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SENATE

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SEWAGE OVERFLOW COMMUNITY RIGHT-TO-KNOW ACT

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 2080]

together with

MINORITY VIEWS

[Including an estimate by the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 2080) 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, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE AND SUMMARY OF THE LEGISLATION

The purpose of S. 2080, the Sewage Overflow Community Right-to-Know Act, is to provide a uniform, national standard for monitoring, reporting, and public notification of municipal combined sewer overflows and sanitary sewer overflows. The bill would require publicly owned treatment works to with an issued, renewed, or modified Clean Water Act permit to institute a methodology, technology, or management program for monitoring sewer overflows to alert the operator of the treatment works of a sewer overflow in a timely manner.

S. 2080 would also require, with in the case of a sewer overflow that has the potential to affect human health, that the owner or operator of a treatment facility notify the public of the overflow as soon as practicable, but not later than 24 hours after the time of discovery of the overflow. If a sewer overflow may imminently and substantially endanger human health, the owner or operator must

notify public health authorities and other affected entities immediately after the owner or operator knows of the overflow. The bill would require a report of each sewer overflow in the treatment facility's discharge monitoring report to the Administrator or State, and a yearly report to the Administrator or State.

The bill would require the Administrator of the Environmental Protection Agency (EPA) to conduct a rulemaking that establishes a set of criteria to guide owners or operators of publicly owned treatment works in assessing the potential threats to human health from a sewer overflow. The same rulemaking would have criteria to guide the owner or operator's development of communication measure that are sufficient to give notice to the public, public health officials, and other affected entities. S. 2080 also provides for the Administrator's approval of State notification programs and for the Administrator's withdrawal of approval if certain conditions are met.

S. 2080 also clarifies when the notification requirements apply to the owner or operator of a treatment works and become subject to the section 309 of the Clean Water Act. The bill also clarifies key terms and authorizes financial assistance for implementing requirements under this Act.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

The Sewage Overflow Right-To-Know Act bill will require communities to provide the public and public health officials with information regarding sewer overflows in places of public interest. In 2004, EPA estimated that up to 75,000 sanitary sewer overflow events occur each year in the United States, releasing up to 10 billion gallons of untreated wastewater, which can pollute our rivers, lakes, and beaches. People can be exposed to pollutants from these overflow events in a number of ways, including by coming into direct contact with waters with pollutants from CSOs or SSOs, drinking water contaminated by sewer discharges, and consuming or handling fish or shellfish. People are also at risk of exposure to sewer overflows by sewer backups into residential buildings, city streets, and sidewalks. This bill would require monitoring, reporting, and notifications of sewage overflow events—and authorize funding for such activities.

Eliminating or reducing the potential for humans to be exposed to discharges from pollutants from Combined Sewer Overflows (CSOs) and Sanitary Sewer Overflows (SSOs) could prevent human illness from waterborne diseases and pathogens. Once a release has occurred, steps should be taken to minimize the potential human for contact to the pollutants. There is no uniform, national standard for notification of combined and sanitary sewer overflows. Various federal, state, and local laws and initiatives are now used to provide notification of such sewer overflow events.

Our national wastewater infrastructure is aging and in need of important but expensive repairs. These repairs will require significant investment in traditional infrastructure and innovative, non-structural infrastructure to prevent the occurrence of sewer overflows. In EPA's most recent Clean Water Needs Survey, the Agency estimated the future capital needs to address existing CSOs at

\$50.6 billion. The Agency also 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).

Some Federal laws have notification requirements for potential health risks from waterborne contaminants. Under section 1414 of the Safe Drinking Water Act, public water systems are required 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 Safe Drinking Water Act 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. The Act also requires public water systems to provide written notice and annual reports to Federal and State agencies, as well as to the public.

Section 406 of the Clean Water Act authorizes funding for state and local governments to implement monitoring and notification programs for some coastal waters. Under this monitoring and notification program, the federal government provides grants to states to run such programs.

