

Calendar No. 748

106TH CONGRESS
2D SESSION**H. R. 999**

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1999

Received; read twice and referred to the Committee on Environment and
Public Works

AUGUST 25, 2000

Reported under authority of the order of the Senate of July 26, 2000, by Mr.
SMITH of New Hampshire, without amendment

AN ACT

To amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, 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 “Beaches Environ-
5 mental Awareness, Cleanup, and Health Act of 1999”.

1 **SEC. 2. ADOPTION OF COASTAL RECREATION WATER QUAL-**
2 **ITY CRITERIA AND STANDARDS BY STATES.**

3 Section 303 of the Federal Water Pollution Control
4 Act (33 U.S.C. 1313) is amended by adding at the end
5 the following:

6 “(i) COASTAL RECREATION WATER QUALITY CRI-
7 TERIA AND STANDARDS.—

8 “(1) ADOPTION BY STATES.—

9 “(A) INITIAL CRITERIA AND STAND-
10 ARDS.—Not later than 3½ years after the date
11 of the enactment of this subsection, each State
12 having coastal recreation waters shall adopt and
13 submit to the Administrator water quality cri-
14 teria and standards for such waters for those
15 pathogens and pathogen indicators for which
16 the Administrator has published criteria under
17 section 304(a).

18 “(B) NEW OR REVISED STANDARDS.—Not
19 later than 3 years after the date of publication
20 by the Administrator of new or revised water
21 quality criteria under section 304(a)(9), each
22 State having coastal recreation waters shall
23 adopt and submit to the Administrator new or
24 revised water quality standards for such waters
25 for all pathogens and pathogen indicators for

1 which the Administrator publishes new or re-
2 vised water quality criteria.

3 “(2) FAILURE OF STATES TO ADOPT.—If a
4 State has not adopted water quality criteria referred
5 to in paragraph (1)(A) that are as protective of
6 human health as the criteria for pathogens and
7 pathogen indicators for coastal recreation waters
8 that the Administrator has published under section
9 304(a)(9), the Administrator shall promptly prepare
10 and publish proposed regulations for the State set-
11 ting forth revised or new water quality standards for
12 coastal recreation waters for the pathogens and
13 pathogen indicators subject to paragraph (1)(A). If
14 the Administrator prepares and publishes such regu-
15 lations under subsection (c)(4)(B) before the date
16 specified in paragraph (1)(A), the Administrator
17 shall promulgate any revised or new standard under
18 this paragraph not later than the date specified in
19 paragraph (1)(A).

20 “(3) SAVINGS CLAUSE.—Except as expressly
21 provided by this subsection, the requirements and
22 procedures of subsection (c) apply to this sub-
23 section.”.

1 **SEC. 3. REVISIONS TO WATER QUALITY CRITERIA.**

2 (a) STUDIES.—Section 104 of the Federal Water Pol-
3 lution Control Act (33 U.S.C. 1254) is amended by adding
4 at the end the following:

5 “(v) STUDIES CONCERNING PATHOGEN INDICATORS
6 IN COASTAL RECREATION WATERS.—Not later than 3
7 years after the date of the enactment of this subsection,
8 and after consultation and collaboration with appropriate
9 Federal, State, and local officials (including local health
10 officials) and other interested persons, the Administrator
11 shall conduct, in cooperation with the heads of other Fed-
12 eral agencies, studies to provide additional information for
13 use in developing—

14 “(1) a more complete determination of potential
15 human health risks resulting from exposure to
16 pathogens in coastal recreation waters, including ef-
17 fects to the upper respiratory system;

18 “(2) appropriate and effective indicators for im-
19 proving detection in a timely manner in coastal
20 recreation waters of the presence of pathogens that
21 are harmful to human health;

22 “(3) appropriate, accurate, expeditious, and
23 cost-effective methods (including predictive models)
24 for detecting in a timely manner in coastal recre-
25 ation waters the presence of pathogens that are
26 harmful to human health; and

1 “(4) guidance for State application of the cri-
2 teria for pathogens and pathogen indicators to be
3 issued under section 304(a)(9) to account for the di-
4 versity of geographic and aquatic conditions.”.

5 (b) REVISED CRITERIA.—Section 304(a) of such Act
6 (33 U.S.C. 1314(a)) is amended by adding at the end the
7 following:

8 “(9) REVISED CRITERIA FOR COASTAL RECRE-
9 ATION WATERS.—

10 “(A) IN GENERAL.—Not later than 4 years
11 after the date of the enactment of this para-
12 graph, and after consultation and collaboration
13 with appropriate Federal, State, and local offi-
14 cials (including local health officials), the Ad-
15 ministrator shall issue new or revised water
16 quality criteria for pathogens and pathogen in-
17 dicators (including a revised list of testing
18 methods, as appropriate) based on the results
19 of the studies conducted under section 104(v)
20 for the purpose of protecting human health in
21 coastal recreation waters.

