

111TH CONGRESS  
1ST SESSION

# H. R. 2093

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

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## 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

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## 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”.

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

2 (a) **MONITORING PROTOCOLS.**—Section 406(a) of the  
3 Federal Water Pollution Control Act (33 U.S.C. 1346(a))  
4 is amended by striking “methods for monitoring” and in-  
5 serting “methods for monitoring protocols that are most  
6 likely to detect pathogenic contamination”.

7 (b) **SOURCE TRACKING.**—Section 406(b) of such Act  
8 (33 U.S.C. 1346(b)) is amended by adding at the end the  
9 following new paragraph:

10 “(5) **CONTENTS OF MONITORING AND NOTIFI-**  
11 **CATION PROGRAMS.**—For the purposes of this sec-  
12 tion, a program for monitoring and notification shall  
13 include monitoring consistent with the performance  
14 criteria published by the Administrator under sub-  
15 section (a), public notification, source tracking, sani-  
16 tary surveys, and prevention efforts to address iden-  
17 tified sources of contamination by pathogens and  
18 pathogen indicators in coastal recreation waters ad-  
19 jacent to beaches or similar points of access that are  
20 used by the public.”.

21 (c) **AUTHORIZATION OF APPROPRIATIONS.**—Section  
22 406(i) of such Act (33 U.S.C. 1346(i)) is amended by  
23 striking “\$30,000,000 for each of fiscal years 2001  
24 through 2005” and inserting “\$60,000,000 for each of fis-  
25 cal years 2009 through 2013”.

1 **SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESS-**  
2 **MENT AND COASTAL HEALTH ACT.**

3 Section 8 of the Beaches Environmental Assessment  
4 and Coastal Health Act of 2000 (114 Stat. 877) is amend-  
5 ed by striking “2005” and inserting “2013”.

6 **SEC. 4. STATE REPORTS.**

7 Section 406(b)(3)(A)(ii) of the Federal Water Pollu-  
8 tion Control Act (33 U.S.C. 1346(b)(3)(A)(ii)) is amended  
9 by striking “public” and inserting “public and all environ-  
10 mental agencies of the State with authority to prevent or  
11 treat sources of pathogenic contamination in coastal recre-  
12 ation waters”.

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

14 (a) CONTENTS OF STATE AND LOCAL GOVERNMENT  
15 PROGRAMS.—Section 406(c)(4)(A) of the Federal Water  
16 Pollution Control Act (33 U.S.C. 1346(c)(4)(A)) is  
17 amended by striking “methods” and inserting “methods,  
18 including the use of a rapid testing method after the last  
19 day of the one-year period following the date of validation  
20 of that rapid testing method by the Administrator,”.

21 (b) REVISED CRITERIA.—Section 304(a)(9)(A) of  
22 such Act (33 U.S.C. 1314(a)(9)(A)) is amended by strik-  
23 ing “methods, as appropriate” and inserting “methods, in-  
24 cluding the use of rapid testing methods”.

25 (c) VALIDATION AND USE OF RAPID TESTING METH-  
26 ODS.—

1           (1) VALIDATION OF RAPID TESTING METH-  
2           ODS.—Not later than October 15, 2012, the Admin-  
3           istrator of the Environmental Protection Agency  
4           shall complete an evaluation and validation of a  
5           rapid testing method for the water quality criteria  
6           and standards for pathogens and pathogen indica-  
7           tors described in section 303(i)(1)(A) of the Federal  
8           Water Pollution Control Act (33 U.S.C.  
9           1313(i)(1)(A)).

10           (2) GUIDANCE FOR USE OF RAPID TESTING  
11           METHODS.—

12           (A) IN GENERAL.—Not later than 180  
13           days after completion of the validation under  
14           paragraph (1), and after providing notice and  
15           an opportunity for public comment, the Admin-  
16           istrator shall publish guidance for the use at  
17           coastal recreation waters adjacent to beaches or  
18           similar points of access that are used by the  
19           public of rapid testing methods that will en-  
20           hance the protection of public health and safety  
21           through rapid public notification of any exceed-  
22           ing of applicable water quality standards for  
23           pathogens and pathogen indicators.

24           (B) PRIORITIZATION.—In developing such  
25           guidance, the Administrator shall require the

1 use of rapid testing methods at those beaches  
2 or similar points of access that are the most  
3 used by the public.

4 (d) DEFINITION.—Section 502 of such Act (33  
5 U.S.C. 1362) is amended by adding at the end the fol-  
6 lowing:

7 “(26) RAPID TESTING METHOD.—The term  
8 ‘rapid testing method’ means a method of testing  
9 the water quality of coastal recreation waters for  
10 which results are available as soon as practicable  
11 and not more than 2 hours after the commencement  
12 of the rapid testing method.”.

