

111TH CONGRESS  
1ST SESSION

# H. R. 2883

To amend the Federal Water Pollution Control Act to provide for security at wastewater treatment works, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2009

Ms. EDDIE BERNICE JOHNSON of Texas (for herself, Mr. OBERSTAR, Mr. FILNER, and Mrs. NAPOLITANO) 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 to provide for security at wastewater treatment works, 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 “Wastewater Treatment  
5 Works Security Act of 2009”.

6 **SEC. 2. WASTEWATER TREATMENT WORKS SECURITY.**

7 Title II of the Federal Water Pollution Control Act  
8 (33 U.S.C. 1281 et seq.) is amended by adding at the end  
9 the following:

1 **“SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.**

2 “(a) ASSESSMENT OF TREATMENT WORKS VULNER-  
3 ABILITY.—

4 “(1) IN GENERAL.—Each owner or operator of  
5 a treatment works that stores or uses a substance  
6 of concern in quantities deemed by the Adminis-  
7 trator to pose a security risk shall conduct a vulner-  
8 ability assessment of its treatment works.

9 “(2) VULNERABILITY ASSESSMENTS.—

10 “(A) DEFINITION.—In this section, the  
11 term ‘vulnerability assessment’ means an as-  
12 sessment of the vulnerability of a treatment  
13 works to intentional actions that may—

14 “(i) substantially disrupt the ability of  
15 the treatment works to safely and reliably  
16 operate; or

17 “(ii) have a substantial adverse effect  
18 on critical infrastructure, public health or  
19 safety, or the environment.

20 “(B) REVIEW.—A vulnerability assessment  
21 shall include an identification of the vulner-  
22 ability of the treatment works’—

23 “(i) facilities, systems, and devices  
24 used in the storage, treatment, recycling,  
25 or reclamation of municipal sewage or in-  
26 dustrial wastes;

1           “(ii) intercepting sewers, outfall sew-  
2           ers, sewage collection systems, and other  
3           constructed conveyances under the control  
4           of the owner or operator of the treatment  
5           works;

6           “(iii) electronic, computer, and other  
7           automated systems;

8           “(iv) pumping, power, and other  
9           equipment;

10          “(v) use, storage, and handling of var-  
11          ious chemicals; and

12          “(vi) operation and maintenance pro-  
13          cedures.

14          “(C) SITE SECURITY PLAN.—A vulner-  
15          ability assessment shall include a site security  
16          plan to identify specific security enhancements,  
17          including procedures, countermeasures, or  
18          equipment that the owner or operator of a  
19          treatment works will implement or utilize to re-  
20          duce the vulnerabilities identified through the  
21          review under subparagraph (B) (including the  
22          identification of the extent to which implemen-  
23          tation or utilization of such security enhance-  
24          ments may impact the operations of the treat-

1           ment works in meeting the goals and require-  
2           ments of this Act).

3           “(D) GUIDELINES.—

4           “(i) IN GENERAL.—Not later than  
5           December 31, 2009, the Administrator, in  
6           consultation with the Secretary of Home-  
7           land Security, shall develop and publish  
8           guidelines for carrying out a vulnerability  
9           assessment, consistent with this section  
10          and the goals and requirements of this  
11          Act, and shall periodically revise such  
12          guidelines, as appropriate.

13          “(ii) IDENTIFICATION AND EVALUA-  
14          TION OF SECURITY ENHANCEMENTS.—In  
15          developing the guidelines described in  
16          clause (i), the Administrator shall—

17                 “(I) identify an array of potential  
18                 security enhancements, including pro-  
19                 cedures, countermeasures, or equip-  
20                 ment, that the owner or operator of a  
21                 treatment works can implement or  
22                 utilize to reduce the vulnerability of  
23                 the treatment works; and

24                 “(II) include information on the  
25                 potential effectiveness of such security

1                   enhancements in reducing the vulner-  
2                   ability of the treatment works.

