

112TH CONGRESS  
2D SESSION

# S. 3388

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.

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## IN THE SENATE OF THE UNITED STATES

JULY 16, 2012

Mr. LAUTENBERG (for himself, Mr. SCHUMER, Mr. CARDIN, and Mr. WHITEHOUSE) 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 ensure that sewage treatment plants monitor for and report discharges of raw sewage, 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 “Sewage Overflow Com-  
5 munity Right-to-Know Act”.

6 **SEC. 2. DEFINITIONS.**

7 Section 502 of the Federal Water Pollution Control  
8 Act (33 U.S.C. 1362) is amended by adding at the end  
9 the following:

1           “(26) TREATMENT WORKS.—The term ‘treat-  
2           ment works’ has the meaning given the term in sec-  
3           tion 212.”.

4   **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**  
5                           **TION OF SEWER OVERFLOWS.**

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

9           “(s) SEWER OVERFLOW MONITORING, REPORTING,  
10   AND NOTIFICATIONS.—

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

12           “(A) SANITARY SEWER OVERFLOW.—

13           “(i) IN GENERAL.—The term ‘sani-  
14           tary sewer overflow’ means an overflow,  
15           spill, release, or diversion of wastewater  
16           from a sanitary sewer system.

17           “(ii) INCLUSIONS.—The term ‘sani-  
18           tary sewer overflow’ includes—

19           “(I) overflows or releases of  
20           wastewater that reach waters of the  
21           United States;

22           “(II) overflows or releases of  
23           wastewater in the United States that  
24           do not reach waters of the United  
25           States; and

1                   “(III) wastewater backups into  
2                   buildings that are caused by blockages  
3                   or flow conditions in a sanitary sewer  
4                   other than a building lateral.

5                   “(iii) EXCLUSIONS.—The term ‘sani-  
6                   tary sewer overflow’ does not include—

7                   “(I) municipal combined sewer  
8                   overflows or other discharges from the  
9                   combined portion of a municipal com-  
10                  bined storm and sanitary sewer sys-  
11                  tem; or

12                  “(II) wastewater backups into  
13                  buildings caused by a blockage or  
14                  other malfunction of a building lateral  
15                  that is privately owned.

16                  “(B) SEWER OVERFLOW.—The term  
17                  ‘sewer overflow’ means a sanitary sewer over-  
18                  flow or a municipal combined sewer overflow.

19                  “(C) SINGLE-FAMILY RESIDENCE.—

20                  “(i) IN GENERAL.—The term ‘single-  
21                  family residence’ means an individual  
22                  dwelling unit.

23                  “(ii) INCLUSIONS.—The term ‘single-  
24                  family residence’ includes—

25                  “(I) an apartment;

1 “(II) a condominium;

2 “(III) a house; and

3 “(IV) a dormitory.

4 “(iii) EXCLUSIONS.—The term ‘single-  
5 family residence’ does not include the com-  
6 mon areas of a multidwelling structure.

7 “(2) GENERAL REQUIREMENTS.—After the last  
8 day of the 180-day period beginning on the date on  
9 which regulations are promulgated under paragraph  
10 (5), a permit issued, renewed, or modified under this  
11 section by the Administrator or the State, as appli-  
12 cable, for a publicly owned treatment works shall re-  
13 quire, at a minimum, beginning on the date of the  
14 issuance, modification, or renewal, that the owner or  
15 operator of the treatment works—

16 “(A) institute and use a feasible method-  
17 ology, technology, or management program for  
18 monitoring sewer overflows to alert the owner  
19 or operator to the occurrence of a sewer over-  
20 flow in a timely manner;

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

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

7           “(D) report each sewer overflow on the  
8           discharge monitoring report of the owner or op-  
9           erator to the Administrator or the State, as ap-  
10          plicable, by describing—

11                  “(i) the magnitude, duration, and sus-  
12                  pected cause of the overflow;