22 “(B) REVIEWS.—At least once every 5
23 years after the date of issuance of water quality
24 criteria under this paragraph, the Adminis-

1 trator shall review and, as necessary, revise the
2 water quality criteria.”.

3 **SEC. 4. COASTAL RECREATION WATER QUALITY MONI-**
4 **TORING AND NOTIFICATION.**

5 Title IV of the Federal Water Pollution Control Act
6 (33 U.S.C. 1341–1345) is amended by adding at the end
7 the following:

8 **“SEC. 406. COASTAL RECREATION WATER QUALITY MONI-**
9 **TORING AND NOTIFICATION.**

10 “(a) MONITORING AND NOTIFICATION.—Not later
11 than 18 months after the date of the enactment of this
12 section, after consultation and collaboration with appro-
13 priate Federal, State, tribal, and local officials (including
14 local health officials), and after providing public notice
15 and an opportunity for comment, the Administrator shall
16 publish performance criteria for—

17 “(1) monitoring (including specifying available
18 methods for monitoring) coastal recreation waters
19 adjacent to beaches (or other points of access) that
20 are open to the public for attainment of applicable
21 water quality standards for pathogens and pathogen
22 indicators and for protection of public safety from
23 floatable materials; and

24 “(2) promptly notifying the public, local govern-
25 ments, and the Administrator of any exceedance of

1 applicable water quality standards for coastal recre-
2 ation waters described in paragraph (1) (or the im-
3 mediate likelihood of such an exceedance).

4 The performance criteria shall provide for the activities
5 described in paragraphs (1) and (2) to be carried out as
6 necessary for the protection of public health and safety.

7 “(b) PROGRAM DEVELOPMENT AND IMPLEMENTA-
8 TION GRANTS.—

9 “(1) IN GENERAL.—The Administrator is au-
10 thorized to make grants to States, Indian tribes, and
11 local governments for the purpose of developing and
12 implementing programs for monitoring and notifica-
13 tion, as provided in paragraphs (2) and (3).

14 “(2) STATE AND TRIBAL PROGRAMS.—

15 “(A) IN GENERAL.—The Administrator is
16 authorized to make grants to a State or Indian
17 tribe for developing and implementing a pro-
18 gram for monitoring and notification to protect
19 public health and safety that meets the per-
20 formance criteria established under subsection
21 (a) for coastal recreation waters adjacent to
22 beaches (or other points of access) that are
23 open to the public and are subject to the juris-
24 diction of the State or Indian tribe.

1 “(B) REQUIREMENTS.—The Administrator
2 is authorized to make grants for implementa-
3 tion of a program of a State or Indian tribe
4 under subparagraph (A) only if the Adminis-
5 trator determines that—

6 “(i) the program has been developed
7 through a process that provides for public
8 notice and an opportunity for comment;

9 “(ii) the program meets the perform-
10 ance criteria under subsection (a), based
11 on a review of the program, including in-
12 formation provided by the State or Indian
13 tribe under clause (iii); and

14 “(iii) the program—

15 “(I) identifies coastal recreation
16 waters within the jurisdiction of the
17 State or Indian tribe;

18 “(II) identifies those coastal
19 recreation waters adjacent to beaches
20 (or other points of access) that are
21 open to the public and subject to the
22 jurisdiction of the State or Indian
23 tribe and that are covered by the pro-
24 gram;

1 “(III) identifies those coastal
2 recreation waters covered by the pro-
3 gram that would be given a priority
4 for monitoring and notification if fis-
5 cal constraints prevent compliance at
6 all coastal recreation waters covered
7 by the program with the performance
8 criteria established under subsection
9 (a);

10 “(IV) identifies the process for
11 making any delegation of responsi-
12 bility for implementing the program
13 to local governments, the local govern-
14 ments, if any, to which the State has
15 delegated or intends to delegate such
16 responsibility, and the coastal recre-
17 ation waters covered by the program
18 that are or would be the subject of
19 such delegation;

20 “(V) specifies the frequency of
21 monitoring based on the periods of
22 recreational use of such waters and
23 the nature and extent of use during
24 such periods;

1 “(VI) specifies the frequency and
2 location of monitoring based on the
3 proximity of such waters to known
4 point and nonpoint sources of pollu-
5 tion and in relation to storm events;