13 **SEC. 6. NOTIFICATION OF FEDERAL, STATE, AND LOCAL**  
14 **AGENCIES.**

15 Section 406(c)(5) of the Federal Water Pollution  
16 Control Act (33 U.S.C. 1346(c)(5)) is amended—

17 (1) by striking “prompt communication” and  
18 inserting “communication, within 2 hours of the re-  
19 ceipt of the results of a water quality sample,”;

20 (2) in subparagraph (A)—

21 (A) by inserting “(i) in the case of any  
22 State in which the Administrator is admin-  
23 istering the program under section 402,” before  
24 “the Administrator” the first place it appears;  
25 and

1 (B) by inserting at the end the following:

2 “(ii) in the case of any State other than a  
3 State to which clause (i) applies, all agencies of  
4 the State government with authority to require  
5 the prevention or treatment of the sources of  
6 coastal recreation water pollution; and”;

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

9 (4) by inserting after paragraph (5) the fol-  
10 lowing:

11 “(6) measures for an annual report to the Ad-  
12 ministrator, in such form as the Administrator de-  
13 termines appropriate, on the occurrence, nature, lo-  
14 cation, pollutants involved, and extent of any exceed-  
15 ing of applicable water quality standards for patho-  
16 gens and pathogen indicators;”.

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

18 Section 406(c) of the Federal Water Pollution Con-  
19 trol Act (33 U.S.C. 1346(c)) is amended—

20 (1) in paragraph (7) (as redesignated by section  
21 6(3) of this Act)—

22 (A) by striking “the posting” and inserting  
23 “the immediate posting”; and

24 (B) by striking “and” at the end;

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

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

5           “(9) the availability of a geographic information  
6           system database that such State or local government  
7           program shall use to inform the public about coastal  
8           recreation waters and that—

9           “(A) is publicly accessible and searchable  
10          on the Internet;

11          “(B) is organized by beach or similar point  
12          of access;

13          “(C) identifies applicable water quality  
14          standards, monitoring protocols, sampling plans  
15          and results, and the number and cause of coast-  
16          al recreation water closures and advisory days;  
17          and

18          “(D) is updated within 24 hours of the  
19          availability of revised information;

20          “(10) measures to ensure that closures or  
21          advisories are made or issued within 2 hours after  
22          the receipt of a water quality sample exceeding ap-  
23          plicable water quality standards for pathogens and  
24          pathogen indicators;

1           “(11) measures that inform the public of identi-  
2           fied sources of pathogenic contamination; and

3           “(12) analyses of monitoring protocols to deter-  
4           mine which protocols are most likely to detect patho-  
5           genic contamination.”.

6 **SEC. 8. COMPLIANCE REVIEW.**

7           Section 406(h) of the Federal Water Pollution Con-  
8           trol Act (33 U.S.C. 1346(h)) is amended—

9           (1) by redesignating paragraphs (1) and (2) as  
10          subparagraphs (A) and (B), respectively;

11          (2) by moving such subparagraphs 2 ems to the  
12          right;

13          (3) by striking “In the” and inserting the fol-  
14          lowing:

15                 “(1) IN GENERAL.—In the”; and

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

17                 “(2) COMPLIANCE REVIEW.—On or before July  
18          31 of each calendar year beginning after the date of  
19          enactment of this paragraph, the Administrator  
20          shall—

21                         “(A) prepare a written assessment of com-  
22                         pliance with all statutory and regulatory re-  
23                         quirements of this section for each State and  
24                         local government and of compliance with condi-



1           tions of each grant made under this section to  
2           a State or local government;

3           “(B) notify the State or local government  
4           of such assessment; and

5           “(C) make each of the assessments avail-  
6           able to the public in a searchable database on  
7           the Internet on or before December 31 of such  
8           calendar year.

9           “(3) CORRECTIVE ACTION.—If a State or local  
10          government that the Administrator notifies under  
11          paragraph (2) is not in compliance with any require-  
12          ment or grant condition described in paragraph (2)  
13          fails to take such action as may be necessary to  
14          comply with such requirement or condition within  
15          one year after the date of notification, any grants  
16          made under subsection (b) to the State or local gov-  
17          ernment, after the last day of such one-year period  
18          and while the State or local government is not in  
19          compliance with all requirements and grant condi-  
20          tions described in paragraph (2), shall have a Fed-  
21          eral share of not to exceed 50 percent.