13                  “(ii) the steps taken or planned to re-  
14                  duce, eliminate, or prevent recurrence of  
15                  the overflow; and

16                  “(iii) the steps taken or planned to  
17                  mitigate the impact of the overflow; and

18          “(E) annually report to the Administrator  
19          or the State, as applicable, the total number of  
20          sewer overflows in a calendar year, including—

21                  “(i) the details of how much waste-  
22                  water was released per incident;

23                  “(ii) the duration of each sewer over-  
24          flow;

1           “(iii) the location of the overflow and  
2           any potentially affected receiving waters;

3           “(iv) the responses taken to clean up  
4           the overflow; and

5           “(v) the actions taken to mitigate im-  
6           pacts and avoid further sewer overflows at  
7           the site.

8           “(3) EXCEPTIONS.—

9           “(A) NOTIFICATION REQUIREMENTS.—The  
10          notification requirements of subparagraphs (B)  
11          and (C) of paragraph (2) shall not apply to a  
12          sewer overflow that is a wastewater backup into  
13          a single-family residence.

14          “(B) REPORTING REQUIREMENTS.—The  
15          reporting requirements of subparagraphs (D)  
16          and (E) of paragraph (2) shall not apply to a  
17          sewer overflow that is a release of wastewater  
18          that—

19                 “(i) occurs in the course of mainte-  
20                 nance of the treatment works;

21                 “(ii) is managed consistently with the  
22                 best management practices of the treat-  
23                 ment works; and

24                 “(iii) is intended to prevent sewer  
25                 overflows.

1           “(4) REPORT TO EPA.—Each State shall pro-  
 2           vide to the Administrator annually a summary of  
 3           sewer overflows that occur in the State.

4           “(5) RULEMAKING BY EPA.—Not later than 1  
 5           year after the date of enactment of this subsection,  
 6           the Administrator, after providing notice and an op-  
 7           portunity for public comment, shall promulgate reg-  
 8           ulations to implement this subsection, including reg-  
 9           ulations—

10                   “(A) to establish a set of criteria to guide  
 11                   the owner or operator of a publicly owned treat-  
 12                   ment works in—

13                           “(i) assessing whether a sewer over-  
 14                           flow may imminently and substantially en-  
 15                           danger human health; and

16                           “(ii) developing communication meas-  
 17                           ures that are sufficient to give notice  
 18                           under subparagraphs (B) and (C) of para-  
 19                           graph (2); and

20                   “(B) to define the terms ‘feasible’ and  
 21                   ‘timely’ as those terms apply to paragraph  
 22                   (2)(A), including site specific conditions.

23           “(6) APPROVAL OF STATE NOTIFICATION PRO-  
 24           GRAMS.—

25                   “(A) REQUESTS FOR APPROVAL.—

1           “(i) IN GENERAL.—After the date on  
2           which regulations are promulgated under  
3           paragraph (5), a State may submit to the  
4           Administrator evidence that the State has  
5           in place a legally enforceable notification  
6           program that is substantially equivalent to  
7           the requirements of subparagraphs (B)  
8           and (C) of paragraph (2).

9           “(ii) PROGRAM REVIEW AND AUTHOR-  
10          IZATION.—If the evidence submitted by a  
11          State under clause (i) shows the notifica-  
12          tion program of the State to be substan-  
13          tially equivalent to the requirements of  
14          subparagraphs (B) and (C) of paragraph  
15          (2), the Administrator shall authorize the  
16          State to carry out that program instead of  
17          those requirements.

18          “(iii) FACTORS FOR DETERMINING  
19          SUBSTANTIAL EQUIVALENCY.—In carrying  
20          out a review of a State notification pro-  
21          gram under clause (ii), the Administrator  
22          shall take into account—

23                   “(I) the scope of sewer overflows  
24                   for which notification is required;



1                   “(II) the length of time during  
2                   which notification must be made;

3                   “(III) the number of persons  
4                   that must be notified of sewer over-  
5                   flows;

6                   “(IV) the scope of enforcement  
7                   activities ensuring that notifications of  
8                   sewer overflows are made; and

9                   “(V) such other factors as the  
10                  Administrator considers to be appro-  
11                  priate.

