

112TH CONGRESS  
1ST SESSION

# S. 147

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

JANUARY 25 (legislative day, JANUARY 5), 2011

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) GREAT LAKES.—The term ‘Great  
14 Lakes’ has the meaning given the term in sec-  
15 tion 118(a)(3).

16 “(C) TREATMENT FACILITY.—The term  
17 ‘treatment facility’ includes all wastewater  
18 treatment units used by a publicly owned treat-  
19 ment works to meet secondary treatment stand-  
20 ards or higher, as required to attain water qual-  
21 ity standards, under any operating conditions.

22 “(D) TREATMENT WORKS.—The term  
23 ‘treatment works’ has the meaning given the  
24 term in section 212.

25 “(2) PROHIBITION.—A publicly owned treat-  
26 ment works is prohibited from intentionally diverting

1 waste streams to bypass any portion of a treatment  
2 facility at the treatment works if the diversion re-  
3 sults in a discharge into the Great Lakes unless—

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

7 “(ii) there is not a feasible alternative to  
8 the bypass, such as the use of auxiliary treat-  
9 ment facilities, retention of untreated wastes, or  
10 maintenance during normal periods of equip-  
11 ment downtime; and

12 “(iii) the treatment works provides notice  
13 of the bypass in accordance with this sub-  
14 section; or

15 “(B) the bypass does not cause effluent  
16 limitations to be exceeded, and the bypass is for  
17 essential maintenance to ensure efficient oper-  
18 ation of the treatment facility.

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

21 “(A) adequate back-up equipment should  
22 have been installed in the exercise of reasonable  
23 engineering judgment to prevent the bypass;  
24 and

1           “(B) the bypass occurred during normal  
2           periods of equipment downtime or preventive  
3           maintenance.

4           “(4) NOTICE REQUIREMENTS.—A publicly  
5           owned treatment works shall provide to the Adminis-  
6           trator (or to the State, in the case of a State that  
7           has a permit program approved under this sec-  
8           tion)—

9           “(A) prior notice of an anticipated bypass;  
10          and

11          “(B) notice of an unanticipated bypass by  
12          not later than 24 hours after the time at which  
13          the treatment works first becomes aware of the  
14          bypass.

15          “(5) FOLLOW-UP NOTICE REQUIREMENTS.—In  
16          the case of an unanticipated bypass for which a pub-  
17          licly owned treatment works provides notice under  
18          paragraph (4)(B), the treatment works shall provide  
19          to the Administrator (or to the State in the case of  
20          a State that has a permit program approved under  
21          this section), not later than 5 days following the  
22          date on which the treatment works first becomes  
23          aware of the bypass, a follow-up notice containing a  
24          description of—

25          “(A) the cause of the bypass;

1           “(B) the reason for the bypass;

2           “(C) the period of bypass, including the  
3 exact dates and times;

4           “(D) if the bypass has not been corrected,  
5 the anticipated time the bypass is expected to  
6 continue;

7           “(E) the volume of the discharge resulting  
8 from the bypass;

9           “(F) any public access areas that may be  
10 impacted by the bypass; and

11           “(G) steps taken or planned to reduce,  
12 eliminate, and prevent reoccurrence of the by-  
13 pass.

14           “(6) PUBLIC AVAILABILITY OF NOTICES.—A  
15 publicly owned treatment works providing a notice  
16 under this subsection, and the Administrator (or the  
17 State, in the case of a State that has a permit pro-  
18 gram approved under this section) receiving such a  
19 notice, shall each post the notice, by not later than  
20 48 hours after providing or receiving the notice (as  
21 the case may be), in a searchable database accessible  
22 on the Internet.

23           “(7) SEWAGE BLENDING.—Bypasses prohibited  
24 by this section include bypasses resulting in dis-  
25 charges from a publicly owned treatment works that

1 consist of effluent routed around treatment units  
2 and thereafter blended together with effluent from  
3 treatment units prior to discharge.

4 “(8) IMPLEMENTATION.—Not later than 180  
5 days after the date of enactment of this subsection,  
6 the Administrator shall establish procedures to en-  
7 sure that permits issued under this section (or under  
8 a State permit program approved under this section)  
9 to a publicly owned treatment works include require-  
10 ments to implement this subsection.

11 “(9) INCREASE IN MAXIMUM CIVIL PENALTY  
12 FOR VIOLATIONS OCCURRING AFTER JANUARY 1,  
13 2031.—Notwithstanding section 309, in the case of a  
14 violation of this subsection occurring on or after  
15 January 1, 2031, or any violation of a permit limita-  
16 tion or condition implementing this subsection occur-  
17 ring after such date, the maximum civil penalty that  
18 shall be assessed for the violation shall be \$100,000  
19 per day for each day the violation occurs.

20 “(10) APPLICABILITY.—This subsection shall  
21 apply to a bypass occurring after the last day of the  
22 1-year period beginning on the date of enactment of  
23 this subsection.”.

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

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

4 (1) by redesignating section 519 (33 U.S.C.  
5 1251 note) as section 520; and

6 (2) by inserting after section 518 (33 U.S.C.  
7 1377) the following:

8 **“SEC. 519. ESTABLISHMENT OF GREAT LAKES CLEANUP**  
9 **FUND.**

10 “(a) DEFINITIONS.—In this section:

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

13 “(2) GREAT LAKES; GREAT LAKES STATES.—  
14 The terms ‘Great Lakes’ and ‘Great Lakes States’  
15 have the meanings given the terms in section  
16 118(a)(3).

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

21 “(c) TRANSFERS TO FUND.—Effective January 1,  
22 2031, there are authorized to be appropriated to the Fund  
23 amounts equivalent to the penalties collected for violations  
24 of section 402(s).

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

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

2 “(1) make the amounts in the Fund available  
3 to the Great Lakes States for use in carrying out  
4 programs and activities for improving wastewater  
5 discharges into the Great Lakes, including habitat  
6 protection and wetland restoration; and

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

9 “(A) the amount attributable to a Great  
10 Lakes State for penalties collected for violations  
11 of section 402(s); bears to

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

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

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

22 (1) by inserting “(a) IN GENERAL.—” before  
23 “There is”; and

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



1       “(b) TREATMENT OF GREAT LAKES CLEANUP  
2 FUND.—For purposes of this title, amounts made avail-  
3 able from the Great Lakes Cleanup Fund under section  
4 519 shall be treated as funds authorized to be appro-  
5 priated to carry out this title and as funds made available  
6 under this title, except that the funds shall be made avail-  
7 able to the Great Lakes States in accordance with section  
8 519.”.

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