6 “(VII) specifies which methods
7 will be used for detecting levels of
8 pathogens and pathogen indicators
9 that are harmful to human health and
10 for identifying short-term increases in
11 pathogens and pathogen indicators
12 that are harmful to human health in
13 coastal recreation waters, including in
14 relation to storm events;

15 “(VIII) specifies measures for
16 prompt communication of the occur-
17 rence, nature, location, pollutants in-
18 volved, and extent of such an exceed-
19 ance (or the immediate likelihood of
20 such an exceedance) to the Adminis-
21 trator and a designated official of a
22 local government having jurisdiction
23 over land adjoining the coastal recre-
24 ation waters covered by the State or

1 tribal program for which an exceed-
2 ance is identified; and

3 “(IX) specifies measures for
4 posting of signs at the beach (or other
5 point of access), or functionally equiv-
6 alent communication measures, suffi-
7 cient to give notice to the public of an
8 exceedance (or the immediate likeli-
9 hood of an exceedance) of applicable
10 water quality criteria for pathogens
11 and pathogen indicators for such wa-
12 ters and the potential risks associated
13 with water contact activities in such
14 waters.

15 “(3) LOCAL PROGRAMS.—

16 “(A) IN GENERAL.—The Administrator is
17 authorized to make a grant to a local govern-
18 ment for developing and implementing a pro-
19 gram for monitoring and notification to protect
20 public health and safety that meets the per-
21 formance criteria established under subsection
22 (a) for coastal recreation waters adjacent to
23 beaches (or other points of access) that are
24 open to the public and subject to the jurisdic-
25 tion of the local government.

1 “(B) REQUIREMENTS.—The Administrator
2 is authorized to make grants for implementa-
3 tion of a local government program under sub-
4 paragraph (A) only if the Administrator deter-
5 mines that—

6 “(i) the State in which the local gov-
7 ernment is located did not submit a grant
8 application meeting the requirements of
9 paragraph (2)(B) within one year following
10 the date of publication of performance cri-
11 teria under subsection (a);

12 “(ii) the local government program
13 has been developed through a process that
14 provides for public notice and an oppor-
15 tunity for comment;

16 “(iii) the local government program
17 meets the performance criteria under sub-
18 section (a), based on a review of the local
19 government program, including informa-
20 tion provided by the local government
21 under paragraph (2)(B)(iii); and

22 “(iv) the local government program
23 addresses the matters identified in para-
24 graph (2)(B)(iii) with respect to such wa-
25 ters.

1 “(4) LIST OF WATERS.—Following receipt of a
2 grant under this subsection, a State, Indian tribe, or
3 local government shall apply the prioritization estab-
4 lished by the State, Indian tribe, or local government
5 under paragraph (2)(B)(iii)(III) and promptly sub-
6 mit to the Administrator—

7 “(A) a list of discrete areas of coastal
8 recreation waters that are subject to the pro-
9 gram for monitoring and notification for which
10 the grant is provided where the performance
11 criteria under subsection (a) will be met; and

12 “(B) a list of discrete areas of coastal
13 recreation waters that are subject to the pro-
14 gram for monitoring and notification for which
15 the grant is provided where fiscal constraints
16 will prevent compliance with the performance
17 criteria under subsection (a).

18 “(5) FEDERAL SHARE.—The Federal share of
19 the cost of developing and implementing a moni-
20 toring and notification program under this sub-
21 section shall be not less than 50 percent nor more
22 than 100 percent, as determined by the Adminis-
23 trator. The non-Federal share of such cost may be
24 met through in-kind contributions.

1 “(6) DELEGATION.—If a State delegates re-
2 sponsibility for monitoring and notification under
3 this subsection to a local government, the State shall
4 make a portion of any grant received by the State
5 under paragraph (2) available to the local govern-
6 ment in an amount commensurate with the respon-
7 sibilities delegated.

8 “(c) FEDERAL AGENCY PROGRAMS.—Each Federal
9 agency shall develop, through a process that provides for
10 public notice and an opportunity for comment, a program
11 for monitoring and notification to protect public health
12 and safety that meets the performance criteria established
13 under subsection (a) for coastal recreation waters adjacent
14 to beaches (or other points of access) that are open to
15 the public and subject to the jurisdiction of the Federal
16 agency. Each Federal agency program shall address the
17 matters identified in subsection (b)(2)(B)(iii).

18 “(d) INFORMATION DATABASE.—The Administrator
19 shall establish, maintain, and make available to the public
20 by electronic and other means a national coastal recreation
21 water pollution occurrence database that provides infor-
22 mation on exceedances of applicable water quality stand-
23 ards for pathogens and pathogen indicators for coastal
24 recreation waters using information reported to the Ad-
25 ministrators pursuant to a monitoring and notification pro-

1 gram that meets the performance criteria established
2 under subsection (a). The Administrator may include in
3 the database other information only if the information is
4 on exceedances of applicable water quality standards for
5 pathogens and pathogen indicators for coastal recreation
6 waters and is made available to the Administrator from
7 other coastal water quality monitoring programs deter-
8 mined to be reliable by the Administrator. The database
9 may provide such information through electronic links to
10 other databases determined to be reliable by the Adminis-
11 trator.

