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SENATE

{ REPORT
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BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT OF 2000

AUGUST 25, 2000.—Ordered to be printed
Filed, under authority of the order of the Senate of July 26, 2000

Mr. SMITH of New Hampshire, from the Committee on
Environment and Public Works, submitted the following

REPORT

[to accompany S. 522]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 522) to amend the Federal Water Pollution Control Act to improve the quality of beaches and coastal recreation water, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

GENERAL STATEMENT AND BACKGROUND

The Federal Water Pollution Control Act of 1972 (“Clean Water Act”) was enacted “to restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” There is a broad consensus that the Act has been largely successful. From an environmental perspective, the Clean Water Act has been directly responsible for removing more than a billion pounds of toxic chemicals per year and over 16 billion pounds of oxygen-depleting pollution from wastewater each year. At the same time, however, it is clear that there is more work to be done. In particular, coastal waters in some areas still do not meet water quality standards, especially in areas near pollution sources after a heavy rainfall. In recent years, where water quality is monitored, pollution has caused

closures or advisories on thousands of occasions at coastal beaches nationwide, while countless other beaches were not monitored at all. While monitoring data have shown that beach pollution is usually infrequent and confined to limited areas, additional measures to address this ongoing problem are warranted.

The public health risks from swimming in polluted coastal waters continue to be serious. The U.S. Environmental Protection Agency's (EPA's) research has found that contact with contaminated water can lead to gastrointestinal disorders and ear or skin infections, and inhalation of contaminated water can cause respiratory diseases. The pathogens responsible for these diseases can be bacteria, viruses, protozoans, fungi, or parasites. Public health risks are especially of concern to sensitive subpopulations who are particularly vulnerable.

Improving water quality at our nation's beaches, as well as implementing monitoring and public notification programs, will benefit all Americans who have a right to expect that they can safely swim in the water. In the United States, over half the population lives near a coastal area; the great majority of Americans visit coastal areas to participate in recreational activities. It is estimated that coastal recreation, and the related tourism industry, together serve 180 million Americans, support 28.3 million jobs, and generate billions of dollars in goods and services every year.

Water quality criteria are established by the Environmental Protection Agency under Section 303 of the Clean Water Act. EPA regulations implementing Section 303 require States to adopt sufficient criteria and monitoring in their standards to protect designated uses. The States may adopt the Federal criteria as their own, may modify the Federal criteria to reflect site-specific conditions, or may base their water quality criteria on other scientifically defensible methods.

The data supporting EPA's water quality criteria for coastal recreation waters were obtained from a series of research studies conducted by EPA examining the relationship between swimming-associated illness and the microbiological quality of the waters used by recreational bathers. EPA's current criteria for detecting pathogens in coastal recreation waters, established in 1986, require that States collect at least 5 samples of the indicator organism enterococcus, and that the samples be equally spaced over a 30-day period. According to EPA's criteria, the geometric mean of the enterococcus densities should not exceed 35 per 100 milliliters.

Currently, many States have established water quality standards and have programs in place to monitor coastal beaches and ensure protection of public health. However, differences in the standards and the level of monitoring effort among the States raise questions about the ability to ensure that all coastal waters are safe for recreational activities and fishing. For example, only 15 States have adopted EPA's 1986 criteria for pathogens disease causing microorganisms, such as bacteria or fungus, that are the leading cause of beach closures or advisories.

Moreover, EPA's 1986 criteria need to be updated to improve the scientific basis for identifying pathogens in coastal waters. Similarly, monitoring programs vary dramatically. Coastal water quality monitoring is now being conducted by the National Oceanic and Atmospheric Administration (NOAA), EPA, and the United States

Geological Survey (USGS), as well as several States and local community organizations. Greater consistency and coordination is necessary. In addition, citizens must have access to better information about the water quality of coastal waters and the status of beaches. A number of States have developed programs to notify the public when water quality standards are exceeded, but these too vary widely at the local level. EPA has established an electronic data base of coastal water quality, but does not provide comprehensive information about the quality of all our coastal recreation waters.

