113th CONGRESS

1st Session

S.____ / H.R. ____

To promote sustainable water resources management by providing communities with new tools to enhance affordable and cost-effective management of wet weather flows while promoting public health and protecting the environment.

Senate / House of Representatives

DATE

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

A BILL

To support municipalities in sustainable wet weather management by enabling publicly owned treatment works to develop wet weather management plans to enhance affordable and cost-effective management of wet weather-related wastewater flows while promoting public health and protecting the environment.

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 Wet Weather Community Sustainability Act"*

SEC. 2. FINDINGS -

The Congress finds that ----

(a) The Clean Water Act has proven effective for managing municipal wastewater flows under most weather conditions, however, during heavy precipitation events wastewater flows to a municipal sanitary or combined sewer system can overload the system, overwhelm treatment plant processes, and lead to sewer overflows;

(b) There are approximately 15,800 municipal sanitary sewer systems, 616 municipal combined sewer systems, and 5,000 satellite collection systems that convey wastewater through municipal sewer systems for treatment at publicly owned treatment works (POTW);

(c) In December 1999, Congress incorporated EPA's National Combined Sewer Overflow Policy into Section 402(q) of the CWA and, thereby, codified a framework to manage wet weather events that overwhelm combined sewer systems; no similar approach has been established for managing wet weather-related challenges at municipal sanitary sewer systems;

(d) Municipal sanitary sewer systems can experience flows exceeding their capacity when storm-water enters the system via infiltration and inflow (I/I) which occur when groundwater enters collection systems through broken pipes or defective pipe joints (infiltration) or through inappropriate connections (inflow);

(e) Some I/I is anticipated with all sewer systems. As those sewers age, I/I increases due to a number of factors. Not surprisingly, despite massive infrastructure investments by communities to reduce wet weather-related I/I, complete elimination of I/I is impossible to achieve. For example, Johnson County, Kansas, has one of the most aggressive and well managed sewer maintenance programs in the country. It spent approximately $60 million during the 1990s to correct wet weather-related I/I problems and were able to reduce I/I by 42% to 71%. This is an impressive result but also shows the impracticability of reducing I/I to these levels or certainly, beyond. EPA considers Johnson County's I/I reduction program a model program and similar programs throughout the clean water community are continuously working to address the issue of I/I;

(f) EPA estimates that over $8 billion is needed to correct I/I throughout the country with no expectation that overflows will be eliminated. This expected investment is in addition to the over $290 billion EPA estimates communities must invest to address general wastewater and storm-water management needs over the next 20 years and $335 billion communities must invest to address drinking water needs;

(g) The U.S. Census Bureau estimates that municipalities are already 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;

(h) Affordable treatment and management techniques are available to help municipalities to affordably and cost-effectively better manage wet weather-related flows while ensuring the protection of the environment and public health. For example, peak wet weather

treatment facilities often employing screening or some form of chemical and/or physical separation and disinfection, allow municipalities to better manage excessive amounts of wet weather influent, resulting in discharge effluent that meets water quality standards and protects public health. Other techniques such as diverting excess wet weather flow to prevent washout of the biological treatment processes and managing those flows with other methods have also proven protective of the environment and public health. A recent federal appellate decision (Iowa League of Cities v. EPA, U.S. Ct. of Appeals, 8th Cir. #11-3412) confirmed EPA's statutory limitation to place restrictions on use of these types of practices;

(i) Many communities have used these techniques for decades with EPA approval and federal and state grant/loan funding. However, recent changes in EPA interpretations are limiting communities' abilities to continue using these existing, proven and cost-effective technologies. This is imposing additional wet weather control requirements at great expense to local ratepayers yet with minimal or no commensurate improvement in water quality. If communities are no longer able to use some of these techniques as a way to manage wet weather flows, they could face between $90 billion to $190 billion in additional, avoidable costs that will achieve little or no measurable water quality improvement (because much of this cost is focused on a few extreme storm events each year);

(j) The added challenge of climate change and weather unpredictability will further result in communities facing both intensive precipitation events that will overwhelm sewer systems, including treatment plant processes, and increasingly result in unwanted system

overflows and more intensive droughts which render the more costly treatment techniques a stranding of scarce resources for marginal environmental benefits;

(k) The Clean Water Act can provide more cost effective tools to incentivize better planning for heavy precipitation events, enable alternative treatment and management techniques to be utilized that protect the environment and public health, and provide for better overall cost-effective management of wet weather flows.

