1)(E), the State shall report to the Administrator annually, in summary, the details of reported sewer overflows that occurred in that State.

(3) RULEMAKING BY EPA.—Not later than one year after the date of enactment of this subsection, the Administrator shall, after providing notice and the opportunity for public comment, issue regulations to—

(A) establish a set of criteria to guide owners and operators of publicly owned treatment works in assessing whether a sewer overflow has the potential to affect human health or may imminently and substantially endanger human health; and

(B) define the terms "feasible" and "timely" as such terms apply to paragraph (1)(A).

(4) SITE SPECIFIC CONDITIONS.—The definitions under paragraph (3)(B) shall include site specific conditions.

(5) DEFINITIONS.—

(A) SEWER OVERFLOW.—In this subsection, the term "sewer overflow" means a sanitary sewer overflow or a municipal combined sewer overflow.

(B) SINGLE FAMILY RESIDENCE.—In this subsection, the term "single-family residence" means an individual dwelling unit, including an apartment, condominium, house, or dormitory. Such term does not include the common areas of a multi-dwelling structure.

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TITLE V—GENERAL PROVISIONS

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GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

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(25) SANITARY SEWER OVERFLOW.—The term "sanitary sewer overflow" means an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. Such term does not include municipal combined sewer overflows or other discharges from a municipal combined storm and sanitary sewer system and does not include wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned. Such term includes overflows or releases of wastewater that reach waters of the United States, overflows or releases of wastewater in the United States that do not reach waters of the United States, and wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral.

(26) TREATMENT WORKS.—The term "treatment works" has the meaning given that term in section 212.

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TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) GENERAL AUTHORITY.—Subject to the provisions of this title, the Administrator shall make capitalization grants to each State for the purpose of establishing a water pollution control revolving fund for providing assistance (1) for construction of treatment works (as defined in section 212 of this Act) which are publicly owned, (2) for implementing a management program under section 319, [and] (3) for developing and implementing a conservation and management plan under section 320*, and (4) for the implementation of requirements to monitor for sewer overflows under section 402*.

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SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) * * *

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(c) PROJECTS ELIGIBLE FOR ASSISTANCE.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, [and] (3) for development and implementation of a conservation and management plan under section 320 of this Act*, and (4) for the implementation of requirements to monitor for sewer overflows under section 402 of this Act*. The fund shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing such financial assistance.

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