Coastal water quality should be an important consideration at all beaches used by the public. Many beaches with heavy public use are under the jurisdiction of Federal agencies, such as the National Park Service, however, there is no requirement that the Federal Government monitor these beaches for pathogens nor notify the public when water quality standards are exceeded.

The Beaches Environmental Assessment and Coastal Health Act of 2000 addresses these issues.

OBJECTIVES OF LEGISLATION

This legislation makes several significant changes to the Clean Water Act to address the lack of adoption by some States and Federal agencies of EPA's water quality criteria for pathogen and pathogen indicators, the need to develop better scientific data to improve water quality criteria, to provide greater consistency among State monitoring and notification programs, and to improve water quality monitoring and notification efforts by Federal agencies over their coastal waters.

First, the legislation addresses the problem of inconsistent State water quality standards by requiring all States with coastal waters to incorporate water quality criteria for pathogens and pathogen indicators into their coastal water quality standards no later than 42 months after enactment. As with other water quality criteria established by EPA, these water quality criteria for pathogen and pathogen indicators must be at least as protective of human health as EPA's water quality criteria. EPA must propose water quality criteria and standards for the State if the State fails to meet this deadline.

Second, the legislation addresses the need for EPA to update water quality criteria, and for the States to adopt these criteria as standards, for pathogens and pathogen indicators in coastal recreation waters as new scientific information becomes available. The legislation requires EPA to conduct studies of new pathogens and pathogen indicators in consultation and cooperation with other Federal, State, tribal, and local agencies to develop and to issue any new or revised criteria guidance for the States within 5 years of completion of these studies. States are given 36 months to incorporate these updated criteria into their water quality standards.

Third, the legislation addresses the inconsistency and, in some cases, a complete lack of State coastal water quality monitoring programs. The bill requires EPA to propose performance criteria for monitoring and assessing coastal recreational water quality, as well as criteria for notification of the public when water quality standards are exceeded. EPA must consult and cooperate with Federal, State, tribal and local officials in developing the performance criteria. States and in some cases, local governments may receive

grants to develop and implement coastal water quality monitoring programs consistent with the performance criteria.

Finally, the legislation addresses the need for consistent beach water quality notification programs and improved information for the potential beach visitors. States and local governments that receive grants under this bill would be required to report information on beach water quality to the Administrator. The EPA would then make this information available to the public through a central data base. The information may be made available electronically.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 designates the bill as the “Beaches Environmental Assessment and Coastal Health Act of 2000.”

Sec. 2. Adoption of Coastal Recreation Water Quality Criteria and Standards By States

Section 2 amends Section 303 of the Clean Water Act by adding a new subsection (i) to require States to: (1) adopt coastal recreation water quality criteria published by EPA to protect human health from pathogens; and (2) incorporate these criteria into State standards in accordance with the requirements of section 303(c) no later than 42 months after the date of enactment. This section also provides States up to 36 months to adopt into their State water quality standards any new or revised criteria for pathogens and pathogen indicators in coastal recreational waters. If the State fails to adopt the criteria in accordance with this section, the EPA will promptly propose regulations setting forth revised or new water quality standards for pathogens and pathogen indicators for coastal recreation waters of the State.

These provisions are consistent with the applicable requirements of the Clean Water Act and specifically section 303(c) and the regulations implementing that section. States must incorporate into their water quality standards, water quality criteria for pathogens and pathogen indicators that are at least as protective of human health as criteria EPA publishes under section 304(a). The State’s criteria may be as protective as those of EPA without being numerically equivalent. However, if a State adopts criteria differing from those published by EPA, the State has a duty to defend the criteria from a scientific perspective. EPA’s approval or disapproval of the criteria is based upon the information provided by the State.

