

Union Calendar No. 116

111TH CONGRESS
1ST SESSION

H. R. 2093

[Report No. 111-214]

To amend the Federal Water Pollution Control Act relating to beach monitoring, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2009

Mr. PALLONE (for himself, Mr. ACKERMAN, Mr. ADLER of New Jersey, Mr. BERMAN, Mr. BILBRAY, Mr. BISHOP of New York, Ms. BORDALLO, Mrs. CAPPS, Mrs. CHRISTENSEN, Mr. HALL of New York, Ms. HARMAN, Mr. ISRAEL, Mr. KING of New York, Mr. KIRK, Mr. KLEIN of Florida, Mrs. LOWEY, Mrs. MALONEY, Mr. MCINTYRE, Mr. GEORGE MILLER of California, Mr. ROTHMAN of New Jersey, Mr. SERRANO, Mr. SESTAK, Mr. WAXMAN, and Mr. WEINER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

JULY 20, 2009

Additional sponsors: Mr. MILLER of North Carolina, Mr. GRIJALVA, Mrs. DAHLKEMPER, and Mr. FARR

JULY 20, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 23, 2009]

A BILL

To amend the Federal Water Pollution Control Act relating to beach monitoring, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Clean Coastal Environ-*
 5 *ment and Public Health Act of 2009”.*

6 **SEC. 2. WATER POLLUTION SOURCE IDENTIFICATION.**

7 (a) *MONITORING PROTOCOLS.*—Section 406(a)(1)(A)
 8 *of the Federal Water Pollution Control Act (33 U.S.C.*
 9 *1346(a)(1)(A)) is amended by striking “methods for moni-*
 10 *toring” and inserting “protocols for monitoring that are*
 11 *most likely to detect pathogenic contamination”.*

12 (b) *SOURCE TRACKING.*—Section 406(b) of such Act
 13 (33 U.S.C. 1346(b)) is amended—

14 (1) *by redesignating paragraphs (3) and (4) as*
 15 *paragraphs (4) and (5), respectively; and*

16 (2) *by inserting after paragraph (2) the fol-*
 17 *lowing:*

18 “(3) *SOURCE IDENTIFICATION PROGRAMS.*—*In*
 19 *carrying out a monitoring and notification program,*
 20 *a State or local government may develop and imple-*
 21 *ment a coastal recreation waters pollution source*
 22 *identification and tracking program for coastal recre-*
 23 *ation waters adjacent to beaches or similar points of*
 24 *access that are used by the public and are not meeting*

3 (c) *AUTHORIZATION OF APPROPRIATIONS.*—Section
4 406(i) of such Act (33 U.S.C. 1346(i)) is amended by strik-
5 ing “\$30,000,000 for each of fiscal years 2001 through
6 2005” and inserting “\$40,000,000 for each of fiscal years
7 2010 through 2014”.

8 **SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESS-**
9 **MENT AND COASTAL HEALTH ACT.**

Section 8 of the Beaches Environmental Assessment
and Coastal Health Act of 2000 (114 Stat. 877) is amended
by striking “2005” and inserting “2014”.

13 **SEC. 4. STATE REPORTS.**

14 *Section 406(b)(4)(A)(ii) of the Federal Water Pollu-*
15 *tion Control Act (as redesignated by section 2(b)(1) of this*
16 *Act) is amended by striking “public” and inserting “public*
17 *and all environmental agencies of the State with authority*
18 *to prevent or treat sources of pathogenic contamination in*
19 *coastal recreation waters”.*

20 **SEC. 5. USE OF RAPID TESTING METHODS.**

(a) CONTENTS OF STATE AND LOCAL GOVERNMENT
PROGRAMS.—Section 406(c)(4)(A) of the Federal Water
Pollution Control Act (33 U.S.C. 1346(c)(4)(A)) is amended
by striking “methods” and inserting “methods, including
a rapid testing method after the last day of the one-year

1 *period following the date of validation of that rapid testing*
 2 *method by the Administrator,”.*

3 *(b) REVISED CRITERIA.—Section 304(a)(9)(A) of such*
 4 *Act (33 U.S.C. 1314(a)(9)(A)) is amended by striking*
 5 *“methods, as appropriate” and inserting “methods, includ-*
 6 *ing rapid testing methods”.*

