

112TH CONGRESS
1ST SESSION

S. 1582

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

SEPTEMBER 20, 2011

Mr. LAUTENBERG (for himself, Mr. KIRK, and Mrs. BOXER) 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 2011”.

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 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 in
17 developing the new or revised water quality cri-
18 teria.”.

19 (c) SOURCE IDENTIFICATION.—

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

1 detect pathogenic contamination and the source of
2 that contamination”.

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

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

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

12 “(5) CONTENTS OF MONITORING AND NOTIFI-
13 CATION PROGRAMS.—For the purposes of this sec-
14 tion, a program for monitoring, assessment, and no-
15 tification shall include, consistent with performance
16 criteria published by the Administrator under sub-
17 section (a), monitoring, public notification, storm
18 event testing, source tracking, and sanitary surveys,
19 and may include prevention efforts, not already
20 funded under this Act to address identified sources
21 of contamination by pathogens and pathogen indica-
22 tors in coastal recreation waters adjacent to beaches
23 or similar points of access that are used by the pub-
24 lic.”.

25 (d) USE OF RAPID TESTING METHODS.—

1 (1) CONTENTS OF STATE AND LOCAL GOVERN-
2 MENT PROGRAMS.—Section 406(e)(4)(A) of the Fed-
3 eral Water Pollution Control Act (33 U.S.C.
4 1346(e)(4)(A)) is amended by striking “methods”
5 and inserting “methods, including a rapid testing
6 method after the last day of the 1-year period fol-
7 lowing the date of validation of that rapid testing
8 method by the Administrator,”.

9 (2) VALIDATION AND USE OF RAPID TESTING
10 METHODS.—

11 (A) VALIDATION OF RAPID TESTING METH-
12 ODS.—Not later than October 15, 2012, the
13 Administrator of the Environmental Protection
14 Agency (referred to in this Act as the “Admin-
15 istrator”) shall complete an evaluation and vali-
16 dation of a rapid testing method for the water
17 quality criteria and standards for pathogens
18 and pathogen indicators described in section
19 304(a)(9)(A) of the Federal Water Pollution
20 Control Act (33 U.S.C. 1314(a)(9)(A)).

21 (B) GUIDANCE FOR USE OF RAPID TEST-
22 ING METHODS.—

23 (i) IN GENERAL.—Not later than 180
24 days after the date of completion of the
25 validation under subparagraph (A), and

1 after providing notice and an opportunity
2 for public comment, the Administrator
3 shall publish guidance for the use at coast-
4 al recreation waters adjacent to beaches or
5 similar points of access that are used by
6 the public of rapid testing methods that
7 will enhance the protection of public health
8 and safety through rapid public notifica-
9 tion of any exceedance of applicable water
10 quality standards for pathogens and patho-
11 gen indicators.

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

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

22 “(26) RAPID TESTING METHOD.—The term
23 ‘rapid testing method’ means a method of testing
24 the water quality of coastal recreation waters for
25 which results are available as soon as practicable

1 and not more than 4 hours after receipt of the appli-
2 cable sample by the testing facility.”.

3 (e) NOTIFICATION OF FEDERAL, STATE, AND LOCAL
4 AGENCIES; CONTENT OF STATE AND LOCAL PRO-
5 GRAMS.—Section 406(c) of the Federal Water Pollution
6 Control Act (33 U.S.C. 1346(c)) is amended—

7 (1) in paragraph (5)—

8 (A) in the matter preceding subparagraph
9 (A), by striking “prompt communication” and
10 inserting “communication, within 2 hours of the
11 receipt of the results of a water quality sam-
12 ple,”;

13 (B) by striking subparagraph (A) and in-
14 serting the following:

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

20 “(ii) in the case of any State other than a
21 State to which clause (i) applies, all agencies of
22 the State government with authority to require
23 the prevention or treatment of the sources of
24 coastal recreation water pollution; and”;

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

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

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

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

13 (A) by striking “the posting” and inserting
14 “the immediate posting”; and

15 (B) by striking “and” at the end;

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

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

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

24 “(A) is publicly accessible and searchable
25 on the Internet;

1 “(B) is organized by beach or similar point
2 of access;

3 “(C) identifies applicable water quality
4 standards, monitoring protocols, sampling plans
5 and results, and the number and cause of coast-
6 al recreation water closures and advisory days;
7 and

8 “(D) is updated within 24 hours of the
9 availability of revised information;

10 “(10) measures to ensure that closures or
11 advisories are made or issued within 2 hours after
12 the receipt of the results of a water quality sample
13 exceeding applicable water quality standards for
14 pathogens and pathogen indicators;

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

17 “(12) analyses of monitoring protocols to deter-
18 mine which protocols are most likely to detect patho-
19 genic contamination.”.

20 (f) NATIONAL LIST OF BEACHES.—Section 406(g) of
21 the Federal Water Pollution Control Act (33 U.S.C.
22 1346(g)) is amended by striking paragraph (3) and insert-
23 ing the following:

24 “(3) UPDATES.—Not later than 1 year after
25 the date of enactment of the Clean Coastal Environ-

1 ment and Public Health Act of 2011, and biennially
2 thereafter, the Administrator shall update the list
3 described in paragraph (1).”.