Sec. 3. Revisions to Water Quality Criteria Guidance

Section 3 amends Section 104 of the Clean Water Act to add a subsection (v) to require EPA to conduct studies to improve the scientific basis for water quality criteria for pathogen and pathogen indicators, and to provide guidance to States on the application of criteria for pathogens and pathogen indicators to account for the diversity of geographic and aquatic conditions. The EPA must initiate the study within 18 months after enactment of this subsection and complete it no later than 3 years after enactment of this subsection.

Section 3 also amends section 304(a) of the Clean Water Act to require EPA to issue any new or revised water quality criteria for

pathogens and pathogen indicators based on research within 5 years of enactment of this bill.

Sec. 4. Coastal Recreation Water Quality Monitoring and Notification

Section 4 amends title IV of the Clean Water Act to add a new section 406 to establish a coastal recreation water monitoring and notification program for States. Section 406(a) requires EPA to publish performance criteria to assist States in establishing monitoring programs for coastal recreation waters that are used by the public. The performance criteria should also establish procedures for notifying the public, local governments, and the Administrator of any exceedances of, or likelihood of any exceedances of, applicable water quality standards. Section 406(a) directs EPA to consult and cooperate with Federal, State, tribal and local officials in developing the performance criteria.

EPA may, for example, hold regional workshops with State and local government officials to solicit information on how the public health protection objectives of the Act can be met in a manner which take into account the diversity of conditions and circumstances among and within States.

The monitoring and notification programs will not be the same for all coastal recreation areas. The programs will be tailored to meet local needs and conditions. Thus, the performance criteria should be viewed as guidance to the States on what to include in monitoring and notification programs.

Section 406(b) authorizes EPA to make grants to States and local governments of up to 100 percent of the costs of developing and implementing monitoring and notification programs that meet the performance criteria established under subsection (a). Section 406(b)(3)(B) authorizes EPA to make grants to local governments if a State does not submit a grant application for a program that meets the requirements of subsections (a) and (c) during the 1 year period beginning on the date of publication of the performance criteria.

In some cases a grant will not be sufficient to assist a State or local government in conducting monitoring and notification for all of the coastal recreational waters under its jurisdiction. Therefore, the bill directs States and local governments to prioritize the use of funds in those coastal recreational waters that present the greatest risk to human health. The States should place greater emphasis on those areas where bathing water quality standards are more likely to be exceeded, and where use by the public is heavily concentrated. The EPA may propose guidance for States to use in prioritizing monitoring and notification funding based on the greatest risk to human health.

Section 406(b) requires that upon receipt of a grant, States submit to EPA data gathered as part of the monitoring and notification program and to identify each local government to which the State has delegated or intends to delegate responsibility for implementing a monitoring and notification program. EPA is authorized to require a cost share from the States of up to 50 percent. The Administrator, in consultation with the State, tribal and local governmental representative determines cost share requirements. In certain situations, such as the early stages of a program, it may be

appropriate for EPA to award a large percentage, up to 100 percent, to some States.

Section 406(c) requires State or local grant recipients to provide EPA with the following information: a list of coastal recreation waters that are used by the public; an explanation of the process by which the States may delegate to local governments; a description of the frequency and location of monitoring; methods and assessment procedures used to detect and analyze pathogens and pathogen indicators; measures for prompt communication to the Administrator and designated local officials of the local government of any exceedances or likelihood of exceedances; measures for the posting of signs or other functionally equivalent communication measures; and measures that inform the public of the potential risks associated with activities in areas exceeding water quality standards. States and local governments are encouraged to use innovative public notification methods.

Section 406(d) directs each Federal agency with jurisdiction over coastal recreation waters open to the public to implement a monitoring and notification program that is consistent with the performance criteria established by EPA under subsection (a) and that protects public health and safety.

Section 406(e) requires EPA to establish and maintain a publicly available data base of information provided by the States about the local beach health incidents and conditions. Such information would include only information provided by the States about their beach monitoring programs, such as any exceedances of coastal water quality standards, the frequency of monitoring, and the number of advisories and closings. EPA is expected to maintain this information on the Internet.

