

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 753

To amend the Federal Water Pollution Control Act to ensure that publicly owned treatment works monitor for and report sewer overflows, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2009

Mr. BISHOP of New York (for himself and Mr. LOBIONDO) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to ensure that publicly owned treatment works monitor for and report sewer overflows, 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 “Sewage Overflow Com-  
5       munity Right-to-Know Act”.

6       **SEC. 2. DEFINITIONS.**

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

1           “(26) TREATMENT WORKS.—The term ‘treat-  
2           ment works’ has the meaning given that term in sec-  
3           tion 212.”.

4 **SEC. 3. MONITORING, REPORTING, AND PUBLIC NOTIFICA-**  
5 **TION OF SEWER OVERFLOWS.**

6           Section 402 of the Federal Water Pollution Control  
7 Act (33 U.S.C. 1342) is amended by adding at the end  
8 the following:

9           “(r) SEWER OVERFLOW MONITORING, REPORTING,  
10 AND NOTIFICATIONS.—

11           “(1) GENERAL REQUIREMENTS.—After the last  
12 day of the 180-day period beginning on the date on  
13 which regulations are issued under paragraph (4), a  
14 permit issued, renewed, or modified under this sec-  
15 tion by the Administrator or the State, as the case  
16 may be, for a publicly owned treatment works shall  
17 require, at a minimum, beginning on the date of the  
18 issuance, modification, or renewal, that the owner or  
19 operator of the treatment works—

20           “(A) institute and utilize a feasible meth-  
21 odology, technology, or management program  
22 for monitoring sewer overflows to alert the  
23 owner or operator to the occurrence of a sewer  
24 overflow in a timely manner;

1           “(B) in the case of a sewer overflow that  
2 has the potential to affect human health, notify  
3 the public of the overflow as soon as practicable  
4 but not later than 24 hours after the time the  
5 owner or operator knows of the overflow;

6           “(C) in the case of a sewer overflow that  
7 may imminently and substantially endanger  
8 human health, notify public health authorities  
9 and other affected entities, such as public water  
10 systems, of the overflow immediately after the  
11 owner or operator knows of the overflow;

12           “(D) report each sewer overflow on its dis-  
13 charge monitoring report to the Administrator  
14 or the State, as the case may be, by describ-  
15 ing—

16                   “(i) the magnitude, duration, and sus-  
17 pected cause of the overflow;

18                   “(ii) the steps taken or planned to re-  
19 duce, eliminate, or prevent recurrence of  
20 the overflow; and

21                   “(iii) the steps taken or planned to  
22 mitigate the impact of the overflow; and

23           “(E) annually report to the Administrator  
24 or the State, as the case may be, the total num-

1           ber of sewer overflows in a calendar year, in-  
2           cluding—

3                   “(i) the details of how much waste-  
4                   water was released per incident;

5                   “(ii) the duration of each sewer over-  
6                   flow;

7                   “(iii) the location of the overflow and  
8                   any potentially affected receiving waters;

9                   “(iv) the responses taken to clean up  
10                  the overflow; and

11                  “(v) the actions taken to mitigate im-  
12                  pacts and avoid further sewer overflows at  
13                  the site.

14           “(2) EXCEPTIONS.—

15                   “(A) NOTIFICATION REQUIREMENTS.—The  
16                   notification requirements of paragraphs (1)(B)  
17                   and (1)(C) shall not apply to a sewer overflow  
18                   that is a wastewater backup into a single-family  
19                   residence.

20                   “(B) REPORTING REQUIREMENTS.—The  
21                   reporting requirements of paragraphs (1)(D)  
22                   and (1)(E) shall not apply to a sewer overflow  
23                   that is a release of wastewater that occurs in  
24                   the course of maintenance of the treatment  
25                   works, is managed consistently with the treat-

1           ment works’ best management practices, and is  
2           intended to prevent sewer overflows.

3           “(3) REPORT TO EPA.—Each State shall pro-  
4           vide to the Administrator annually a summary of  
5           sewer overflows that occurred in the State.

6           “(4) RULEMAKING BY EPA.—Not later than one  
7           year after the date of enactment of this subsection,  
8           the Administrator, after providing notice and an op-  
9           portunity for public comment, shall issue regulations  
10          to implement this subsection, including regulations  
11          to—

12                   “(A) establish a set of criteria to guide the  
13                   owner or operator of a publicly owned treat-  
14                   ment works in—

15                           “(i) assessing whether a sewer over-  
16                           flow has the potential to affect human  
17                           health or may imminently and substan-  
18                           tially endanger human health; and

19                                   “(ii) developing communication meas-  
20                                   ures that are sufficient to give notice  
21                                   under paragraphs (1)(B) and (1)(C); and

22   “(B) define the terms ‘feasible’ and ‘time-  
23   ly’ as such terms apply to paragraph (1)(A), in-  
24   cluding site specific conditions.

1           “(5) APPROVAL OF STATE NOTIFICATION PRO-  
2           GRAMS.—

3           “(A) REQUESTS FOR APPROVAL.—

4           “(i) IN GENERAL.—After the date of  
5           issuance of regulations under paragraph  
6           (4), a State may submit to the Adminis-  
7           trator evidence that the State has in place  
8           a legally enforceable notification program  
9           that is substantially equivalent to or ex-  
10          ceeds the requirements of paragraphs  
11          (1)(B) and (1)(C).

