

111TH CONGRESS
1ST SESSION

S. 878

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

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2009

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

A BILL

To amend the Federal Water Pollution Control Act to modify provisions 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. FEDERAL WATER POLLUTION CONTROL ACT**
7 **AMENDMENTS.**

8 (a) **ADOPTION OF NEW OR REVISED CRITERIA AND**
9 **STANDARDS.**—Section 303(i)(2)(A) of the Federal Water

1 Pollution Control Act (33 U.S.C. 1313(i)(2)(A)) is amend-
2 ed by striking “paragraph (1)(A)” each place it appears
3 and inserting “paragraph (1)”.

4 (b) REVISED CRITERIA FOR COASTAL RECREATION
5 WATERS.—Section 304(a)(9) of the Federal Water Pollu-
6 tion Control Act (33 U.S.C. 1314(a)(9)) is amended—

7 (1) in subparagraph (A), by striking “methods,
8 as appropriate” and inserting “methods, including
9 the use of rapid testing methods”; and

10 (2) by adding 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 (c) SOURCE IDENTIFICATION.—

19 (1) MONITORING PROTOCOLS.—Section
20 406(a)(1)(A) of the Federal Water Pollution Control
21 Act (33 U.S.C. 1346(a)(1)(A)) is amended by strik-
22 ing “methods for monitoring” and inserting “meth-
23 ods for monitoring protocols that are most likely to
24 detect pathogenic contamination”.

1 (2) STATE REPORTS; SOURCE TRACKING.—Sec-
2 tion 406(b) of the Federal Water Pollution Control
3 Act (33 U.S.C. 1346(b)) is amended—

4 (A) in paragraph (3)(A)(ii), by striking
5 “public” and inserting “public and all environ-
6 mental agencies of the State with authority to
7 prevent or treat sources of pathogenic contami-
8 nation in coastal recreation waters”; and

9 (B) by adding at the end the following:

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 (d) USE OF RAPID TESTING METHODS.—

22 (1) CONTENTS OF STATE AND LOCAL GOVERN-
23 MENT PROGRAMS.—Section 406(e)(4)(A) of the Fed-
24 eral Water Pollution Control Act (33 U.S.C.
25 1346(e)(4)(A)) is amended by striking “methods”

1 and inserting “methods, including the use of a rapid
2 testing method after the last day of the 1-year pe-
3 riod following the date of validation of that rapid
4 testing method by the Administrator,”.

5 (2) VALIDATION AND USE OF RAPID TESTING
6 METHODS.—

7 (A) VALIDATION OF RAPID TESTING METH-
8 ODS.—Not later than October 15, 2012, the
9 Administrator of the Environmental Protection
10 Agency (referred to in this Act as the “Admin-
11 istrator”) shall complete an evaluation and vali-
12 dation of a rapid testing method for the water
13 quality criteria and standards for pathogens
14 and pathogen indicators described in section
15 303(i)(1)(A) of the Federal Water Pollution
16 Control Act (33 U.S.C. 1313(i)(1)(A)).

17 (B) GUIDANCE FOR USE OF RAPID TEST-
18 ING METHODS.—

19 (i) IN GENERAL.—Not later than 180
20 days after the date of completion of the
21 validation under subparagraph (A), and
22 after providing notice and an opportunity
23 for public comment, the Administrator
24 shall publish guidance for the use at coast-
25 al recreation waters adjacent to beaches or

1 similar points of access that are used by
2 the public of rapid testing methods that
3 will enhance the protection of public health
4 and safety through rapid public notifica-
5 tion of any exceedance of applicable water
6 quality standards for pathogens and patho-
7 gen indicators.

8 (ii) PRIORITIZATION.—In developing
9 guidance under clause (i), the Adminis-
10 trator shall require the use of rapid testing
11 methods at those beaches or similar points
12 of access that are the most used by the
13 public.

14 (3) DEFINITION OF RAPID TESTING METHOD.—
15 Section 502 of the Federal Water Pollution Control
16 Act (33 U.S.C. 1362) is amended by adding at the
17 end the following:

18 “(26) RAPID TESTING METHOD.—The term
19 ‘rapid testing method’ means a method of testing
20 the water quality of coastal recreation waters for
21 which results are available as soon as practicable
22 and not more than 2 hours after the commencement
23 of the rapid testing method.”.

24 (e) NOTIFICATION OF FEDERAL, STATE, AND LOCAL
25 AGENCIES; CONTENT OF STATE AND LOCAL PRO-

1 GRAMS.—Section 406(c) of the Federal Water Pollution
2 Control Act (33 U.S.C. 1346(c)) is amended—

3 (1) in paragraph (5)—

4 (A) in the matter preceding subparagraph
5 (A), by striking “prompt communication” and
6 inserting “communication, within 2 hours of the
7 receipt of the results of a water quality sam-
8 ple,”;

9 (B) by striking subparagraph (A) and in-
10 sserting the following:

11 “(A)(i) in the case of any State in which
12 the Administrator is administering the program
13 under section 402, the Administrator, in such
14 form as the Administrator determines to be ap-
15 propriate; and

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

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

1 “(6) measures for an annual report to the Ad-
2 ministrator, in such form as the Administrator de-
3 termines to be appropriate, on the occurrence, na-
4 ture, location, pollutants involved, and extent of any
5 exceedance of applicable water quality standards for
6 pathogens and pathogen indicators;”;