Section 406(f) directs EPA to provide technical assistance to States and local governments on assessment and monitoring procedures for floatable materials in coastal recreation waters.

Section 406(g) requires EPA to maintain a publicly available list of discrete coastal recreation waters that are subject to State and local monitoring and notification programs, as well as those coastal recreation waters that do not have monitoring and notification programs. EPA should clearly identify in the lists those coastal recreation waters that have been determined not to need a monitoring program to protect public health and safety. In developing these lists, EPA should use reliable information provided by the States, local governments, other Federal agencies or other persons, as well as any information developed by the Agency.

Section 406(h) directs EPA to conduct a monitoring and notification program if a State or local government fails to do so, to the extent funds are available from the funds provided in Section 406(i). EPA must apply the same prioritization as would be required of the State under subsection (b)(2).

Section 406(i) authorizes \$30,000,000 a year for fiscal years 2001 through 2005 for grants to States, tribes and local governments to implement monitoring and notification programs, or to EPA for implementation if a State, tribe, or local government fails to act.

Sec. 5. Definitions

Section 5 amends section 502 of the Clean Water Act to add definitions for "coastal recreation waters," "floatable materials," and

“pathogen indicators.” The term “coastal recreation waters” includes only the Great Lakes and marine coastal waters that are adjacent to the coastline of the United States. It does not include waters that extend beyond the mouth of any river or stream having unimpaired natural connection with the open sea. Floatable materials are defined as any foreign matter that may float or remain suspended in the water column, including plastic, aluminum cans, wood products, bottles and paper products. Pathogen indicators is defined as a substance that indicates the potential for human infectious disease.

Sec. 6. Indian Tribes

Section 6 amends section 518(e) of the Clean Water Act by striking “and 404” and inserting “404 and 406.” This extends the authority of the Administrator to treat an Indian tribe as a State to the new Section 406, added by this bill.

Sec. 7. Report

Section 7 requires EPA to report to Congress on recommendations for additional water quality criteria guidance for pathogens, the progress achieved by this Act, and recommendations for improvements to the monitoring program. Such reporting is required within 4 years of enactment, and again within 4 years thereafter. The Administrator may coordinate the report with other reporting requirements under the Clean Water Act.

Sec. 8. Authorization of Appropriations

Section 8 authorizes such sums as may be necessary for EPA to carry out the provisions of this Act, other than for the grant program authorized in new section 406 of the Clean Water Act.

REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report the committee’s estimate of the regulatory impact made by the bill as reported. No regulatory impact is expected by the passage of this bill.

The bill will not affect the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee makes the following evaluation of the Federal mandates contained in the reported bill.

S. 522 imposes no Federal intergovernmental mandates on State, local or tribal governments.

LEGISLATIVE HISTORY

On March 3, 1999, Senator Frank R. Lautenberg introduced S. 522, the “Beaches Environment Assessment, Closure, and Health Act of 2000,” a bill to amend the Federal Water Pollution Control Act to improve the quality of beaches and coastal recreation water, and for other purposes. On July 22, 1999, the Committee on the Environment and Public Works held a hearing on S. 522. On April 13, 2000, the Committee on the Environment and Public Works held a business meeting to consider S. 522 and H.R. 999, similar

legislation passed by the House of Representatives on April 22, 1999 and referred to the Committee on Environment and Public Works. During consideration of the bills, the committee ordered reported S. 522, as amended by a manager's amendment in the nature of a substitute, and H.R. 999, by voice vote.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 2000.

