

113TH CONGRESS  
1ST SESSION

# S. 571

To amend the Federal Water Pollution Control Act to establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 14, 2013

Mr. KIRK (for himself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to establish a deadline for restricting sewage dumping into the Great Lakes and to fund programs and activities for improving wastewater discharges into the Great Lakes.

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 “Great Lakes Water  
5 Protection Act”.

1 **SEC. 2. PROHIBITION ON SEWAGE DUMPING INTO THE**  
2 **GREAT LAKES.**

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

6 “(s) PROHIBITION ON SEWAGE DUMPING INTO THE  
7 GREAT LAKES.—

8 “(1) DEFINITIONS.—In this subsection:

9 “(A) BYPASS.—The term ‘bypass’ means  
10 an intentional diversion of waste streams to by-  
11 pass any portion of a treatment facility which  
12 results in a discharge into the Great Lakes.

13 “(B) DISCHARGE.—

14 “(i) IN GENERAL.—The term ‘dis-  
15 charge’ means a direct or indirect dis-  
16 charge of untreated sewage or partially  
17 treated sewage from a treatment works  
18 into the Great Lakes.

19 “(ii) INCLUSIONS.—The term ‘dis-  
20 charge’ includes a bypass and a combined  
21 sewer overflow.

22 “(C) GREAT LAKES.—The term ‘Great  
23 Lakes’ has the meaning given the term in sec-  
24 tion 118(a)(3).

25 “(D) PARTIALLY TREATED SEWAGE.—The  
26 term ‘partially treated sewage’ means any sew-

1 age, sewage and storm water, or sewage and  
2 wastewater, from domestic or industrial sources  
3 that—

4 “(i) is not treated to national sec-  
5 ondary treatment standards for waste-  
6 water; or

7 “(ii) is treated to a level less than the  
8 level required by the applicable national  
9 pollutant discharge elimination system per-  
10 mit.

11 “(E) TREATMENT FACILITY.—The term  
12 ‘treatment facility’ includes all wastewater  
13 treatment units used by a publicly owned treat-  
14 ment works to meet secondary treatment stand-  
15 ards or higher, as required to attain water qual-  
16 ity standards, under any operating conditions.

17 “(F) TREATMENT WORKS.—The term  
18 ‘treatment works’ has the meaning given the  
19 term in section 212.

20 “(2) PROHIBITION.—A publicly owned treat-  
21 ment works is prohibited from performing a bypass  
22 unless—

23 “(A)(i) the bypass is unavoidable to pre-  
24 vent loss of life, personal injury, or severe prop-  
25 erty damage;

1           “(ii) there is not a feasible alternative to  
2 the bypass, such as the use of auxiliary treat-  
3 ment facilities, retention of untreated wastes, or  
4 maintenance during normal periods of equip-  
5 ment downtime; and

6           “(iii) the treatment works provides notice  
7 of the bypass in accordance with this sub-  
8 section; or

9           “(B) the bypass does not cause effluent  
10 limitations to be exceeded, and the bypass is for  
11 essential maintenance to ensure efficient oper-  
12 ation of the treatment facility.

13           “(3) LIMITATION.—The requirement of para-  
14 graph (2)(A)(ii) is not satisfied if—

15           “(A) adequate back-up equipment should  
16 have been installed in the exercise of reasonable  
17 engineering judgment to prevent the bypass;  
18 and

19           “(B) the bypass occurred during normal  
20 periods of equipment downtime or preventive  
21 maintenance.

22           “(4) IMMEDIATE NOTICE REQUIREMENTS.—

23           “(A) IN GENERAL.—A publicly owned  
24 treatment works shall provide to the entities de-  
25 scribed in subparagraph (B)—

1           “(i) for any anticipated discharge,  
2 prior notice of that discharge; and

3           “(ii) for any unanticipated discharge,  
4 as soon as practicable, but not later  
5 than—

6                   “(I) for a treatment works with  
7 an automated detection system, 2  
8 hours after the discharge begins; and

9                   “(II) for a treatment works with-  
10 out an automated detection system,  
11 12 hours after the discharge begins.