12                  “(B) REVIEW PERIOD.—If a State submits  
13                  evidence with respect to a notification program  
14                  under subparagraph (A)(i) in the 30-day period  
15                  beginning on the date of promulgation of regu-  
16                  lations under paragraph (5), the requirements  
17                  of subparagraphs (B) and (C) of paragraph (2)  
18                  shall not apply to a publicly owned treatment  
19                  works located in the State until the date on  
20                  which the Administrator completes a review of  
21                  the notification program under subparagraph  
22                  (A)(ii).

23                  “(C) WITHDRAWAL OF AUTHORIZATION.—  
24                  If the Administrator, after conducting a public  
25                  hearing, determines that a State is not admin-

1           istering and enforcing a State notification pro-  
2           gram authorized under subparagraph (A)(ii) in  
3           accordance with the requirements of this para-  
4           graph, the Administrator shall so notify the  
5           State and, if appropriate corrective action is not  
6           taken within a reasonable time, not to exceed  
7           90 days, the Administrator shall withdraw au-  
8           thorization of the program and enforce the re-  
9           quirements of subparagraphs (B) and (C) of  
10          paragraph (2) with respect to the State.

11          “(7) SPECIAL RULES CONCERNING APPLICA-  
12          TION OF NOTIFICATION REQUIREMENTS.—Beginning  
13          on the day after the 30-day period that begins on  
14          the date of promulgation of regulations under para-  
15          graph (5), the requirements of subparagraphs (B)  
16          and (C) of paragraph (2) shall—

17                 “(A) apply to the owner or operator of a  
18                 publicly owned treatment works and be subject  
19                 to enforcement under section 309; and

20                 “(B) supersede any notification require-  
21                 ments contained in a permit issued under this  
22                 section for the treatment works to the extent  
23                 that the notification requirements are less strin-  
24                 gent than the notification requirements of sub-  
25                 paragraphs (B) and (C) of paragraph (2), until

1           such date as a permit is issued, renewed, or  
2           modified under this section for the treatment  
3           works in accordance with paragraph (2).”.

4 **SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

5           (a) PURPOSE OF STATE REVOLVING FUND.—Section  
6 601(a) of the Federal Water Pollution Control Act (33  
7 U.S.C. 1381(a)) is amended—

8           (1) by striking “and” the first place it appears;  
9           and

10           (2) by inserting after “section 320” the fol-  
11           lowing: “, and (4) for the implementation of require-  
12           ments to monitor for sewer overflows under section  
13           402”.

14           (b) WATER POLLUTION CONTROL REVOLVING LOAN  
15 FUNDS.—Section 603(c) of the Federal Water Pollution  
16 Control Act (33 U.S.C. 1383(c)) is amended—

17           (1) by striking “and” the first place it appears;  
18           and

19           (2) by inserting after “section 320 of this Act”  
20           the following: “, and (4) for the implementation of  
21           requirements to monitor for sewer overflows under  
22           section 402”.

23 **SEC. 5. EFFECT OF ACT.**

24           Nothing in this Act or an amendment made by this  
25 Act—

- 1           (1) limits the ability of any State to implement  
2           or enforce a more stringent monitoring or notifica-  
3           tion standard than the applicable standard under  
4           the Federal Water Pollution Control Act (33 U.S.C.  
5           1251 et seq.);
- 6           (2) authorizes any sewer overflow; or
- 7           (3) supplants or diminishes any obligation to  
8           comply with any requirement of the Federal Water  
9           Pollution Control Act (33 U.S.C. 1251 et seq.) or  
10          any other Federal or State law.

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