12          “(ii) PROGRAM REVIEW AND AUTHOR-  
13          IZATION.—If the evidence submitted by a  
14          State under clause (i) shows the notifica-  
15          tion program of the State to be substan-  
16          tially equivalent to or exceeds the require-  
17          ments of paragraphs (1)(B) and (1)(C),  
18          the Administrator shall authorize the State  
19          to carry out such program instead of the  
20          requirements of paragraphs (1)(B) and  
21          (1)(C).

22          “(iii) FACTORS FOR DETERMINING  
23          SUBSTANTIAL EQUIVALENCY.—In carrying  
24          out a review of a State notification pro-  
25          gram under clause (ii), the Administrator

1 shall take into account the scope of sewer  
2 overflows for which notification is required,  
3 the length of time during which notifica-  
4 tion must be made, the scope of persons  
5 who must be notified of sewer overflows,  
6 the scope of enforcement activities ensur-  
7 ing that notifications of sewer overflows  
8 are made, and such other factors as the  
9 Administrator considers appropriate.

10 “(B) REVIEW PERIOD.—If a State submits  
11 evidence with respect to a notification program  
12 under subparagraph (A)(i) on or before the last  
13 day of the 30-day period beginning on the date  
14 of issuance of regulations under paragraph (4),  
15 the requirements of paragraphs (1)(B) and  
16 (1)(C) shall not begin to apply to a publicly  
17 owned treatment works located in the State  
18 until the date on which the Administrator com-  
19 pletes a review of the notification program  
20 under subparagraph (A)(ii).

21 “(C) WITHDRAWAL OF AUTHORIZATION.—  
22 If the Administrator, after conducting a public  
23 hearing, determines that a State is not admin-  
24 istering and enforcing a State notification pro-  
25 gram authorized under subparagraph (A)(ii) in

1 accordance with the requirements of this para-  
2 graph, the Administrator shall so notify the  
3 State and, if appropriate corrective action is not  
4 taken within a reasonable time, not to exceed  
5 90 days, the Administrator shall withdraw au-  
6 thorization of such program and enforce the re-  
7 quirements of paragraphs (1)(B) and (1)(C)  
8 with respect to the State.

9 “(6) SPECIAL RULES CONCERNING APPLICA-  
10 TION OF NOTIFICATION REQUIREMENTS.—After the  
11 last day of the 30-day period beginning on the date  
12 of issuance of regulations under paragraph (4), the  
13 requirements of paragraphs (1)(B) and (1)(C)  
14 shall—

15 “(A) apply to the owner or operator of a  
16 publicly owned treatment works and be subject  
17 to enforcement under section 309, and

18 “(B) supersede any notification require-  
19 ments contained in a permit issued under this  
20 section for the treatment works to the extent  
21 that the notification requirements are less strin-  
22 gent than the notification requirements of para-  
23 graphs (1)(B) and (1)(C),



1       until such date as a permit is issued, renewed, or  
2       modified under this section for the treatment works  
3       in accordance with paragraph (1).

4               “(7) DEFINITIONS.—In this subsection, the fol-  
5       lowing definitions apply:

6               “(A) SANITARY SEWER OVERFLOW.—The  
7       term ‘sanitary sewer overflow’ means an over-  
8       flow, spill, release, or diversion of wastewater  
9       from a sanitary sewer system. Such term does  
10      not include municipal combined sewer overflows  
11      or other discharges from the combined portion  
12      of a municipal combined storm and sanitary  
13      sewer system and does not include wastewater  
14      backups into buildings caused by a blockage or  
15      other malfunction of a building lateral that is  
16      privately owned. Such term includes overflows  
17      or releases of wastewater that reach waters of  
18      the United States, overflows or releases of  
19      wastewater in the United States that do not  
20      reach waters of the United States, and waste-  
21      water backups into buildings that are caused by  
22      blockages or flow conditions in a sanitary sewer  
23      other than a building lateral.

1           “(B) SEWER OVERFLOW.—The term  
2           ‘sewer overflow’ means a sanitary sewer over-  
3           flow or a municipal combined sewer overflow.

4           “(C) SINGLE-FAMILY RESIDENCE.—The  
5           term ‘single-family residence’ means an indi-  
6           vidual dwelling unit, including an apartment,  
7           condominium, house, or dormitory. Such term  
8           does not include the common areas of a multi-  
9           dwelling structure.”.

10 **SEC. 4. ELIGIBILITY FOR ASSISTANCE.**

11           (a) PURPOSE OF STATE REVOLVING FUND.—Section  
12 601(a) of the Federal Water Pollution Control Act (33  
13 U.S.C. 1381(a)) is amended—

14           (1) by striking “and” the first place it appears;  
15           and

16           (2) by inserting after “section 320” the fol-  
17           lowing: “, and (4) for the implementation of require-  
18           ments to monitor for sewer overflows under section  
19           402”.

20           (b) WATER POLLUTION CONTROL REVOLVING LOAN  
21 FUNDS.—Section 603(c) of the Federal Water Pollution  
22 Control Act (33 U.S.C. 1383(c)) is amended—

23           (1) by striking “and” the first place it appears;  
24           and

1           (2) by inserting after “section 320 of this Act”  
2           the following: “, and (4) for the implementation of  
3           requirements to monitor for sewer overflows under  
4           section 402”.

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