

108TH CONGRESS
1ST SESSION

S. 820

To amend the Federal Water Pollution Control Act to establish a perchlorate pollution prevention fund and to establish safety standards applicable to owners and operators of perchlorate storage facilities.

IN THE SENATE OF THE UNITED STATES

APRIL 8, 2003

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 establish a perchlorate pollution prevention fund and to establish safety standards applicable to owners and operators of perchlorate storage facilities.

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 “Perchlorate Commu-
5 nity Right-to-Know Act of 2003”.

1 **SEC. 2. PERCHLORATE POLLUTION PREVENTION.**

2 The Federal Water Pollution Control Act is amended
3 by inserting after section 406 (33 U.S.C. 1346) the fol-
4 lowing:

5 **“SEC. 407. PERCHLORATE POLLUTION PREVENTION.**

6 “(a) DEFINITIONS.—In this section:

7 “(1) FUND.—The term ‘Fund’ means the Per-
8 chlorate Pollution Prevention Fund established by
9 subsection (i)(1).

10 “(2) PERCHLORATE STORAGE FACILITY.—

11 “(A) IN GENERAL.—The term ‘perchlorate
12 storage facility’ means a facility that stores
13 more than 375 pounds of perchlorate over the
14 course of a calendar year.

15 “(B) EXCLUSION.—The term ‘perchlorate
16 storage facility’ does not include a facility that
17 stores perchlorate for a retail or law enforce-
18 ment purpose.

19 “(b) DISCHARGE OF PERCHLORATE.—

20 “(1) NOTIFICATION.—

21 “(A) IN GENERAL.—Any person that,
22 without regard to intent or negligence, causes
23 or permits to occur a discharge of perchlorate
24 into or on any waters of the United States shall
25 notify the Administrator and the appropriate

1 State water pollution control agency of the dis-
2 charge as soon as practicable after—

3 “(i) the person has knowledge of the
4 discharge; and

5 “(ii) the notification may be provided
6 without substantially impeding cleanup or
7 other emergency measures.

8 “(B) CONTENTS OF NOTICE.—A notice
9 under subparagraph (A) shall include—

10 “(i) the volume of perchlorate dis-
11 charged;

12 “(ii) a description of the extent of the
13 discharge;

14 “(iii) a copy of each document relat-
15 ing to any monitoring for potential dis-
16 charges undertaken by the person on or
17 before the date of the discharge; and

18 “(iv) a description of any actions
19 taken by the person in response to the dis-
20 charge.

21 “(C) FAILURE TO PROVIDE NOTICE.—For
22 each day for which a person fails to provide the
23 notice required by subparagraph (A), the per-
24 son shall—

25 “(i) be guilty of a misdemeanor; and

1 “(ii) be punished by a fine of not less
2 than \$500 nor more than \$5,000.

3 “(2) DISCHARGE UNDER PERMIT.—Paragraph
4 (1) applies to a discharge of perchlorate under a
5 permit issued under section 402 of the Federal
6 Water Pollution Control Act (33 U.S.C. 1342).

7 “(3) PENALTIES.—A penalty collected under
8 paragraph (1)(B)(ii) shall be deposited in the Fund.

9 “(c) SUBMISSION OF INFORMATION.—Not later than
10 January 1, 2005, each owner or operator of a perchlorate
11 storage facility that has been operated, by that owner or
12 operator or by any other person, at any time after January
13 1, 1950, shall submit to the Administrator and the appro-
14 priate State water pollution control agency a report that
15 includes, for the period beginning on January 1, 1950 (or
16 such later date as the perchlorate storage facility initiated
17 operations), and ending on the date of submission of the
18 report—

19 “(1) the volume of perchlorate stored during
20 each calendar year at the perchlorate storage facil-
21 ity;

22 “(2) a description of each method of storage
23 used; and

1 “(3) a copy of each document relating to any
2 monitoring undertaken for potential discharges from
3 the perchlorate storage facility.

4 “(d) LIST OF PERCHLORATE STORAGE FACILI-
5 TIES.—Not later than June 1, 2005, and annually there-
6 after, the Administrator, in consultation with each State
7 water pollution control agency, shall publish in the Federal
8 register a list of perchlorate storage facilities operating in
9 the United States at any time during the period—

10 “(1) beginning on January 1, 1950; and

11 “(2) ending on the date of publication of the
12 list.

13 “(e) LIST OF PERCHLORATE DISCHARGES.—Not
14 later than June 1, 2005, the Administrator, in consulta-
15 tion with each State water pollution control agency, shall
16 annually publish in the Federal Register a list of dis-
17 charges of perchlorate that occurred during the 1-year pe-
18 riod preceding the date of publication of the report (in-
19 cluding a list of locations at which perchlorate was de-
20 tected in groundwater within the State during that pe-
21 riod).

22 “(f) PENALTIES.—

23 “(1) IN GENERAL.—An owner or operator of a
24 perchlorate storage facility that violates subsection
25 (c) shall be liable for a civil penalty of not less than

1 \$500 nor more than \$5,000 for each day of viola-
2 tion.

3 “(2) DETERMINATION OF AMOUNT.—In deter-
4 mining the amount of a civil penalty, a court of com-
5 petent jurisdiction shall consider all relevant cir-
6 cumstances, including—

7 “(A) the extent of harm or potential harm
8 caused by the violation;

9 “(B) the nature of the violation;

10 “(C) the period over which the violation oc-
11 curred;

12 “(D) the frequency of any past violations
13 by perchlorate storage facility involved; and

14 “(E) any action taken to remedy the viola-
15 tion.

16 “(3) DEPOSIT IN FUND.—A penalty collected
17 under paragraph (1) shall be deposited in the Fund.