7 *(c) VALIDATION AND USE OF RAPID TESTING METH-*
 8 *ODS.—*

9 *(1) VALIDATION OF RAPID TESTING METHODS.—*
 10 *Not later than October 15, 2012, the Administrator of*
 11 *the Environmental Protection Agency (in this Act re-*
 12 *ferred to as the “Administrator”) shall complete an*
 13 *evaluation and validation of a rapid testing method*
 14 *for the water quality criteria and standards for*
 15 *pathogens and pathogen indicators described in sec-*
 16 *tion 304(a)(9)(A) of the Federal Water Pollution Con-*
 17 *trol Act (33 U.S.C. 1314(a)(9)(A)).*

18 *(2) GUIDANCE FOR USE OF RAPID TESTING*
 19 *METHODS.—*

20 *(A) IN GENERAL.—Not later than 180 days*
 21 *after completion of the validation under para-*
 22 *graph (1), and after providing notice and an op-*
 23 *portunity for public comment, the Administrator*
 24 *shall publish guidance for the use at coastal*
 25 *recreation waters adjacent to beaches or similar*

1 *points of access that are used by the public of the*
2 *rapid testing method that will enhance the pro-*
3 *tection of public health and safety through rapid*
4 *public notification of any exceeding of applicable*
5 *water quality standards for pathogens and*
6 *pathogen indicators.*

7 *(B) PRIORITIZATION.—In developing such*
8 *guidance, the Administrator shall require the use*
9 *of the rapid testing method at those beaches or*
10 *similar points of access that are the most used*
11 *by the public.*

12 *(d) DEFINITION.—Section 502 of such Act (33 U.S.C.*
13 *1362) is amended by adding at the end the following:*

14 *“(26) RAPID TESTING METHOD.—The term*
15 *‘rapid testing method’ means a method of testing the*
16 *water quality of coastal recreation waters for which*
17 *results are available as soon as practicable and not*
18 *more than 6 hours after the commencement of the*
19 *rapid testing method in the laboratory.”.*

20 *(e) REVISIONS TO RAPID TESTING METHODS.—*

21 *(1) IN GENERAL.—Upon completion of the vali-*
22 *dation required under subsection (c)(1), and every 5*
23 *years thereafter, the Administrator shall identify and*
24 *review potential rapid testing methods for existing*

1 *water quality criteria for pathogens and pathogen in-*
2 *dicators for coastal recreation waters.*

3 (2) *REVISIONS TO RAPID TESTING METHODS.—If*
4 *a rapid testing method identified under paragraph*
5 *(1) will make results available in less time and im-*
6 *prove the accuracy and reproducibility of results*
7 *when compared to the existing rapid testing method,*
8 *the Administrator shall complete an evaluation and*
9 *validation of the rapid testing method as expedi-*
10 *tiously as practicable.*

11 (3) *REPORTING REQUIREMENT.—Upon comple-*
12 *tion of the review required under paragraph (1), the*
13 *Administrator shall publish in the Federal Register*
14 *the results of the review, including information on*
15 *any potential rapid testing method proposed for eval-*
16 *uation and validation under paragraph (2).*

17 (4) *DECLARATION OF GOALS FOR RAPID TESTING*
18 *METHODS.—It is a national goal that by 2017, a*
19 *rapid testing method for testing water quality of*
20 *coastal recreation waters be developed that can*
21 *produce accurate and reproducible results in not more*
22 *than 2 hours after commencement of the rapid testing*
23 *method.*

1 **SEC. 6. NOTIFICATION OF FEDERAL, STATE, AND LOCAL**
2 **AGENCIES.**

3 *Section 406(c) of the Federal Water Pollution Control*
4 *Act (33 U.S.C. 1346(c)) is amended—*

5 *(1) in paragraph (5) by striking “prompt com-*
6 *munication” and inserting “communication, within*
7 *24 hours of the receipt of the results of a water qual-*
8 *ity sample,”;*

9 *(2) in subparagraph (A) of paragraph (5)—*

10 *(A) by inserting “(i) in the case of any*
11 *State in which the Administrator is admin-*
12 *istering the program under section 402,” before*
13 *“the Administrator” the first place it appears;*
14 *and*

15 *(B) by inserting at the end the following:*

16 *“(ii) in the case of any State other than a*
17 *State to which clause (i) applies, all agencies of*
18 *the State government with authority to require*
19 *the prevention or treatment of the sources of*
20 *coastal recreation water pollution; and”;*

21 *(3) by redesignating paragraphs (6) and (7) as*
22 *paragraphs (7) and (8), respectively; and*

