

112th CONGRESS

1st Session

**H. R. \_\_\_\_**

To promote environmental sustainability and ambient water quality by developing plans to address the most significant community wastewater system issues in priority order, and to support economic sustainability of communities.

**IN THE HOUSE OF REPRESENTATIVES**

**July 11, 2011**

Mr./Ms. \_\_\_\_\_ (for himself/herself, \_\_\_\_\_) introduced the following bill; which was referred to the Committees on \_\_\_\_\_.

**A BILL**

To promote environmental sustainability and ambient water quality by developing plans to address the most significant community wastewater system issues in priority order, and to support economic sustainability of communities.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SEC. 1. SHORT TITLE**

(a) SHORT TITLE ---- This Act may be cited as the “The Water Quality Improvement and Investment Prioritization Act”

(b) SEC. 2 FINDINGS.

The Congress finds that ----

- (a) Significant progress has been made in reducing the effects of community wastewater system discharges to U.S. waters pursuant to the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1351 *et seq.* (the Clean Water Act);
- (b) Community wastewater systems have provided leadership in environmental sustainability efforts under the Clean Water Act by investing over a trillion dollars constructing and rehabilitating wastewater and stormwater collection and treatment systems and implementing pollution controls and pollution prevention techniques to improve water quality;
- (c) Over the past four decades, as the Clean Water Act has been implemented and new compliance priorities have been established by the U.S. Environmental Protection Agency, new and innovative sustainability approaches such as green infrastructure, adaptive management and energy recovery have been developed, based on technical and scientific advances, to address challenges such as climate change, increased emphasis on wet weather runoff control, air deposition’s significant effect on ambient water quality and other issues not contemplated when the Clean Water Act was enacted in 1972;

(d) Community wastewater systems will be required to fund hundreds of billions of dollars of additional investment in wastewater and stormwater treatment in the future to comply with the Clean Water Act, as detailed in, among other things, - - -

- (i) EPA’s 2008 Clean Watersheds Needs Survey, which estimates that the nation’s community wastewater systems must invest over \$300 billion over the next 20 years to meet the expanding requirements of the Clean Water Act, in addition to a \$500 billion funding gap that EPA has identified is needed for investment in wastewater infrastructure systems over the next twenty years;
- (ii) the U.S. Census Bureau’s statement that municipalities are spending over \$90 billion annually on water and wastewater infrastructure — an amount that is second only to education as a municipal budget item, and one that is greater than roads, hospitals, police and other essential services;
- (iii) the American Society of Civil Engineers’ 2009 Infrastructure Report Card, which gave the nation’s wastewater infrastructure a grade of D-.

(e) Many communities are facing serious budgetary shortfalls due to economic factors such as high unemployment, loss of jobs and population, increased energy costs, competing social, public health, educational and environmental demands, and the limited sources from which communities can raise funds, resulting in the need to set priorities for compliance and take into account new

affordability and financial capability considerations in setting compliance schedules under the Clean Water Act;

- (f) In order to comply with additional regulatory requirements prescribed by the U.S. Environmental Protection Agency pursuant to the Clean Water Act, to encourage the most cost-effective and innovative treatment and pollution prevention alternatives, to accommodate new scientific information or changed economic circumstances, to most expeditiously advance ambient water quality improvement, and to prevent undue economic hardship on ratepayers, the U.S. Environmental Protection Agency, in collaboration with States, shall allow for the establishment of priority plans for community wastewater systems to meet regulatory compliance schedules.

### **SEC. 3. DEVELOPING EPA GUIDELINES FOR STATE WATER QUALITY ATTAINMENT PLANS**

In order to establish priorities for community compliance with the Federal Water Pollution Control Act, the Administrator shall, in consultation with states and communities and after opportunity for public notice and comment, not later than one year after enactment of this Act and every ten years thereafter, publish guidance for the development of state water quality attainment plans for community wastewater compliance.

- (a) The Administrator's guidance shall include criteria for assessment of the following considerations:

- (1) the relative contribution of pollution from community wastewater systems to waters of the United States, in comparison to other sources of water pollution and naturally occurring alteration of ambient water quality;
- (2) the costs of new or additional regulatory requirements imposed on a community by EPA or a State pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, as compared to the environmental and public health benefits to be achieved by these regulatory requirements;
- (3) the ecological and public health benefits and long-term sustainability of green infrastructure, adaptive management or other innovative treatment technologies as alternative treatment for compliance, if applicable;
- (4) the financial capability of communities to achieve compliance requirements;
- (5) the climate-related, economic-related and population size variations that may impact compliance priorities; and
- (6) the compliance with interstate agreements intended to improve ambient water quality in waters of the United States.