Hon. ROBERT C. SMITH, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 522, the Beaches Environmental Assessment and Coastal Health Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for Federal costs), who can be reached at 226-2860, and Victoria Held Hall (for the State and local impact), who can be reached at 225-3220.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 522, Beaches Environmental Assessment and Coastal Health Act of 2000, as ordered reported by the Senate Committee on Environment and Public Works on April 13, 2000

Summary

S. 522 would amend the Federal Water Pollution Control Act to require States to adopt water quality criteria for coastal recreation waters consistent with those developed by the Environmental Protection Agency (EPA) for the purpose of protecting human health in coastal recreation waters (beaches). The bill would authorize EPA to provide new grants to State and local governments of \$30 million annually over the 2001-2005 period to implement programs to monitor the quality of coastal waters and to notify the public when water quality does not meet the established standards. In addition, the legislation would require EPA to issue new water quality criteria for recreational coastal areas based on studies of potential human health risks in these areas, make available to the public data on the water quality at coastal recreational areas, and report to the Congress on the efforts made under this program.

The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. S. 522 contains no inter-governmental or private-sector mandates as defined in the Un-

funded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 522 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law						
Budget Authority ¹	1	0	0	0	0	0
Estimated Outlays	1	0	0	0	0	0
Proposed Changes						
Estimated Authorization Level	0	34	34	34	34	34
Estimated Outlays	0	19	28	34	34	34
Spending Under S. 522						
Estimated Authorization Level ¹	1	34	34	34	34	34
Estimated Outlays	1	19	28	34	34	34

¹The 2000 level is the amount appropriated for that year.

Basis of Estimate

For purposes of this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2001 and that the full amounts authorized will be appropriated for each fiscal year. Outlays have been estimated based on historical spending patterns of similar EPA programs.

The bill authorizes the appropriation of \$30 million annually for grants to States to implement programs to monitor and report on water quality at beaches. Based on information from EPA, CBO estimates that the agency would incur additional costs of about \$4 million annually over the 2001–2005 period to study health hazards in coastal recreational waters, establish new water quality criteria for these waters, develop a national database on pollution of beaches, and report to the Congress on the effectiveness of this program.

Pay-As-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact

S. 522 contains no intergovernmental mandates as defined in UMRA and would impose no costs on State, local, or tribal governments. While the bill would require States to establish acceptable water quality standards for coastal areas, States could choose not to establish these standards and EPA would do it for them. The bill would authorize \$30 million annually from 2001 through 2005 for State and local governments to implement eligible monitoring and notification programs. If they choose not to implement these programs, EPA would be directed to use the remaining money authorized by this bill to provide those programs for them. Any costs incurred by State and local governments to implement these programs would be voluntary and a condition of receiving grant assistance.

Previous CBO Estimate

On April 19, 1999, CBO transmitted a cost estimate for H.R. 999, the Beaches Environmental Assessment, Cleanup, and Health Act of 1999, as ordered reported by the House Committee on Transportation and Infrastructure on April 15, 1999. While S. 522 and H.R. 999 are not identical, they are very similar. The estimated costs of the two bills are the same, though S. 522 updates the authorization period to cover 2001 through 2005.

Estimate Prepared by: Federal Costs: Susanne S. Mehlman (226–2860); Impact on State, Local, and Tribal Governments: Victoria Held Hall (225–3220); Impact on the Private Sector: Jean Wooster (226–2940).

Estimate Approved by: Robert A. Sunshine Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in *italic*, existing law in which no change is proposed is shown in roman:

FEDERAL WATER POLLUTION CONTROL ACT

(33 U.S.C. 1251 et seq.)

[As Amended Through P.L. 105–394, November 13, 1998]

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

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RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

SEC. 104. (a) * * *

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(v) *STUDIES CONCERNING PATHOGEN INDICATORS IN COASTAL RECREATION WATERS.*—*Not later than 18 months after the date of enactment of this subsection, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall initiate, and, not later than 3 years after the date of enactment of this subsection, shall complete, in cooperation with the heads of other Federal agencies, studies to provide additional information for use in developing—*

(1) *an assessment of potential human health risks resulting from exposure to pathogens in coastal recreation waters, including nongastrointestinal effects;*

(2) *appropriate and effective indicators for improving detection in a timely manner in coastal recreation waters of the presence of pathogens that are harmful to human health;*

(3) appropriate, accurate, expeditious, and cost-effective methods (including predictive models) for detecting in a timely manner in coastal recreation waters the presence of pathogens that are harmful to human health; and

(4) guidance for State application of the criteria guidance for pathogens and pathogen indicators to be published under section 304(a)(9) to account for the diversity of geographic and aquatic conditions.