18 “(g) REGULATIONS.—Not later than June 1, 2005,
19 the Administrator shall promulgate regulations that—

20 “(1) require each perchlorate storage facility—

21 “(A) to meet minimum, industry-estab-
22 lished training standards; and

23 “(B) to be operated in a manner consistent
24 with industry-established best management
25 practices; and

1 “(2) implement an outreach effort to educate
2 owners and operators of perchlorate storage facilities
3 concerning the regulations promulgated under this
4 subsection.

5 “(h) STATE LOAN PROGRAM.—

6 “(1) IN GENERAL.—The Administrator, in co-
7 ordination with each State water pollution control
8 agency, shall carry out a loan program to assist pub-
9 lic water suppliers and owners of private wells in ac-
10 quiring or providing water that meets applicable
11 Federal and State standards for drinking water to
12 replace water contaminated by perchlorate.

13 “(2) APPLICATIONS.—A public water supplier
14 or owner of a private well that seeks to receive a
15 loan under paragraph (1) shall submit to the Admin-
16 istrator an application that is in such form, and that
17 contains such information, as the Administrator
18 shall require.

19 “(3) AMOUNT.—A loan provided under para-
20 graph (1) shall be for not less than \$10,000 and not
21 more than \$750,000.

22 “(4) TERM.—The term of a loan provided
23 under paragraph (1) shall be—

24 “(A) not more than 20 years, if the loan
25 is secured by real property; or

1 “(B) not more than 10 years, if the loan
2 is not secured by real property.

3 “(5) INTEREST RATE.—The interest rate for a
4 loan shall be equal to the rate of interest applicable
5 at the time of the loan commitment to Federal secu-
6 rities having a term of 10 years.

7 “(6) USE OF LOAN FUNDS.—Funds from a loan
8 provided under paragraph (1) may be used to pay
9 up to 100 percent of costs incurred by the recipient
10 of the loan in acquiring or providing water that
11 meets applicable Federal and State standards for
12 drinking water to replace water contaminated by
13 perchlorate.

14 “(7) LOAN FEE.—

15 “(A) IN GENERAL.—The Administrator
16 may charge a loan fee, not to exceed an amount
17 equal to 2 percent of the amount of the loan,
18 to an applicant for a loan under paragraph (1).

19 “(B) DEPOSIT IN FUND.—The Adminis-
20 trator shall deposit each loan fee collected
21 under subparagraph (A) in the Fund.

22 “(i) PERCHLORATE POLLUTION PREVENTION
23 FUND.—

24 “(1) ESTABLISHMENT.—There is established in
25 the Treasury of the United States a revolving fund,

1 to be known as the ‘Perchlorate Pollution Prevention
2 Fund’, to be used in carrying out this section, con-
3 sisting of—

4 “(A) such amounts as are deposited in the
5 Fund under subsections (b)(3), (f)(3), and
6 (h)(7)(B); and

7 “(B) any interest earned on investment of
8 amounts in the Fund under paragraph (3).

9 “(2) EXPENDITURES FROM FUND.—

10 “(A) IN GENERAL.—Subject to subpara-
11 graph (B), upon request by the Administrator,
12 the Secretary of the Treasury shall transfer
13 from the Fund to the Administrator such
14 amounts as the Administrator determines are
15 necessary—

16 “(i) to carry out this section; and

17 “(ii) to provide loans under subsection
18 (h).

19 “(B) ADMINISTRATIVE EXPENSES.—An
20 amount not exceeding 5 percent of the amounts
21 in the Fund shall be available in each fiscal
22 year to pay the administrative expenses nec-
23 essary to carry out this subsection.

24 “(3) INVESTMENT OF AMOUNTS.—

1 “(A) IN GENERAL.—The Secretary of the
2 Treasury shall invest such portion of the Fund
3 as is not, in the judgment of the Secretary of
4 the Treasury, required to meet current with-
5 drawals. Investments may be made only in in-
6 terest-bearing obligations of the United States.

7 “(B) ACQUISITION OF OBLIGATIONS.—For
8 the purpose of investments under subparagraph
9 (A), obligations may be acquired—

10 “(i) on original issue at the issue
11 price; or

12 “(ii) by purchase of outstanding obli-
13 gations at the market price.

14 “(C) SALE OF OBLIGATIONS.—Any obliga-
15 tion acquired by the Fund may be sold by the
16 Secretary of the Treasury at the market price.

17 “(D) CREDITS TO FUND.—The interest on,
18 and the proceeds from the sale or redemption
19 of, any obligations held in the Fund shall be
20 credited to and form a part of the Fund.

21 “(4) TRANSFERS OF AMOUNTS.—

22 “(A) IN GENERAL.—The amounts required
23 to be transferred to the Fund under this sub-
24 section shall be transferred at least monthly
25 from the general fund of the Treasury to the

1 Fund on the basis of estimates made by the
2 Secretary of the Treasury.

3 “(B) ADJUSTMENTS.—Proper adjustment
4 shall be made in amounts subsequently trans-
5 ferred to the extent prior estimates were in ex-
6 cess of or less than the amounts required to be
7 transferred.

8 “(j) REPORTS.—Not later than 1 year after the date
9 of enactment of this section, and annually thereafter, the
10 Administrator shall submit to the Committee on Environ-
11 ment and Public Works of the Senate and the Committee
12 on Resources and the Committee on Energy and Com-
13 merce of the House of Representatives a report that de-
14 scribes progress made in implementing this section.

15 “(k) NO EFFECT ON STATE LAW.—Nothing in this
16 section preempts or otherwise affects any State law (in-
17 cluding any State law that contains a requirement that
18 is more stringent than a requirement under this section).”.

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