#### **SEC. 4. PROCEDURES FOR THE DEVELOPMENT OF STATE**

#### **WATER QUALITY ATTAINMENT PLANS AND EPA APPROVAL**

- (a) Not later than one year after the Administrator establishes guidelines pursuant to Section 3 of this Act and every ten years thereafter, the water pollution control

- agency for each State, or EPA in a non-delegated State, shall, after opportunity for public notice and comment, and in consultation with community wastewater systems and other stakeholders identified by the State or EPA, publish a statewide or regional water quality attainment plan (as defined by Sec. 7(c)) for compliance with the Federal Water Pollution Control Act, outlining the compliance priorities for community wastewater systems.
- (b) The Administrator shall promptly prepare and publish a proposed water quality attainment plan for any State that fails to develop a plan in accordance with the provisions of this Act.
- (c) The Administrator must review and approve or disapprove the state water quality attainment plans within 90 days of their receipt from the state. Failure by the Administrator to respond within 90 days will qualify as an approval of the state plan. Any reason for disapproval of the state plan must be clearly communicated in writing to the state and the state must be given 60 days to address the Administrator's concerns. Upon the Administrator's receipt of the amended plan the Administrator must approve the state plan within 60 days.

## **SEC. 5. PROCEDURES FOR THE DEVELOPMENT OF COMMUNITY WASTEWATER SYSTEMS PRIORITY PLANS AND STATE APPROVAL**

- (a) Application and Approval Process – Within 90 days of approval of a State water quality attainment plan, the State or Administrator must establish an application and approval process whereby a community wastewater system may submit an application for approval of a community wastewater priority plan as defined in Sec. 7(d);

- (1) The application and approval process for community wastewater systems priority plans must allow for public notice and comment in the development of the application, and minimize the paperwork requirements for community wastewater systems to prepare and submit the applications;
- (2) The State or the Administrator must approve an application for a priority plan by a community wastewater system within 90 days after receipt of an application if the proposed community wastewater priority plan will meet the regulatory requirements of the Clean Water Act consistent with the priorities for compliance outlined in the State water quality attainment plan;
- (b) A community wastewater system seeking approval of a priority plan must demonstrate one or more changed circumstances warranting a change in compliance schedules, including:
  - (1) new scientific data, modeling or other predictive calculations;
  - (2) proposed innovative treatment approaches, including but not limited to adaptive management, watershed management, water quality trading, constructed wetlands or green infrastructure approaches;
  - (3) new or additional regulatory, permitting or other enforceable requirements, including judicial or administrative consent orders;
  - (4) efficacy of treatment and management techniques previously implemented; watershed protection permitting system implementation; water conservation or changes in demand and usage;
  - (5) changes in the size of the system's population served;
  - (6) changes in the financial capability of the community served by the system.

(c) A community wastewater application may be submitted by a community wastewater system to the State, or the Administrator, as appropriate, at any time.

(d) Community wastewater systems shall comply with the provisions of the Act in a manner and time-frame consistent with their application upon approval by the State and the Administrator. If requested by a community wastewater system, the State or the Administrator, as appropriate, shall seek modification of a judicial or administrative order that is inconsistent with an approved priority plan.

(e) Financial capability of the community and community wastewater system shall be determined considering the total federal regulatory burden, existing and projected public health needs, and current and projected economic factors such as unemployment rates, tax burden, debt load, and the economic costs and benefits of additional or more stringent discharge permitting requirements for the community wastewater system.

(f) Once a community priority plan application is approved, the State must incorporate these changes within 60 days into the wastewater treatment system's permit issued pursuant to 33 U.S.C. 1342.

## **SEC. 6. PERMIT TERM LIMITS**

**The Federal Water Pollution Control Act is amended by striking Section 402 (b) (1)**

**(B), and by inserting:**

**“(b) (1) (B) are for fixed terms not exceeding ten years; and”.**

## **SEC. 7. DEFINITIONS**



- (a) Except as otherwise specifically provided, when used in this Act, all terms shall have the meanings as provided in the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*
- (b) “Community wastewater system,” means a municipal separate storm sewer system, a combined sewer overflow system, a publicly-owned treatment works, a municipal wastewater collection system, or a stormwater or wastewater treatment or collection system owned or operated by a public-private partnership for the benefit of a community.
- (c) “State Water Quality Attainment Plan” means a plan developed by a State or the Administrator to identify the State’s highest priority compliance requirements for community wastewater systems and establish appropriate compliance schedules to achieve improvement in ambient water quality. The plan must be consistent with EPA guidelines as set forth in Section 3 of this Act, ensure compliance with State water quality standards, and be consistent with interstate water quality agreements.
- (d) “Community wastewater priority plan” means a priority plan developed by a community wastewater system in compliance with this Act that establishes schedules for complying with new and existing requirements under the Act consistent with State water quality attainment plans, and based on the financial capability of the community wastewater system. A community wastewater priority plan shall ensure compliance with anti-backsliding requirements of the 33 USC Sec. 1342(o).
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