SEC. 3. TECHNOLOGY-BASED CONTROLS FOR PEAK WET WEATHER MANAGEMENT.

Section 301 (b) of the Federal Water Pollution Control Act (33 U.S.C. 1311) is amended as follows:

Strike ";" in 301(b)(1)(B) and replace with "." add the following sentence: "*Effluent limitations shall apply at the final point of discharge from the treatment facility into navigable waters and not to flows within the treatment facility*;"

Insert new subsection "(q): *Modification of Effluent Limitations during Peak Wet Weather for Collection Systems: The Administrator, with concurrence of the State, may issue permits pursuant to section 1342 [402] that modify the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a collection system servicing a publicly-owned treatment works during periods of peak wet weather, if the applicant demonstrates to the satisfaction of the Administrator that the applicant has a Peak Wet Weather Management Plan approved by the Administrator or State that 1) defines the peak wet weather event during which the Plan will apply, and 2) describes the*

management practices to be used by the applicant during peak wet weather events pursuant to guidelines established by the Administrator under section [304(d)(2)];"

SEC. 4. WET WEATHER WATER QUALITY-BASED STANDARDS.

Section 303 (c)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1313) is amended by inserting a new subsection (C) to read as follows -

"*States may adopt peak wet weather-related water quality standards for receiving waters during periods of peak wet weather events (as determined pursuant to [newly inserted] 304(d)(2)). The Administrator, after consultation with States and within twelve months of enactment of this section, and from time to time thereafter, shall develop and publish guidance to States on developing and implementing peak wet weather-related water quality standards to accommodate peak wet weather discharges*."

SEC. 5. PEAK WET WEATHER WASTE WATER MANAGEMENT TECHNIQUES:

Sec. 304(d) of the Federal Water Pollution Control Act (33 U.S.C. 1314) is amended as follows –

Renumber subsection (2) thru (4) to (3) thru (5) and insert a new subsection (2) to read as follows -

"*Peak Wet Weather Flow Practices and Techniques: The Administrator, after consultation with appropriate Federal and State agencies and other interested parties, shall publish within 12 months of enactment of this section and from time to time thereafter, information and guidelines for peak wet weather waste water management practices available for use during periods of peak wet weather events by a collection system servicing a publicly-owned treatment works to prevent damage to the treatment facility, maximize the delivery of flow to the treatment facility, and provide for appropriate cost-effective controls during peak wet weather events. The guidelines shall include options for the types of technologies and management approaches*

available to manage peak wet weather-related wastewater flows, including but not limited to technologies and management approaches relating to facility and collection system storage methods (including in-system treatment methods throughout the collection system), facility and collection systems operations and maintenance systems, monitoring and reporting systems, and alternative treatment methods and technologies that can achieve applicable water quality standards as determined by the Administrator or State. The guidance shall also include methods for defining periods of peak wet weather during which peak wet weather management are warranted, the duration of time after a peak wet weather event occurs during which these management options can be used, and information, whenever practicable on the acceptable range of pollutant reduction attainable for each management approach or technology."

SEC. 6. DEFINITION OF BYPASS. Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended by adding at the end the following –

"(26) BYPASS – The term "bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The term "bypass" shall not apply to any diversion or flow of waste streams within a municipal wastewater treatment facility that is (1) unavoidable to prevent loss of life, personal injury, or severe property damage; (2) necessary for essential maintenance and does cause an exceedance of effluent limitations; or (3) consistent with the treatment facility design, including diversions or flows for purposes of wet weather management, that does not cause an exceedance of effluent limitations."