(33 U.S.C. 1254)

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WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a)(1) * * *

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(i) COASTAL RECREATION WATER QUALITY CRITERIA.—

(1) ADOPTION BY STATES.—

(A) INITIAL CRITERIA AND STANDARDS.—Not later than 42 months after the date of enactment of this subsection, each State having coastal recreation waters shall adopt and submit to the Administrator water quality criteria and standards for the coastal recreation waters of the State for those pathogens and pathogen indicators for which the Administrator has published criteria guidance under section 304(a).

(B) NEW OR REVISED CRITERIA AND STANDARDS.—Not later than 36 months after the date of publication by the Administrator of new or revised water quality criteria under section 304(a)(9), each State having coastal recreation waters shall adopt and submit to the Administrator new or revised water quality standards for the coastal recreation waters of the State for all pathogens and pathogen indicators to which the new or revised water quality criteria guidance is applicable.

(2) FAILURE OF STATES TO ADOPT.—

(A) IN GENERAL.—If a State fails to adopt water quality criteria and standards in accordance with paragraph (1), the Administrator shall promptly propose regulations described in subparagraph (A) or (B) of that paragraph for the State setting forth revised or new water quality standards for pathogens and pathogen indicators for coastal recreation waters of the State.

(B) EXCEPTION.—If the Administrator proposes regulations described in subparagraph (A) under section 303(c)(4)(B), the Administrator shall publish any revised or new standard under this section not later than 36 months after the date of publication of the new or revised water quality criteria under section 304(a)(9).

(3) APPLICABILITY.—Except as expressly provided by this subsection, the requirements and procedures of subsection (c) apply to this subsection, including the requirement in subsection (c)(2)(A) that the criteria protect public health and welfare.

(33 U.S.C. 1313)

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) * * *

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(9) REVISED CRITERIA GUIDANCE FOR COASTAL RECREATION WATERS.—

(A) IN GENERAL.—Not later than 5 years after the date of enactment of this paragraph, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall publish new or revised water quality criteria guidance for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted under section 104(v), for the purpose of protecting human health in coastal recreation waters.

(B) REVIEWS.—Not later than the date that is 5 years after the date of publication of water quality criteria guidance under this paragraph, and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria guidance.

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(33 U.S.C. 1314)

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SEC. 406. COASTAL RECREATION WATER QUALITY MONITORING AND NOTIFICATION.

(a) MONITORING AND NOTIFICATION.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), and after providing public notice and an opportunity for comment, the Administrator shall publish performance criteria that provide for—

(A) monitoring and assessment (including specifying available methods for monitoring) of coastal recreation waters adjacent to beaches or other points of access that are used by the public for attainment of applicable water quality standards for pathogens and pathogen indicators; and

(B) the prompt notification of the public, local governments, and the Administrator of any exceeding of or likelihood of exceeding applicable water quality standards for coastal recreation waters described in subparagraph (A).

(2) LEVEL OF PROTECTION.—The performance criteria referred to in paragraph (1) shall provide for the activities described in subparagraphs (A) and (B) of that paragraph to be carried out as necessary for the protection of public health and safety.

(b) PROGRAM DEVELOPMENT AND IMPLEMENTATION GRANTS.—

(1) IN GENERAL.—The Administrator may make grants to States and local governments to develop and implement programs for monitoring and notification for coastal recreation waters adjacent to beaches or other points of access that are used by the public.