The Centers for Disease Control and Prevention (CDC) is involved in tracking disease outbreaks. The CDC’s National Center for Infectious Diseases uses water quality sampling and reports of waterborne disease outbreaks to supply information on such threats.

All of these efforts would benefit from more consistent monitoring and notification requirements. If local officials and the public were alerted to overflow events, it would also reduce the potential for exposure to dangerous pollutants. By providing the public and public health officials with this information, appropriate action can occur to protect public health.

The EPA has undertaken a number of initiatives to encourage local governments 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 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.

In 2001, Congress amended the Clean Water Act 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).

However, there is no uniform federal requirement for public notification of SSOs. Under existing EPA rules (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 human health or the environment. However, these regulations do not specifically require public notification of SSOs.

In 2001, the EPA began to address this lack of a consistent Federal mandate for public notification. The Agency issued a draft SSO rule that would have implemented a formal program for reporting, public notification, and recordkeeping for sanitary sewer systems and SSOs. However, EPA's draft SSO rule was never finalized, and was later withdrawn. No additional regulatory proposals for public notification of SSOs have been issued.

NEED FOR LEGISLATION

There is utility in establishing a national standard for monitoring, reporting, and public notification of municipal combined sewer overflows and sanitary sewer overflows. However, 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 S. 2080 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 S. 2080 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 Sec. 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 S. 2080. 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 S. 2080, the monitoring, notification, or reporting requirements contained in S. 2080, and the implementing regulations promulgated by the Environmental Protection Agency shall apply.

SUMMARY OF MAJOR PROVISIONS OF THE BILL

S. 2080, the Sewage Overflow Community Right to Know Act provides for a uniform, national standard for monitoring, reporting, and public notification of municipal combined sewer overflows and sanitary sewer overflows. The bill would require publicly owned treatment works to with a Clean Water Act permit to monitor sewer overflows. The bill would require the notification of the public and public health officials under certain circumstances occur as a result of an overflow event. S. 2080 also contains reporting requirements related to overflow events.

The bill would require the Administrator of the Environmental Protection Agency (EPA) to conduct a rulemaking that establishes a set of criteria to guide owners or operators of publicly owned treatment works in assessing the potential threats to human health from a sewer overflow. The rulemaking would also develop criteria for communication measures to notify the public, public health officials, and other affected entities of overflow events. S. 2080 also provides for the Administrator's approval of State notification programs and for the Administrator's withdrawal of approval if certain conditions are met.

S. 2080 also clarifies when the notification requirements apply to the owner or operator of a treatment works and become subject to the section 309 of the Clean Water Act. The bill also clarifies key terms and authorizes financial assistance for implementing requirements under this Act.

SECTION-BY-SECTION ANALYSIS

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 "treatment works".

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 (s) to provide a uniform, national standard for monitoring, reporting, and public notification of combined sewer overflows and sanitary sewer overflows. Subsection (s)(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 (s)(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 (s)(1) also does not require a publicly owned treatment works to assume 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 the bill 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 (s)(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 (s)(4). 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 (s)(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 (s)(4). 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 (s)(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 (s)(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 (s)(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)(4). 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 S. 2080. 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 S. 2080, including any regulations promulgated pursuant to the Sewage Overflow Community Right-to-Know Act.

New subsection (s)(2)(A) provides a limited exception from the notice requirement for a sewer overflow under (s)(1)(B) and (s)(1)(C) that is limited to a wastewater backup into a single-family residence. 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 would 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 (s)(7)(C). 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 (s)(1)(B) and (s)(1)(C).

New subsections (s)(1)(D) and (s)(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 (s)(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 (s)(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.

New subsection (s)(2)(B) provides 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 for (s)(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 Sec. 122.41(m) and (n) (2006)).

New subsection (s)(3) requires individual States to provide an annual summary report to the Administrator on sewer overflows that occurred within the State.