12 “(e) TECHNICAL ASSISTANCE.—The Administrator
13 shall provide technical assistance to States, Indian tribes,
14 and local governments for the development of assessment
15 and monitoring procedures for floatable materials to pro-
16 tect public health and safety in coastal recreation waters.

17 “(f) LIST OF WATERS.—Beginning not later than 18
18 months after the date of publication of performance cri-
19 teria under subsection (a), the Administrator shall main-
20 tain a list of discrete areas of coastal recreation waters
21 adjacent to beaches (or other points of access) that are
22 open to the public and are not subject to a program for
23 monitoring and notification meeting the performance cri-
24 teria established under subsection (a) based on informa-
25 tion made available to the Administrator. The list also

1 shall identify discrete areas of coastal recreation waters
2 adjacent to beaches (or other points of access) that are
3 open to the public and are subject to a monitoring and
4 notification program meeting the performance criteria es-
5 tablished under subsection (a). The Administrator shall
6 make the list available to the public through publication
7 in the Federal Register and through electronic media. The
8 Administrator shall update the list at least annually.

9 “(g) EPA IMPLEMENTATION.—With respect to a
10 State that has no program for monitoring for and notifica-
11 tion of exceedances of the applicable water quality stand-
12 ards for pathogens and pathogen indicators in coastal
13 recreation waters adjacent to beaches (or other points of
14 access) open to the public that protects public health and
15 safety, after the last day of the 3-year period beginning
16 on the date the Administrator identifies, on a list required
17 pursuant to subsection (f), discrete areas of coastal recre-
18 ation waters in the State that are not subject to a moni-
19 toring and notification program meeting the performance
20 criteria established under subsection (a), the Adminis-
21 trator shall conduct, subject to the conditions of sub-
22 section (b)(2), a monitoring and notification program for
23 such discrete areas using the funds appropriated for
24 grants under subsection (b), including salaries, expenses,
25 and travel.

1 “(h) AUTHORIZATION OF APPROPRIATIONS.—There
2 is authorized to be appropriated for making grants to
3 States, Indian tribes, and local governments under sub-
4 section (b), including implementation of monitoring and
5 notification programs by the Administrator under sub-
6 section (f), \$30,000,000 for each of fiscal years 2000
7 through 2004.”.

8 **SEC. 5. DEFINITIONS.**

9 Section 502 of the Federal Water Pollution Control
10 Act (33 U.S.C. 1362) is amended by adding at the end
11 the following:

12 “(21) COASTAL RECREATION WATERS.—The
13 term ‘coastal recreation waters’ means the Great
14 Lakes and marine coastal waters, including coastal
15 estuaries, used by the public for swimming, bathing,
16 surfing, or other similar water contact activities.

17 “(22) FLOATABLE MATERIALS.—The term
18 ‘floatable materials’ means any foreign matter that
19 may float or remain suspended in the water column
20 and includes plastic, aluminum cans, wood products,
21 bottles, and paper products.

22 “(23) PATHOGEN INDICATORS.—The term
23 ‘pathogen indicators’ means substances that indicate
24 the potential for human infectious disease.”.

1 **SEC. 6. REPORT TO CONGRESS.**

2 (a) IN GENERAL.—Not later than 4 years after the
3 date of the enactment of this Act, and within the suc-
4 ceeding 4-year period and periodically thereafter, the Ad-
5 ministrator of the Environmental Protection Agency shall
6 transmit to Congress a report including—

7 (1) recommendations concerning the need for
8 additional water quality criteria for pathogens and
9 other actions needed to improve the quality of coast-
10 al recreation waters;

11 (2) an evaluation of Federal, State, and local
12 efforts to implement this Act, including the amend-
13 ments made by this Act; and

14 (3) recommendations on improvements to meth-
15 odologies and techniques for monitoring of coastal
16 recreation waters.

17 (b) COORDINATION.—The Administrator may coordi-
18 nate the report under this section with other reporting re-
19 quirements under the Federal Water Pollution Control
20 Act.

21 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

22 There are authorized to be appropriated for carrying
23 out the provisions of this Act (including amendments
24 made by this Act) for which amounts are not otherwise
25 specifically authorized to be appropriated such sums as

1 may be necessary for each of fiscal years 2000 through
2 2004.

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