(2) *PRIORITIZATION.*—States and local governments may prioritize the use of funds under paragraph (1) based on the greatest risks to human health.

(3) *LIMITATIONS.*—

(A) *IN GENERAL.*—The Administrator may award a grant to a State or a local government to implement a monitoring and notification program if—

(i) the program is consistent with the performance criteria published by the Administrator under subsection (a); and

(ii) the public is provided an opportunity to review the program through a process that provides for public notice and an opportunity for comment.

(B) *GRANTS TO LOCAL GOVERNMENTS.*—The Administrator is authorized to make grants for implementation of a local government program under subparagraph (A) only if the Administrator determines that the State in which the local government is located did not submit a grant application for a program that meets the requirements of subsection (c) during the 1-year period beginning on the date of publication of performance criteria under subsection (a).

(4) *OTHER REQUIREMENTS.*—

(A) *LISTS OF WATERS.*—On receipt of a grant under this subsection, a State, tribe, or local government shall—

(i) apply the prioritization established by the State, tribe, or local government under paragraph (2); and

(ii) promptly submit to the Administrator—

(I) a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided; and

(II) a list of discrete areas of coastal recreation waters that are subject to the program for monitoring and notification for which the grant is provided that specifies any coastal recreation waters for which fiscal constraints will prevent compliance with the performance criteria under subsection (a).

(B) *ADDITIONAL INFORMATION.*—A State recipient of a grant under this subsection shall submit to the Administrator, in such format and at such intervals as the Administrator determines to be appropriate, information collected as part of the program for monitoring and notification under this section.

(C) *DELEGATION.*—A State recipient of a grant under this subsection shall identify each local government to which the State has delegated or intends to delegate responsibility for implementing a monitoring and notification program consistent with the performance criteria published under subsection (a) (including any coastal recreation waters for which the authority to implement a monitoring and notification program would be subject to the delegation).

(5) *FEDERAL SHARE.*—

(A) *IN GENERAL.*—The Administrator, through grants awarded under this section, may pay up to 100 percent of

the costs of developing and implementing a program for monitoring and notification under this subsection.

(B) NON-FEDERAL SHARE.—The non-Federal share of the costs of developing and implementing a monitoring and notification program may be—

(i) in an amount not to exceed 50 percent, as determined by the Administrator in consultation with State, tribal, and local government representatives; and

(ii) provided in cash or in kind.

(c) CONTENT OF STATE AND LOCAL GOVERNMENT PROGRAMS.—As a condition of receipt of a grant under subsection (b), a State or local government program for monitoring and notification under this section shall identify—

(1) lists of coastal recreation waters in the State, including coastal recreation waters adjacent to beaches or other points of access that are used by the public;

(2) in the case of a State program for monitoring and notification, the process by which the State may delegate to local governments responsibility for implementing the monitoring and notification program;

(3) the frequency and location of monitoring and assessment of coastal recreation waters based on—

(A) the periods of recreational use of the waters;

(B) the nature and extent of use during certain periods;

(C) the proximity of the waters to known point and nonpoint sources of pollution; and

(D) any effect of storm events on the waters;

(4)(A) the methods to be used for detecting levels of pathogens and pathogen indicators that are harmful to human health; and

(B) the assessment procedures for identifying short-term increases in pathogens and pathogen indicators that are harmful to human health in coastal recreation waters (including increases in relation to storm events);

(5) measures for prompt communication of the occurrence, nature, location, pollutant source involved, and extent of any exceeding of, or likelihood of exceeding, applicable water quality standards for pathogens and pathogen indicators to—

(A) the Administrator; and

(B) a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which the failure to meet applicable standards is identified;

(6) measures for the posting of signs at beaches or other points of access, or functionally equivalent communication measures that are sufficient to give notice to the public that the coastal recreation waters are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators; and

(7) measures that inform the public of the potential risks associated with water contact activities in the coastal recreation waters that do not meet applicable water quality standards.