22          “(4) GAO REVIEW.—Not later than December  
23          31 of the third calendar year beginning after the  
24          date of enactment of this paragraph, the Comp-  
25          troller General shall conduct a review of the activi-

1 ties of the Administrator under paragraphs (2) and  
2 (3) during the first and second calendar years begin-  
3 ning after such date of enactment and submit to  
4 Congress a report on the results of such review.”.

5 **SEC. 9. STUDY OF GRANT DISTRIBUTION FORMULA.**

6 (a) STUDY.—Not later than 30 days after the date  
7 of enactment of this Act, the Administrator of the Envi-  
8 ronmental Protection Agency shall commence a study of  
9 the formula for the distribution of grants under section  
10 406 of the Federal Water Pollution Control Act (33  
11 U.S.C. 1346) for the purpose of identifying potential revi-  
12 sions of such formula.

13 (b) CONTENTS.—In conducting the study, the Ad-  
14 ministrator shall consider the base cost to States of devel-  
15 oping and maintaining water quality monitoring and noti-  
16 fication programs, the States’ varied beach monitoring  
17 and notification needs, including beach mileage, beach  
18 usage, and length of beach season, and other factors that  
19 the Administrator determines to be appropriate.

20 (c) CONSULTATION.—In conducting the study, the  
21 Administrator shall consult with appropriate Federal,  
22 State, and local agencies.

23 (d) REPORT.—Not later than 12 months after the  
24 date of enactment of this Act, the Administrator shall sub-  
25 mit to the Committee on Transportation and Infrastruc-

1 ture of the House of Representatives and the Committee  
2 on Environment and Public Works of the Senate a report  
3 on the results of the study, including any recommendation  
4 for revision of the distribution formula referred to in sub-  
5 section (a).

6 **SEC. 10. PUBLICATION OF COASTAL RECREATION WATERS**

7 **PATHOGEN LIST.**

8 Section 304(a)(9) of the Federal Water Pollution  
9 Control Act (33 U.S.C. 1314(a)(9)) is amended by adding  
10 at the end the following:

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

18 **SEC. 11. ADOPTION OF NEW OR REVISED CRITERIA AND**

19 **STANDARDS.**

20 Section 303(i)(2)(A) of the Federal Water Pollution  
21 Control Act (33 U.S.C. 1313(i)(2)(A)) is amended by  
22 striking “paragraph (1)(A)” each place it appears and in-  
23 serting “paragraph (1)”.

1 **SEC. 12. NATIONAL LIST OF BEACHES.**

2 Section 406(g)(3) of the Federal Water Pollution  
3 Control Act (33 U.S.C. 1346(g)(3)) is amended by strik-  
4 ing “The Administrator” and all that follows through the  
5 period and inserting “Within 12 months after the date of  
6 the enactment of the Clean Coastal Environment and Pub-  
7 lic Health Act of 2009, and biennially thereafter, the Ad-  
8 ministrator shall update the list described in paragraph  
9 (1).”.

10 **SEC. 13. IMPACT OF CLIMATE CHANGE ON POLLUTION OF**  
11 **COASTAL RECREATION WATERS.**

12 (a) STUDY.—The Administrator of the Environ-  
13 mental Protection Agency shall conduct a study on the  
14 long-term impact of climate change on pollution of coastal  
15 recreation waters.

16 (b) REPORT.—

17 (1) IN GENERAL.—Not later than one year  
18 after the date of enactment of this Act, the Adminis-  
19 trator shall submit to Congress a report on the re-  
20 sults of the study conducted under subsection (a).

21 (2) INFORMATION ON POTENTIAL CONTAMI-  
22 NANT IMPACTS.—The report shall include informa-  
23 tion on potential contaminant impacts on ground  
24 and surface water resources as well as public and  
25 ecosystem health in coastal communities.

1           (3) MONITORING.—The report shall address  
2           monitoring required to document and assess chang-  
3           ing conditions of coastal water resources, rec-  
4           reational waters, and ecosystems and review the cur-  
5           rent ability to assess and forecast impacts associated  
6           with long-term change.

7           (4) FEDERAL ACTIONS.—The report shall high-  
8           light necessary Federal actions to help advance the  
9           availability of information and tools to assess and  
10          mitigate these effects in order to protect public and  
11          ecosystem health.

12          (5) CONSULTATION.—In developing the report,  
13          the Administrator shall work in consultation with  
14          agencies active in the development of the National  
15          Water Quality Monitoring Network and the imple-  
16          mentation of the Ocean Research Priorities Plan and  
17          Implementation Strategy.

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