3                   “(iii) RISK-BASED EVALUATION OF  
4                   TREATMENT WORKS.—

5                   “(I) IN GENERAL.—In developing  
6                   the guidelines described in clause (i),  
7                   the Administrator shall develop stand-  
8                   ards for assigning individual treat-  
9                   ment works into 4 risk-based classi-  
10                  fications.

11                  “(II) STANDARDS FOR RISK-  
12                  BASED CLASSIFICATIONS.—In devel-  
13                  oping such standards, the Adminis-  
14                  trator shall consider—

15                   “(aa) the size of the treat-  
16                   ment works;

17                   “(bb) the proximity of the  
18                   treatment works to large popu-  
19                   lation centers;

20                   “(cc) the potential adverse  
21                   impacts of an intentional act on  
22                   the operation of the treatment  
23                   works or on critical infrastruc-  
24                   ture, public health or safety, or  
25                   the environment; and

1                   “(dd) any other factor which  
2                   the Administrator determines to  
3                   be appropriate.

4                   “(III) CRITERIA FOR AP-  
5                   PROVAL.—The Administrator may as-  
6                   sign differing criteria for the approval  
7                   of a vulnerability assessment under  
8                   paragraph (4) based on the risk-based  
9                   classification of the treatment works.

10                  “(iv) SUBSTANCE OF CONCERN.—

11                   “(I) IN GENERAL.—In developing  
12                   the guidelines described in clause (i),  
13                   the Administrator, in consultation  
14                   with the Secretary of Homeland Secu-  
15                   rity, may designate any chemical sub-  
16                   stance as a substance of concern.

17                   “(II) THRESHOLD QUANTITY.—  
18                   At the time a substance is designated  
19                   pursuant to subclause (I), the Admin-  
20                   istrator shall establish by rule a  
21                   threshold quantity for the release or  
22                   theft of the substance, taking into ac-  
23                   count the toxicity, reactivity, volatility,  
24                   dispersability, combustibility, and  
25                   flammability of the substance and the

1 amount of the substance which, as a  
2 result of the release, is known to  
3 cause or may be reasonably antici-  
4 pated to cause death, injury, or a sub-  
5 stantial adverse effect to critical infra-  
6 structure, public health or safety, or  
7 the environment.

8 “(III) CONSIDERATION OF EX-  
9 ISTING STANDARDS.—In making a de-  
10 termination under subclause (I), the  
11 Administrator shall take into account  
12 appendix A of part 27 of title 6, Code  
13 of Federal Regulations (or any suc-  
14 cessor regulations).

15 “(v) REVIEW AND REVISION OF VUL-  
16 NERABILITY ASSESSMENTS.—In developing  
17 the guidelines described in clause (i), the  
18 Administrator shall include—

19 “(I) a process for the revision, if  
20 necessary, and resubmission of vulner-  
21 ability assessments for treatment  
22 works conducted prior to the date of  
23 enactment of this section to determine  
24 whether they meet the requirements  
25 of this section; and

1                   “(II) provisions for the periodic  
2                   review of vulnerability assessments  
3                   and revision of vulnerability assess-  
4                   ments based on new information pro-  
5                   vided by the Administrator, in con-  
6                   sultation with the Secretary of Home-  
7                   land Security, to the owner or oper-  
8                   ator of the treatment works.

9                   “(3) CERTIFICATION AND DEADLINES.—

10                   “(A) CERTIFICATION.—Each owner or op-  
11                   erator of a treatment works referred to in para-  
12                   graph (1) shall certify to the Administrator that  
13                   a vulnerability assessment has been conducted  
14                   for the treatment works and shall submit to the  
15                   Administrator a written copy of the vulner-  
16                   ability assessment.