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

7 (1) by redesignating paragraphs (1) and (2) as
8 subparagraphs (A) and (B), respectively, and indent-
9 ing the subparagraphs appropriately;

10 (2) by striking “In the” and inserting the fol-
11 lowing:

12 “(1) IN GENERAL.—In the”; and

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

14 “(2) COMPLIANCE REVIEW.—On or before July
15 31 of each calendar year beginning 18 months after
16 the date of enactment of the Clean Coastal Environ-
17 ment and Public Health Act of 2011, the Adminis-
18 trator shall—

19 “(A) prepare a written assessment of com-
20 pliance with—

21 “(i) all statutory and regulatory re-
22 quirements of this section for each State
23 and local government; and

1 “(ii) conditions of each grant made
2 under this section to a State or local gov-
3 ernment;

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

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

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

23 “(4) GAO REVIEW.—Not later than December
24 31 of the third calendar year beginning after the
25 date of enactment of the Clean Coastal Environment

1 and Public Health Act of 2011, the Comptroller
2 General shall—

3 “(A) conduct a review of the activities of
4 the Administrator under paragraphs (2) and
5 (3) during the first and second calendar years
6 beginning after that date of enactment; and

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

9 (h) **AUTHORIZATION OF APPROPRIATIONS.**—Section
10 406(i) of the Federal Water Pollution Control Act (33
11 U.S.C. 1346(i)) is amended by striking “fiscal years 2001
12 through 2005” and inserting “fiscal years 2011 through
13 2015”.

14 **SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESS-**
15 **MENT AND COASTAL HEALTH ACT.**

16 Section 8 of the Beaches Environmental Assessment
17 and Coastal Health Act of 2000 (114 Stat. 877) is amend-
18 ed by striking “2005” and inserting “2015”.

19 **SEC. 4. MONITORING PROTOCOL FOR MERCURY.**

20 (a) **REVIEW AND UPDATE OF EXISTING MONITORING**
21 **AND TESTING PROTOCOLS AND RECOMMENDATIONS.**—As
22 soon as practicable after the date of enactment of this Act,
23 the Administrator of the Environmental Protection Agen-
24 cy (referred to in this Act as the “Administrator”) shall—

1 (1) review and update existing monitoring pro-
2 ocols as necessary for mercury affecting the coastal
3 recreation waters of the Great Lakes; and

4 (2) develop updated recommendations on test-
5 ing for the presence of mercury affecting the coastal
6 recreation waters of the Great Lakes, including the
7 presence of mercury in Great Lakes sediment and
8 fish tissue.

9 (b) PUBLICATION OF WATER QUALITY CRITERIA.—
10 Nothing in this section shall delay the schedule for publi-
11 cation of new or revised water quality criteria as required
12 by section 304(a)(9) of the Federal Water Pollution Con-
13 trol Act (33 U.S.C. 1314(a)(9)).

14 (c) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated to carry out this section
16 such sums as are necessary.

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

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

24 (b) CONTENTS.—In conducting the study under this
25 section, the Administrator shall take into consideration—

1 (1) the base cost to States of developing and
2 maintaining water quality monitoring and notifica-
3 tion programs;

4 (2) the varied beach monitoring and notification
5 needs of the States, including beach mileage, beach
6 usage, and length of beach season; and

7 (3) other factors that the Administrator deter-
8 mines to be appropriate.

9 (c) CONSULTATION.—In conducting the study under
10 this section, the Administrator shall consult with appro-
11 priate Federal, State, and local agencies.

12 (d) REPORT.—Not later than 1 year after the date
13 of enactment of this Act, the Administrator shall submit
14 to the Committee on Transportation and Infrastructure
15 of the House of Representatives and the Committee on
16 Environment and Public Works of the Senate a report de-
17 scribing the results of the study under this section, includ-
18 ing any recommendation for revision of the distribution
19 formula referred to in subsection (a).

20 **SEC. 6. IMPACT OF CLIMATE CHANGE ON POLLUTION OF**
21 **COASTAL RECREATION WATERS.**

22 (a) STUDY.—The Administrator shall conduct a
23 study on the long-term impact of climate change on pollu-
24 tion of coastal recreation waters.

25 (b) REPORT.—

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 cli-
19 mate 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.

1 (5) CONSULTATION.—In developing the report,
2 the Administrator shall work in consultation with
3 agencies active in the development of the National
4 Water Quality Monitoring Network and the imple-
5 mentation of the Ocean Research Priorities Plan and
6 Implementation Strategy.

7 **SEC. 7. IMPACT OF NUTRIENTS ON POLLUTION OF COAST-**
8 **AL RECREATION WATERS.**

9 (a) STUDY.—The Administrator shall conduct a
10 study of available scientific information relating to the im-
11 pacts of nutrient excesses and algal blooms on coastal
12 recreation waters.

13 (b) REPORT.—

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

18 (2) INCLUSIONS.—The report under paragraph

19 (1) shall include—

20 (A) information regarding the impacts of
21 nutrient excesses and algal blooms on coastal
22 recreation waters and coastal communities; and

23 (B) recommendations of the Administrator
24 for actions to be carried out by the Adminis-
25 trator to address those impacts, including, if

1 applicable, through the establishment of nu-
2 meric water quality criteria.

3 (3) CONSULTATION.—In developing the report
4 under paragraph (1), the Administrator shall work
5 in consultation with the heads of other appropriate
6 Federal agencies (including the National Oceanic
7 and Atmospheric Administration), States, and local
8 governmental entities.

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