23 *(4) by inserting after paragraph (5) the fol-*
24 *lowing:*

25 *“(6) measures for an annual report to the Ad-*
26 *ministrator, in such form as the Administrator deter-*

1 *mines appropriate, on the occurrence, nature, loca-*
 2 *tion, pollutants involved, and extent of any exceeding*
 3 *of applicable water quality standards for pathogens*
 4 *and pathogen indicators;”.*

5 **SEC. 7. CONTENT OF STATE AND LOCAL PROGRAMS.**

6 *Section 406(c) of the Federal Water Pollution Control*
 7 *Act (33 U.S.C. 1346(c)) is amended—*

8 *(1) in paragraph (7) (as redesignated by section*
 9 *6(3) of this Act)—*

10 *(A) by striking “the posting” and inserting*
 11 *“the immediate posting”; and*

12 *(B) by striking “and” at the end;*

13 *(2) by striking the period at the end of para-*
 14 *graph (8) (as redesignated by section 6(3) of this Act)*
 15 *and inserting a semicolon; and*

16 *(3) by adding at the end the following:*

17 *“(9) the availability of a geographic information*
 18 *system database that such State or local government*
 19 *program shall use to inform the public about coastal*
 20 *recreation waters and that—*

21 *“(A) is publicly accessible and searchable on*
 22 *the Internet;*

23 *“(B) is organized by beach or similar point*
 24 *of access;*

1 “(C) identifies applicable water quality
2 standards, monitoring protocols, sampling plans
3 and results, and the number and cause of coastal
4 recreation water closures and advisory days; and

5 “(D) is updated within 24 hours of the
6 availability of revised information; and

7 “(10) measures to ensure that closures or
8 advisories are made or issued within 2 hours after the
9 receipt of the results of a water quality sample that
10 exceeds applicable water quality standards for patho-
11 gens and pathogen indicators.”.

12 **SEC. 8. COMPLIANCE REVIEW.**

13 Section 406(h) of the Federal Water Pollution Control
14 Act (33 U.S.C. 1346(h)) is amended—

15 (1) by redesignating paragraphs (1) and (2) as
16 subparagraphs (A) and (B), respectively;

17 (2) by moving such subparagraphs 2 ems to the
18 right;

19 (3) by striking “In the” and inserting the fol-
20 lowing:

21 “(1) IN GENERAL.—In the”; and

22 (4) by adding at the end the following:

23 “(2) COMPLIANCE REVIEW.—On or before July
24 31 of each calendar year beginning after the date of

1 enactment of this paragraph, the Administrator
2 shall—

3 “(A) prepare a written assessment of com-
4 pliance with all statutory and regulatory re-
5 quirements of this section for each State and
6 local government and of compliance with condi-
7 tions of each grant made under this section to a
8 State or local government;

9 “(B) notify the State or local government of
10 such assessment; and

11 “(C) make each of the assessments available
12 to the public in a searchable database on the
13 Internet on or before December 31 of such cal-
14 endar year.

15 “(3) *CORRECTIVE ACTION.*—If a State or local
16 government that the Administrator notifies under
17 paragraph (2) is not in compliance with any require-
18 ment or grant condition described in paragraph (2)
19 fails to take such action as may be necessary to com-
20 ply with such requirement or condition within one
21 year after the date of notification, any grants made
22 under subsection (b) to the State or local government,
23 after the last day of such one-year period and while
24 the State or local government is not in compliance
25 with all requirements and grant conditions described

1 *in paragraph (2), shall have a Federal share of not*
2 *to exceed 50 percent.*

3 “(4) *GAO REVIEW.*—*Not later than December 31*
4 *of the third calendar year beginning after the date of*
5 *enactment of this paragraph, the Comptroller General*
6 *shall conduct a review of the activities of the Admin-*
7 *istrator under paragraphs (2) and (3) during the*
8 *first and second calendar years beginning after such*
9 *date of enactment and submit to Congress a report on*
10 *the results of such review.”.*

11 **SEC. 9. PUBLICATION OF COASTAL RECREATION WATERS**

12 **PATHOGEN LIST.**

13 *Section 304(a)(9) of the Federal Water Pollution Con-*
14 *trol Act (33 U.S.C. 1314(a)(9)) is amended by adding at*
15 *the end the following:*