17                   “(B) DEADLINES.—Certifications and sub-  
18                   missions referred to in subparagraph (A) shall  
19                   be made prior to—

20                   “(i) December 31, 2010, in the case  
21                   of a treatment works with a treatment ca-  
22                   pacity of 15,000,000 gallons per day or  
23                   greater or that is assigned to the highest  
24                   risk-based classification under the guide-  
25                   lines developed under paragraph (2)(D);



1           “(ii) June 30, 2011, in the case of a  
2           treatment works that is assigned to the  
3           second highest risk-based classification  
4           under the guidelines developed under para-  
5           graph (2)(D);

6           “(iii) December 31, 2011, in the case  
7           of a treatment works that is assigned to  
8           the third highest risk-based classification  
9           under the guidelines developed under para-  
10          graph (2)(D); and

11          “(iv) June 30, 2012, in the case of a  
12          treatment works that is assigned to the  
13          lowest risk-based classification under  
14          guidelines developed under paragraph  
15          (2)(D).

16          “(4) REVIEW OF VULNERABILITY ASSESS-  
17          MENTS.—

18                 “(A) IN GENERAL.—Not later than 180  
19                 days after the date on which the Administrator  
20                 receives a vulnerability assessment under this  
21                 section, the Administrator shall review and ap-  
22                 prove or disapprove such assessment.

23                 “(B) DISAPPROVAL.—

24                         “(i) IN GENERAL.—The Administrator  
25                         shall disapprove a vulnerability assessment

1 if the Administrator determines that the  
2 vulnerability assessment does not comply  
3 with this section (including guidelines de-  
4 veloped under paragraph (2)(D)) or imple-  
5 mentation of any security enhancement  
6 identified under paragraph (2)(C) is not  
7 consistent with the goals and requirements  
8 of this Act.

9 “(ii) LIMITATION ON DISAPPROVAL.—  
10 The Administrator may not disapprove a  
11 vulnerability assessment submitted under  
12 this section based on the implementation of  
13 a particular security enhancement.

14 “(iii) PROVISIONS OF NOTIFICATION  
15 OF DISAPPROVAL.—If the Administrator  
16 disapproves the vulnerability assessment  
17 under this section, the Administrator shall  
18 provide the owner or operator of a treat-  
19 ment works a written notification of the  
20 disapproval that—

21 “(I) includes a clear explanation  
22 of deficiencies in the vulnerability as-  
23 sessment;

1           “(II) provides guidance to assist  
2           the owner or operator in addressing  
3           deficiencies; and

4           “(III) requires the owner or oper-  
5           ator to revise the vulnerability assess-  
6           ment to address any deficiencies and,  
7           by such date as the Administrator de-  
8           termines is appropriate, to submit to  
9           the Administrator a revised vulner-  
10          ability assessment.

11          “(5) PROHIBITION OF PUBLIC DISCLOSURE.—

12           “(A) IN GENERAL.—The Administrator  
13           shall ensure that vulnerability assessments (in-  
14           cluding site security plans) and other security-  
15           related information, records, and documents are  
16           not disclosed except as provided in this section.

17           “(B) SPECIFIC PROHIBITIONS.—In car-  
18           rying out paragraph (1), the Administrator  
19           shall ensure that any information contained in  
20           the vulnerability assessment is not disclosed—

21                   “(i) by any Federal agency under sec-  
22                   tion 552 of title 5, United States Code; or

23                   “(ii) under any State or local law.

24           “(C) LIMITATION.—Nothing in this para-  
25           graph shall prohibit the sharing of information,

1 as the Administrator, in consultation with the  
2 Secretary of Homeland Security, determines to  
3 be appropriate, with State and local government  
4 officials possessing the necessary security clear-  
5 ances, including law enforcement officials and  
6 first responders, for the purpose of carrying out  
7 this section.

8 “(b) GRANTS FOR VULNERABILITY ASSESSMENTS,  
9 SECURITY ENHANCEMENTS, AND WORKER TRAINING  
10 PROGRAMS.—

11 “(1) IN GENERAL.—The Administrator may  
12 make grants to a State, municipality, or intermunic-  
13 ipal or interstate agency—

14 “(A) to conduct a vulnerability assessment  
15 of a publicly owned treatment works;

16 “(B) to implement security enhancements  
17 listed in paragraph (2) to reduce vulnerabilities  
18 identified in an approved vulnerability assess-  
19 ment;

20 “(C) to implement additional security en-  
21 hancements to reduce vulnerabilities identified  
22 in an approved vulnerability assessment; and

23 “(D) to provide for security-related train-  
24 ing of employees of the treatment works and

1 training for first responders and emergency re-  
2 sponse providers.