7 (4) in paragraph (7) (as redesignated by para-
8 graph (2))—

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

11 (B) by striking “and” at the end;

12 (5) in paragraph (8) (as redesignated by para-
13 graph (2)), by striking the period at the end and in-
14 serting a semicolon; and

15 (6) by adding at the end the following:

16 “(9) the availability of a geographical informa-
17 tion system database that the State or local govern-
18 ment program shall use to inform the public about
19 coastal recreation waters and that—

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

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

24 “(C) identifies applicable water quality
25 standards, monitoring protocols, sampling plans

1 and results, and the number and cause of coast-
2 al recreation water closures and advisory days;
3 and

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

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

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

13 “(12) analyses of monitoring protocols to deter-
14 mine which protocols are most likely to detect patho-
15 genic contamination.”.

16 (f) NATIONAL LIST OF BEACHES.—Section 406(g) of
17 the Federal Water Pollution Control Act (33 U.S.C.
18 1346(g)) is amended by striking paragraph (3) and insert-
19 ing the following:

20 “(3) UPDATES.—Not later than 1 year after
21 the date of enactment of the Clean Coastal Environ-
22 ment and Public Health Act of 2009, and biennially
23 thereafter, the Administrator shall update the list
24 described in paragraph (1).”.

1 (g) COMPLIANCE REVIEW.—Section 406(h) of the
2 Federal Water Pollution Control Act (33 U.S.C. 1346(h))
3 is amended—

4 (1) by redesignating paragraphs (1) and (2) as
5 subparagraphs (A) and (B), respectively, and indent-
6 ing the subparagraphs appropriately;

7 (2) by striking “In the” and inserting the fol-
8 lowing:

9 “(1) IN GENERAL.—In the”; and

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

11 “(2) COMPLIANCE REVIEW.—On or before July
12 31 of each calendar year beginning after the date of
13 enactment of the Clean Coastal Environment and
14 Public Health Act of 2009, the Administrator
15 shall—

16 “(A) prepare a written assessment of com-
17 pliance with—

18 “(i) all statutory and regulatory re-
19 quirements of this section for each State
20 and local government; and

21 “(ii) conditions of each grant made
22 under this section to a State or local gov-
23 ernment;

24 “(B) notify the State or local government
25 of each such assessment; and

1 “(C) make each of the assessments avail-
2 able to the public in a searchable database on
3 the Internet on or before December 31 of the
4 applicable calendar year.

5 “(3) CORRECTIVE ACTION.—If a State or local
6 government that the Administrator notifies under
7 paragraph (2) is not in compliance with any require-
8 ment or grant condition described in paragraph (2)
9 and fails to take such action as is necessary to com-
10 ply with the requirement or condition by the date
11 that is 1 year after the date of notification, any
12 grants made under subsection (b) to the State or
13 local government, after the last day of that 1-year
14 period and while the State or local government is
15 not in compliance with all requirements and grant
16 conditions described in paragraph (2), shall have a
17 Federal share of not to exceed 50 percent.

18 “(4) GAO REVIEW.—Not later than December
19 31 of the third calendar year beginning after the
20 date of enactment of the Clean Coastal Environment
21 and Public Health Act of 2009, the Comptroller
22 General shall—

23 “(A) conduct a review of the activities of
24 the Administrator under paragraphs (2) and

1 (3) during the first and second calendar years
2 beginning after that date of enactment; and

3 “(B) submit to Congress a report on the
4 results of the review.”.

5 (h) AUTHORIZATION OF APPROPRIATIONS.—Section
6 406(i) of the Federal Water Pollution Control Act (33
7 U.S.C. 1346(i)) is amended by striking “\$30,000,000 for
8 each of fiscal years 2001 through 2005” and inserting
9 “\$60,000,000 for each of fiscal years 2009 through
10 2013”.

11 **SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESS-**
12 **MENT AND COASTAL HEALTH ACT.**

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

16 **SEC. 4. STUDY OF GRANT DISTRIBUTION FORMULA.**

17 (a) STUDY.—Not later than 30 days after the date
18 of enactment of this Act, the Administrator shall com-
19 mence a study of the formula for the distribution of grants
20 under section 406 of the Federal Water Pollution Control
21 Act (33 U.S.C. 1346) for the purpose of identifying poten-
22 tial revisions of that formula.

23 (b) CONTENTS.—In conducting the study, the Ad-
24 ministrator shall consider—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Administrator
3 shall submit to Congress a report on the results of
4 the study conducted under subsection (a).

5 (2) INFORMATION ON POTENTIAL CONTAMI-
6 NANT IMPACTS.—The report shall include informa-
7 tion on potential contaminant impacts on—

8 (A) ground and surface water resources;

9 and

10 (B) public and ecosystem health in coastal
11 communities.

12 (3) MONITORING.—The report shall—

13 (A) address monitoring required to docu-
14 ment and assess changing conditions of coastal
15 water resources, recreational waters, and eco-
16 systems; and

17 (B) review the current ability to assess and
18 forecast impacts associated with long-term
19 change.

20 (4) FEDERAL ACTIONS.—The report shall high-
21 light necessary Federal actions to help advance the
22 availability of information and tools to assess and
23 mitigate the impacts and effects described in para-
24 graphs (2) and (3) in order to protect public and
25 ecosystem health.