16 “(C) *PUBLICATION OF PATHOGEN AND*
17 *PATHOGEN INDICATOR LIST.*—*Upon publication*
18 *of the new or revised water quality criteria*
19 *under subparagraph (A), the Administrator shall*
20 *publish in the Federal Register a list of all*
21 *pathogens and pathogen indicators studied under*
22 *section 104(v).”.*

1 **SEC. 10. ADOPTION OF NEW OR REVISED CRITERIA AND**
2 **STANDARDS.**

3 *Section 303(i)(2)(A) of the Federal Water Pollution*
4 *Control Act (33 U.S.C. 1313(i)(2)(A)) is amended by strik-*
5 *ing “paragraph (1)(A)” each place it appears and inserting*
6 *“paragraph (1)”.*

7 **SEC. 11. NATIONAL LIST OF BEACHES.**

8 *Section 406(g)(3) of the Federal Water Pollution Con-*
9 *trol Act (33 U.S.C. 1346(g)(3)) is amended by striking “The*
10 *Administrator” and all that follows through the period and*
11 *inserting “Within 12 months after the date of the enactment*
12 *of the Clean Coastal Environment and Public Health Act*
13 *of 2009, and biennially thereafter, the Administrator shall*
14 *update the list described in paragraph (1).”.*

15 **SEC. 12. IMPACT OF CLIMATE CHANGE ON PATHOGENIC**
16 **CONTAMINATION OF COASTAL RECREATION**
17 **WATERS.**

18 *(a) STUDY.—The Administrator shall conduct a study*
19 *on the long-term impact of climate change on pathogenic*
20 *contamination of coastal recreation waters.*

21 *(b) REPORT.—*

22 *(1) IN GENERAL.—Not later than one year after*
23 *the date of enactment of this Act, the Administrator*
24 *shall submit to Congress a report on the results of the*
25 *study conducted under subsection (a).*

1 (2) *INFORMATION ON POTENTIAL CONTAMINANT*
2 *IMPACTS.*—*The report shall include information on*
3 *the potential impacts of pathogenic contamination on*
4 *ground and surface water resources as well as public*
5 *and ecosystem health in coastal communities.*

6 (3) *MONITORING.*—*The report shall address mon-*
7 *itoring required to document and assess changing*
8 *conditions of coastal water resources, recreational wa-*
9 *ters, and ecosystems and review the current ability to*
10 *assess and forecast impacts associated with long-term*
11 *change.*

12 (4) *FEDERAL ACTIONS.*—*The report shall high-*
13 *light necessary Federal actions to help advance the*
14 *availability of information and tools to assess and*
15 *mitigate these effects in order to protect public and*
16 *ecosystem health.*

17 (5) *CONSULTATION.*—*In developing the report,*
18 *the Administrator shall work in consultation with*
19 *agencies active in the development of the National*
20 *Water Quality Monitoring Network and the imple-*
21 *mentation of the Ocean Research Priorities Plan and*
22 *Implementation Strategy.*

1 **SEC. 13. IMPACT OF EXCESS NUTRIENTS ON COASTAL**
2 **RECREATION WATERS.**

3 (a) *STUDY.*—*The Administrator shall conduct a study*
4 *to review the available scientific information pertaining to*
5 *the impacts of excess nutrients on coastal recreation waters.*

6 (b) *REPORT.*—

7 (1) *IN GENERAL.*—*Not later than one year after*
8 *the date of enactment of this Act, the Administrator*
9 *shall transmit to the Committee on Transportation*
10 *and Infrastructure of the House of Representatives*
11 *and the Committee on Environment and Public*
12 *Works of the Senate a report on the results of the*
13 *study conducted under subsection (a).*

14 (2) *IMPACTS.*—*Such report shall include infor-*
15 *mation on any adverse impacts of excess nutrients on*
16 *coastal recreation waters, including adverse impacts*
17 *caused by algal blooms resulting from excess nutri-*
18 *ents.*

19 (3) *RECOMMENDATIONS.*—*Such report shall in-*
20 *clude recommendations for action to address adverse*
21 *impacts of excess nutrients and algal blooms on coast-*
22 *al recreation waters, including the establishment and*
23 *implementation of numeric water quality criteria for*
24 *nutrients.*

25 (4) *CONSULTATION.*—*In developing such report,*
26 *the Administrator shall consult with the heads of*

- 1 *other appropriate Federal agencies (including the Na-*
- 2 *tional Oceanic and Atmospheric Administration),*
- 3 *States, and local government entities.*

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