3 “(2) GRANTS FOR SECURITY ENHANCE-  
4 MENTS.—

5 “(A) PREAPPROVED SECURITY ENHANCE-  
6 MENTS.—The Administrator may make a grant  
7 to an applicant under paragraph (1)(B) to im-  
8 plement a security enhancement of a treatment  
9 works (identified in an approved vulnerability  
10 assessment) for 1 or more of the following:

11 “(i) Purchase and installation of  
12 equipment for access control, intrusion  
13 prevention and delay, and detection of in-  
14 truders and hazardous or dangerous sub-  
15 stances, including—

16 “(I) barriers, fencing, and gates;

17 “(II) security lighting and cam-  
18 eras;

19 “(III) metal grates, wire mesh,  
20 and outfall entry barriers;

21 “(IV) securing of manhole covers  
22 and fill and vent pipes;

23 “(V) installation and re-keying of  
24 doors and locks; and

1 “(VI) smoke, chemical, and ex-  
2 plosive mixture detection systems.

3 “(ii) Security improvements to elec-  
4 tronic, computer, or other automated sys-  
5 tems and remote security systems, includ-  
6 ing controlling access to such systems, in-  
7 trusion detection and prevention, and sys-  
8 tem backup.

9 “(iii) Participation in training pro-  
10 grams and the purchase of training manu-  
11 als and guidance materials relating to se-  
12 curity.

13 “(iv) Security screening of employees  
14 or contractor support services.

15 “(B) ADDITIONAL SECURITY ENHANCE-  
16 MENTS.—

17 “(i) IN GENERAL.—The Administrator  
18 may make grants under paragraph (1)(C)  
19 to an applicant for additional security en-  
20 hancements not listed in subparagraph (A)  
21 that are identified in an approved vulner-  
22 ability assessment.

23 “(ii) ELIGIBILITY.—To be eligible for  
24 a grant under this subparagraph, an appli-  
25 cant must have an approved vulnerability

1 assessment and shall submit an application  
2 to the Administrator containing such infor-  
3 mation as the Administrator may request.

4 “(C) LIMITATION ON USE OF FUNDS.—  
5 Grants under this paragraph may not be used  
6 for personnel costs or operation or maintenance  
7 of facilities, equipment, or systems.

8 “(D) FEDERAL SHARE.—The Federal  
9 share of the cost of activities funded by a grant  
10 under paragraph (1) may not exceed 75 per-  
11 cent.

12 “(e) TECHNICAL ASSISTANCE FOR SMALL PUBLICLY  
13 OWNED TREATMENT WORKS.—

14 “(1) SECURITY ASSESSMENT AND PLANNING  
15 ASSISTANCE.—The Administrator, in coordination  
16 with the States, may provide technical guidance and  
17 assistance to small publicly owned treatment works  
18 on conducting a vulnerability assessment and imple-  
19 mentation of security enhancements to reduce  
20 vulnerabilities identified in an approved vulnerability  
21 assessment. Such assistance may include technical  
22 assistance programs, training, and preliminary engi-  
23 neering evaluations.

24 “(2) PARTICIPATION BY NONPROFIT ORGANIZA-  
25 TIONS.—The Administrator may make grants to

1 nonprofit organizations to assist in accomplishing  
2 the purposes of this subsection.

3 “(3) SMALL PUBLICLY OWNED TREATMENT  
4 WORKS DEFINED.—In this subsection, the term  
5 ‘small publicly owned treatment works’ means a  
6 publicly owned treatment works that services a pop-  
7 ulation of fewer than 10,000 persons.

8 “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
9 is authorized to be appropriated annually to the Adminis-  
10 trator for fiscal years 2010 through 2014—

11 “(1) \$200,000,000 for making grants under  
12 subsection (b); and

13 “(2) \$15,000,000 for providing technical assist-  
14 ance under subsection (c).

15 Such sums shall remain available until expended.”.

○