12           “(B) NOTICE.—The entities referred to in  
13 subparagraph (A) are—

14                   “(i) the Administrator or, in the case  
15 of a State that has a permit program ap-  
16 proved under this section, the State;

17                   “(ii) each local health department or,  
18 if a local health department does not exist,  
19 the State health department;

20                   “(iii) the municipality in which the  
21 discharge occurred and each municipality  
22 with jurisdiction over waters that may be  
23 affected by the discharge;

24                   “(iv) a daily newspaper of general cir-  
25 culation in each county in which a munic-

1           pality described in clause (iii) is located;  
2           and

3           “(v) the general public through a  
4           prominent announcement on a publicly ac-  
5           cessible Internet site of the treatment  
6           works.

7           “(C) CONTENTS.—The notice under sub-  
8           paragraph (A) shall include a description of—

9           “(i) the volume and state of treatment  
10          of the discharge;

11          “(ii) the date and time of the dis-  
12          charge;

13          “(iii) the expected duration of the dis-  
14          charge;

15          “(iv) the steps being taken to contain  
16          the discharge, except for a discharge that  
17          is a wet weather combined sewer overflow  
18          discharge;

19          “(v) the location of the discharge,  
20          with the maximum level of specificity prac-  
21          ticable; and

22          “(vi) the cause for the discharge.

23          “(5) FOLLOW-UP NOTICE REQUIREMENTS.—

24          Each publicly owned treatment works that provides  
25          notice under paragraph (4)(B) shall provide to the

1 Administrator (or to the State in the case of a State  
2 that has a permit program approved under this sec-  
3 tion), not later than 5 days after the date on which  
4 the publicly owned treatment works provides initial  
5 notice, a follow-up notice containing—

6 “(A) a more full description of the cause of  
7 the discharge;

8 “(B) the reason for the discharge;

9 “(C) the period of discharge, including the  
10 exact dates and times;

11 “(D) if the discharge has not been cor-  
12 rected, the anticipated time the discharge is ex-  
13 pected to continue;

14 “(E) the volume of the discharge resulting  
15 from the bypass;

16 “(F) a description of any public access  
17 areas that has or may be impacted by the by-  
18 pass; and

19 “(G) steps taken or planned to reduce,  
20 eliminate, and prevent reoccurrence of the dis-  
21 charge.

22 “(6) PUBLIC AVAILABILITY OF NOTICES.—

23 “(A) IN GENERAL.—Not later than 48  
24 hours after providing or receiving a follow-up  
25 notice under paragraph (5), as applicable, a

1 publicly owned treatment works and the Admin-  
2 istrator (or the State, in the case of a State  
3 that has a permit program approved under this  
4 section) shall each post the follow-up notice on  
5 a publicly accessible, searchable database on the  
6 Internet.

7 “(B) ANNUAL PUBLICATION.—The Admin-  
8 istrator (or the State, in the case of a State  
9 that has a permit program approved under this  
10 section) shall annually publish and make avail-  
11 able to the public a list of each of the treatment  
12 works from which the Administrator or the  
13 State, as applicable, received a follow-up notice  
14 under paragraph (5).

15 “(7) SEWAGE BLENDING.—Bypasses prohibited  
16 by this section include bypasses resulting in dis-  
17 charges from a publicly owned treatment works that  
18 consist of effluent routed around treatment units  
19 and thereafter blended together with effluent from  
20 treatment units prior to discharge.

21 “(8) IMPLEMENTATION.—Not later than 180  
22 days after the date of enactment of this subsection,  
23 the Administrator shall establish procedures to en-  
24 sure that permits issued under this section (or under  
25 a State permit program approved under this section)



1 to a publicly owned treatment works include require-  
2 ments to implement this subsection.