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

New subsections (s)(5)(A) authorizes a State to submit to the Administrator evidence that the State has in place a legally enforceable notification program that is substantially equivalent to the requirements of paragraph (1)(B) and (1)(C). If the Administrator de-

termines that the State's program notification program is substantially equivalent, the Administrator shall authorize the State to carry out its program instead of the requirements of paragraphs (1)(B) and (1)(C). In reviewing a State notification program, the Administrator shall take into account: (1) the scope of sewer overflows for which notification is required; (2) the length of time during which notification must be made; (3) the scope of persons who must be notified of sewer overflows; (4) the scope of enforcement activities ensuring that notifications of sewer overflows are made; and (5) such other factors as the Administrator considers appropriate. The Committee believes that the Administrator should heavily consider factors that weigh in favor of protecting persons from potentially unsafe exposures to pollutants.

New subsection (s)(5)(B) provides that if a State submits evidence of a notification program 30 days or earlier than the date on which the Administrator issues regulations under (1)(B) and (1)(C), the requirements under paragraphs (1)(B) and (1)(C) shall not apply to a publicly owned treatment works located in the State until the date on which the Administrator completes a review of the notification program under subparagraph (A)(ii).

New subsection (s)(5)(C) authorizes the Administrator to withdraw a State's authorization of its program and to enforce the requirements of (1)(B) and (1)(C) with respect to the State. Before taking such action, the Administrator must conduct a public health survey and determine that a State is not administering and enforcing a State notification program that is substantially equivalent to the requirements of paragraphs (1)(B) and (1)(C). The Administrator must also notify the State and allow a reasonable time, not to exceed 90 days from the date on which the State received such notification, prior to withdrawing the State's authorization.

New subsection (s)(6) provides that on the 31st day after the Administrator has issued regulations under paragraph (s)(4), the requirements of (1)(B) and (1)(C) shall apply to the owner or operator of a publicly owned treatment works and be subject to enforcement under section 309. On this same day, the requirements of (1)(B) and (1)(C) shall supersede any notification requirements contained in a permit issued under this section for the treatment works to the extent that the notification requirements are less stringent than the notification requirements of paragraphs (1)(B) and (1)(C). These requirements will continue to apply until such date as a permit is issued, renewed, or modified under this section in accordance with paragraph (1).

New subsection (s)(7) defines the terms "Sanitary Sewer Overflow", "Sewer Overflow" and "Single-Family Residence". The term "Sanitary Sewer Overflow" means an overflow, spill, release, or diversion of wastewater from a sanitary sewer system." The term "Sewer Overflow" means a sanitary sewer overflow or a municipal combined sewer overflow. 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). The definition of an SSO was moved from Section 2 of this Act to Section 3 of this Act. This change results in this defi-

dition of an SSO applying only to the requirements of this Act, and not to the entire Federal Water Pollution Control Act. Further, nothing in this legislation changes the scope of which Sanitary or Combined Sewer Overflows are prohibited under the Clean Water Act. Sanitary Sewer Overflows that reach waters of the U.S. or that violate individual permit conditions continue to be prohibited. The monitoring and public notification required in this legislation does not authorize discharges to waters of the U.S. or other permit violations. Nor does anything in this legislation preempt States and individual POTWs with monitoring and notification requirements that are more stringent than this legislation.

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 requirements of the Sewage Overflow Community Right-to-Know Act.

LEGISLATIVE HISTORY AND VOTES

LEGISLATIVE HISTORY

Senator Lautenberg introduced S. 2080 on September 20, 2007. On July 31, 2008, the Committee on Environment and Public Works held a business meeting to consider the bill, and considered and adopted by voice vote Senator Lautenberg's amendment in the nature of a substitute to S. 2080. The Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality held a hearing entitled "Meeting America's Wastewater Infrastructure Needs in the 21st Century" on September 19, 2007, and a hearing entitled "Protecting Water Quality at America's Beaches" on June 27, 2007 at which sewage overflow issues were discussed.