(d) FEDERAL AGENCY PROGRAMS.—Not later than 30 months after the date of enactment of this section, each Federal agency that has jurisdiction over coastal recreation waters adjacent to beaches

or other points of access that are used by the public shall develop and implement, through a process that provides for public notice and an opportunity for comment, a monitoring and notification program for the coastal recreation waters that—

(1) protects the public health and safety; and

(2) is consistent with the performance criteria published under subsection (a).

(e) **INFORMATION DATABASE.**—The Administrator shall establish, maintain, and make available to the public by electronic and other means a national coastal recreation water pollution occurrence database that provides—

(1) the information reported to the Administrator under subsection (b)(4)(B); and

(2) other information concerning pathogens and pathogen indicators in coastal recreation waters that—

(A) is made available to the Administrator by a State or local government, from a coastal water quality monitoring program of the State or local government; and

(B) the Administrator determines should be included.

(f) **TECHNICAL ASSISTANCE FOR MONITORING FLOATABLE MATERIAL.**—The Administrator shall provide technical assistance to States and local governments for the development of assessment and monitoring procedures for floatable material to protect public health and safety in coastal recreation waters.

(g) **LIST OF WATERS.**—

(1) **IN GENERAL.**—Beginning not later than 18 months after the date of publication of performance criteria under subsection (a), based on information made available to the Administrator, the Administrator shall maintain a list of discrete coastal recreation waters adjacent to beaches or other points of access that are used by the public that—

(A) are subject to a monitoring and notification program consistent with the performance criteria established under subsection (a); and

(B) specifies any waters described in this paragraph for which there is no monitoring and notification program (including waters for which fiscal constraints will prevent the State from performing monitoring and notification consistent with the performance criteria established under subsection (a)).

(2) **AVAILABILITY.**—The Administrator shall make the list described in paragraph (1) available to the public through—

(A) publication in the Federal Register; and

(B) electronic media.

(3) **UPDATES.**—The Administrator shall update the list described in paragraph (1) periodically as new information becomes available.

(h) **EPA IMPLEMENTATION.**—

(1) **IN GENERAL.**—In the case of a State that has no program for monitoring and notification that is consistent with the performance criteria published under subsection (a), the Administrator shall conduct a monitoring and notification program for coastal recreation waters in that State using the funds appropriated for grants under subsection (i)—

(A) to conduct monitoring and notification; and

(B) for related salaries, expenses, and travel.

(2) *PRIORITIZATION.*—In conducting a monitoring and notification program under paragraph (1), the Administrator shall apply any prioritization developed by the State under subsection (b)(2).

(i) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated for making grants under subsection (b), including implementation of monitoring and notification programs by the Administrator under subsection (h), \$30,000,000 for each of fiscal years 2001 through 2005.

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GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

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(21) *COASTAL RECREATION WATERS.*—

(A) *IN GENERAL.*—The term “coastal recreation waters” means the Great Lakes and other marine coastal waters (including coastal estuaries) that are used by the public for swimming, bathing, surfing, or other similar water contact activities.

(B) *EXCLUSION.*—The term “coastal recreation waters” does not include inland waters.

(22) *FLOATABLE MATERIAL.*—

(A) *IN GENERAL.*—The term “floatable material” means any foreign matter that may float or remain suspended in the water column.

(B) *INCLUSIONS.*—The term “floatable material” includes—

- (i) plastic;
- (ii) aluminum cans;
- (iii) wood products;
- (iv) bottles; and
- (v) paper products.

(23) *PATHOGEN INDICATOR.*—The term “pathogen indicator” means a substance that indicates the potential for human infectious disease.

(33 U.S.C. 1362)

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SEC. 518. INDIAN TRIBES.

(a) *POLICY.*— * * *

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(e) *TREATMENT AS STATES.*—The Administrator is authorized to treat an Indian tribe as a State for purposes of title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and [404] 404, and 406 of this Act to the degree necessary to carry out the objectives of this section, but only if—

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