3 “(9) INCREASE IN MAXIMUM CIVIL PENALTY  
4 FOR VIOLATIONS OCCURRING AFTER JANUARY 1,  
5 2033.—Notwithstanding section 309, in the case of a  
6 violation of this subsection occurring on or after  
7 January 1, 2033, or any violation of a permit limita-  
8 tion or condition implementing this subsection occur-  
9 ring after that date, the maximum civil penalty that  
10 shall be assessed for the violation shall be \$100,000  
11 per day for each day the violation occurs.

12 “(10) APPLICABILITY.—This subsection shall  
13 apply to a bypass occurring after the last day of the  
14 1-year period beginning on the date of enactment of  
15 this subsection.”.

16 **SEC. 3. ESTABLISHMENT OF GREAT LAKES CLEANUP FUND.**

17 (a) IN GENERAL.—Title V of the Federal Water Pol-  
18 lution Control Act (33 U.S.C. 1361 et seq.) is amended—

19 (1) by redesignating section 519 (33 U.S.C.  
20 1251 note) as section 520; and

21 (2) by inserting after section 518 (33 U.S.C.  
22 1377) the following:

23 **“SEC. 519. ESTABLISHMENT OF GREAT LAKES CLEANUP**  
24 **FUND.**

25 “(a) DEFINITIONS.—In this section:

1           “(1) FUND.—The term ‘Fund’ means the Great  
2       Lakes Cleanup Fund established by subsection (b).

3           “(2) GREAT LAKES; GREAT LAKES STATES.—  
4       The terms ‘Great Lakes’ and ‘Great Lakes States’  
5       have the meanings given the terms in section  
6       118(a)(3).

7           “(b) ESTABLISHMENT OF FUND.—There is estab-  
8       lished in the Treasury of the United States a trust fund  
9       to be known as the ‘Great Lakes Cleanup Fund’ (referred  
10      to in this section as the ‘Fund’).

11          “(c) TRANSFERS TO FUND.—Effective January 1,  
12      2033, there are authorized to be appropriated to the Fund  
13      amounts equivalent to the penalties collected for violations  
14      of section 402(s).

15          “(d) ADMINISTRATION OF FUND.—The Adminis-  
16      trator shall administer the Fund.

17          “(e) USE OF FUNDS.—The Administrator shall—

18               “(1) make the amounts in the Fund available  
19              to the Great Lakes States for use in carrying out  
20              programs and activities for improving wastewater  
21              discharges into the Great Lakes, including habitat  
22              protection and wetland restoration; and

23               “(2) allocate those amounts among the Great  
24              Lakes States based on the proportion that—

1           “(A) the amount attributable to a Great  
2           Lakes State for penalties collected for violations  
3           of section 402(s); bears to

4           “(B) the total amount of those penalties  
5           attributable to all Great Lakes States.

6           “(f) PRIORITY.—In selecting programs and activities  
7           to be funded using amounts made available under this sec-  
8           tion, a Great Lakes State shall give priority consideration  
9           to programs and activities that address violations of sec-  
10          tion 402(s) resulting in the collection of penalties.”.

11          (b) CONFORMING AMENDMENT TO STATE REVOLV-  
12          ING FUND PROGRAM.—Section 607 of the Federal Water  
13          Pollution Control Act (33 U.S.C. 1387) is amended—

14                 (1) by striking “There is” and inserting “(a) IN  
15          GENERAL.—There is”; and

16                 (2) by adding at the end the following:

17          “(b) TREATMENT OF GREAT LAKES CLEANUP  
18          FUND.—For purposes of this title, amounts made avail-  
19          able from the Great Lakes Cleanup Fund under section  
20          519 shall be treated as funds authorized to be appro-  
21          priated to carry out this title and as funds made available  
22          under this title, except that the funds shall be made avail-  
23          able to the Great Lakes States in accordance with section  
24          519.”.

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