VOTES

On July 31, 2008, the Committee on Environment and Public Works held a business meeting to consider S. 2080, among other pieces of legislation. The Committee on Environment and Public Works considered Senator Lautenberg's amendment in the nature of a substitute to S. 2080. The Committee favorably adopted the bill by a voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee notes that the Congressional Budget Office has found, "[w]ithout 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." However, CBO noted, "S. 2080 contains no new private-sector mandates as defined in UMRA."

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the Committee notes that the Congressional Budget Office found that "S. 2080 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act

(UMRA).” They continued that “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.” However, CBO found that “S. 2080 contains no new private-sector mandates as defined in UMRA.”

CONGRESSIONAL BUDGET OFFICE ESTIMATE

SEPTEMBER 23, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2080, the Sewage Overflow Community Right-to-Know Act.

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 Burke Doherty (for the state and local impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 2080—Sewage Overflow Community Right-to-Know Act

S. 2080 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.

S. 2080 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Specifically, the bill would require treatment plants to:

- Institute and utilize a monitoring program for sewer overflows, including combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs);
- Notify the public of a sewer overflow within 24 hours;
- Notify public health authorities and other affected entities, such as public water systems, if there is an imminent and substantial risk to human health due to a sewer overflow;
- Provide an oral or electronic report of an overflow within 24 hours to the state or to the Administrator of EPA and a more-detailed written report within five days;
- Report each sewer overflow on its monthly discharge monitoring report to EPA or the treatment plant’s state. This report must include the magnitude, cause, and mitigation efforts for the specific overflows; and

- 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 S. 2080. 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.

S. 2080 contains no new private-sector mandates as defined in UMRA.

On June 11, 2008, CBO transmitted a 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, as ordered reported by the House Committee on Transportation and Infrastructure on May 15, 2008. H.R. 2453 and this legislation are nearly identical and the estimated costs for both bills are the same.

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

MINORITY VIEWS

Sanitary Sewer Overflows, or SSO's, are a real concern throughout the United States. I agree that S. 2080, the "Sewage Right-to-Know Act," is well-intentioned in its aim to inform the public when there's a potential health risk from raw sewage contaminating public spaces. However, communities continue to struggle with many other federal mandates but lack the financial resources to necessary improvements to their facilities. That is why I oppose this bill.

Congress must recognize that by only increasing federal mandates without appropriate funding, communities and their residents will become increasingly vulnerable to lawsuits and extensive rate hikes that will not result in substantially improved water quality. I firmly believe that communities want their facilities to function properly if they had the financial and technical wherewithal. The populations most vulnerable to new federal regulations tend to be lower income residents in rural communities. Unfortunately, this bill does not properly address this disparity and has the potential to negatively impact rural communities disproportionately.

This legislation requires the Administrator to define the terms "feasible" and "timely" without Congressional direction. The term "feasible" should explicitly reflect individual needs and constraints of a local community, including the financial ability of a local tax base, the access to adequate technical assistance, other federal financial requirements on the particular community (i.e. drinking water regulations), and access to federal and state funding for compliance. Without these particular issues contemplated by the Administrator, the term "feasible" will not adequately address the inequitable hardship on rural and disadvantaged communities as a result of unfunded mandates.

Rather than apply a new federal mandate, Congress should reauthorize and increase appropriations for the Clean Water State Revolving Loan Fund. I'm extremely disappointed that this Congress has failed to pass a clean water infrastructure bill in time for passage out of both chambers to be sent to the President of the United States' desk. However, it is important to note that State Revolving Loan Funds should be used strictly for capital improvements and not for operations and maintenance, including operations and maintenance of a monitoring and reporting program.

JAMES M. INHOFE.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, 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:

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SEC. 401. (a)(1) * * *

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SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) * * *

* * * * *

(s) SEWER OVERFLOW MONITORING, REPORTING, AND NOTIFICATIONS—

(1) GENERAL REQUIREMENTS.—After the last day of the 180-day period beginning on the date on which regulations are issued under paragraph (4), a permit issued, renewed, or modified under this section by the Administrator or the State, as the case may be, for a publicly owned treatment works shall require, at a minimum, beginning on the date of the issuance, modification, or renewal, that the owner or operator of the treatment works—

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

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

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

(D) report each sewer overflow on its 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) annually report to the Administrator or the State, as the case may be, the total number of sewer 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) EXCEPTIONS.—

(A) NOTIFICATION REQUIREMENTS.—The notification requirements of paragraphs (1)(B) and (1)(C) shall not apply to a sewer overflow that is a wastewater backup into a single-family residence.

(B) REPORTING REQUIREMENTS.—The reporting requirements of paragraphs (1)(D) and (1)(E) shall not apply to a sewer overflow that is 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 sewer overflows.

(3) REPORT TO EPA.—Each State shall provide to the Administrator annually a summary of sewer overflows that occurred in the State.

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

(A) establish a set of criteria to guide the owner or operator of a publicly owned treatment works in—

(i) assessing whether a sewer overflow has the potential to affect human health or may imminently and substantially endanger human health; and

(ii) developing communication measures that are sufficient to give notice under paragraphs (1)(B) and (1)(C); and

(B) define the terms “feasible” and “timely” as such terms apply to paragraph (1)(A), including site specific conditions.

(5) APPROVAL OF STATE NOTIFICATION PROGRAMS.—

(A) REQUESTS FOR APPROVAL.—

(i) *IN GENERAL.*—After the date of issuance of regulations under paragraph (4), a State may submit to the Administrator evidence that the State has in place a legally enforceable notification program that is substantially equivalent to the requirements of paragraphs (1)(B) and (1)(C).

(ii) *PROGRAM REVIEW AND AUTHORIZATION.*—If the evidence submitted by a State under clause (i) shows the notification program of the State to be substantially equivalent to the requirements of paragraphs (1)(B) and (1)(C), the Administrator shall authorize the State to carry out such program instead of the requirements of paragraphs (1)(B) and (1)(C).

(iii) *FACTORS FOR DETERMINING SUBSTANTIAL EQUIVALENCY.*—In carrying out a review of a State notification program under clause (ii), the Administrator shall take into account the scope of sewer overflows for which notification is required, the length of time during which notification must be made, the scope of persons who must be notified of sewer overflows, the scope of enforcement activities ensuring that notifications of sewer overflows are made, and such other factors as the Administrator considers appropriate.

(B) *REVIEW PERIOD.*—If a State submits evidence with respect to a notification program under subparagraph (A)(i) on or before the last day of the 30-day period beginning on the date of issuance of regulations under paragraph (4), the requirements of paragraphs (1)(B) and (1)(C) shall not begin to apply to a publicly owned treatment works located in the State until the date on which the Administrator completes a review of the notification program under subparagraph (A)(ii).

(C) *WITHDRAWAL OF AUTHORIZATION.*—If the Administrator, after conducting a public hearing, determines that a State is not administering and enforcing a State notification program authorized under subparagraph (A)(ii) in accordance with the requirements of this paragraph, the Administrator shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days, the Administrator shall withdraw authorization of such program and enforce the requirements of paragraphs (1)(B) and (1)(C) with respect to the State.

(6) *SPECIAL RULES CONCERNING APPLICATION OF NOTIFICATION REQUIREMENTS.*— After the last day of the 30-day period beginning on the date of issuance of regulations under paragraph (4), the requirements of paragraphs (1)(B) and (1)(C) shall—

(A) apply to the owner or operator of a publicly owned treatment works and be subject to enforcement under section 309, and

(B) supersede any notification requirements contained in a permit issued under this section for the treatment works to the extent that the notification requirements are less

stringent than the notification requirements of paragraphs (1)(B) and (1)(C), until such date as a permit is issued, renewed, or modified under this section for the treatment works in accordance with paragraph (1).

(7) DEFINITIONS.—*In this subsection, the following definitions apply:*

(A) 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.*

(B) SEWER OVERFLOW.—*The term “sewer overflow” means a sanitary sewer overflow or a municipal combined sewer overflow.*

(C) SINGLE-FAMILY RESIDENCE.—*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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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.¹

(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. 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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