AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

110TH CONGRESS
2D SESSION

# H. R. 2537

# AN ACT

To amend the Federal Water Pollution Control Act relating to beach monitoring, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Beach Protection Act of 2008''.

**SEC. 2. WATER POLLUTION SOURCE IDENTIFICATION.**

(a) SOURCE TRACKING.—Section 406(b) of the Federal Water Pollution Control Act (33 U.S.C. 1346(b)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following:

''(3) SOURCE IDENTIFICATION PROGRAMS.—In carrying out a monitoring and notification program, a State or local government may develop and implement a coastal recreation waters pollution source identification and tracking program for coastal recreation waters adjacent to beaches or similar points of access that are used by the public and are not meeting applicable water quality standards for pathogens and pathogen indicators. If, in carrying out such source identification and tracking program, a source of pathogenic contamination is identified by such State or local government, such State or local government shall make information on the existence of such source available to the public on the Internet

within 24 hours of the identification of such source.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 406(i) of such Act (33 U.S.C. 1346(i)) is amended by striking ''$30,000,000 for each of fiscal years 2001 through 2005'' and inserting ''$40,000,000 for each of fiscal years 2008 through 2012''.

(c) PROHIBITION ON EARMARKS.—None of the funds appropriated pursuant to section 406(i) of such Act (33 U.S.C. 1346(i)) may be used for a Congressional earmark as defined in clause 9(d) of rule XXI of the Rules of the House of Representatives.

**SEC. 3. FUNDING FOR BEACHES ENVIRONMENTAL ASSESSMENT AND COASTAL HEALTH ACT.**

Section 8 of the Beaches Environmental Assessment and Coastal Health Act of 2000 (114 Stat. 877) is amended by striking ''2005'' and inserting ''2012''.

**SEC. 4. STATE REPORTS.**

Section 406(b)(4)(A)(ii) of the Federal Water Pollution Control Act (as redesignated by section (2)(a)(1) of this Act) is amended by inserting ''and all environmental agencies of the State with authority to prevent or treat sources of pollution in coastal recreation waters'' after ''public''.

**SEC. 5. USE OF RAPID TESTING METHODS.**

(a) CONTENTS OF STATE AND LOCAL GOVERNMENT PROGRAMS.—Section 406(c)(4)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)(4)(A)) is amended by inserting ", including rapid testing methods," after "methods".

(b) REVISED CRITERIA.—Section 304(a)(9)(A) of such Act (33 U.S.C. 1314(a)(9)(A)) is amended by inserting "and rapid testing methods" after "methods".

(c) VALIDATION AND USE OF RAPID TESTING METHODS.—

(1) VALIDATION OF RAPID TESTING METHODS.—Not later than October 1, 2010, the Administrator of the Environmental Protection Agency shall complete an evaluation and validation of a rapid testing method for the water quality criteria and standards for pathogens and pathogen indicators described in section 303(i)(1)(A).

(2) GUIDANCE FOR USE OF RAPID TESTING METHODS.—

(A) IN GENERAL.—Not later than 180 days after completion of the validation under paragraph (1), and after providing notice and an opportunity for public comment, the Administrator shall publish guidance for the use at coastal recreation waters adjacent to beaches or

similar points of access that are used by the public of rapid testing methods that will enhance the protection of public health and safety through rapid public notification of any exceeding of applicable water quality standards for pathogens and pathogen indicators.

(B) PRIORITIZATION.—In developing such guidance, the Administrator shall prioritize the use of rapid testing methods at those beaches or similar points of access that are the most used by the public.

(d) DEFINITION.—Section 502 of such Act (33 U.S.C. 1362) is amended by adding at the end the following:

"(25) RAPID TESTING METHOD.—The term 'rapid testing method' means a method of testing the water quality of coastal recreation waters for which results are available as soon as practicable and not more than 6 hours after a water quality sample is received by the testing facility.".

**SEC. 6. NOTIFICATION OF FEDERAL, STATE, AND LOCAL AGENCIES.**

Section 406(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)(5)) is amended—

(1) by striking ''prompt communication'' and inserting ''communication, within 24 hours of the receipt of the results of a water quality sample,'';

(2) in subparagraph (A)—

(A) by inserting ''(i) in the case of any State in which the Administrator is administering the program under section 402,'' before ''the Administrator'' the first place it appears; and

(B) by inserting at the end the following:

''(ii) in the case of any State other than a State to which clause (i) applies, all agencies of the State government with authority to require the prevention or treatment of the sources of coastal recreation water pollution; and'';

(3) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

''(6) measures for an annual report to the Administrator, in such form as the Administrator determines appropriate, on the occurrence, nature, location, pollutants involved, and extent of any exceeding of applicable water quality standards for pathogens and pathogen indicators;''.

**SEC. 7. CONTENT OF STATE AND LOCAL PROGRAMS.**

Section 406(c) of the Federal Water Pollution Control Act (33 U.S.C. 1346(c)) is amended—

(1) by striking ''and'' at the end of paragraph (7) (as redesignated by section 6(3) of this Act);

(2) by striking the period at the end of paragraph (8) (as redesignated by section 6(3) of this Act) and inserting a semicolon; and

(3) by adding at the end the following:

''(9) the availability of a geographic information system database that such State or local government program shall use to inform the public about coastal recreation waters and that—

''(A) is publicly accessible and searchable on the Internet;

''(B) is organized by beach or similar point of access;

''(C) identifies applicable water quality standards, monitoring protocols, sampling plans and results, and the number and cause of coastal recreation water closures and advisory days; and

''(D) is updated within 24 hours of the availability of revised information;

''(10) measures for the immediate posting of signs at beaches or similar points of access that are

sufficient to give public notice following the results of any water quality sample that demonstrates an exceeding of applicable water quality standards for pathogens and pathogen indicators for the coastal recreation waters adjacent to such beaches or similar points of access; and

"(11) measures to ensure that closures or advisories are made or issued within 24 hours after the State government determines that any coastal recreation waters in the State are not meeting or are not expected to meet applicable water quality standards for pathogens and pathogen indicators.".

**SEC. 8. COMPLIANCE REVIEW.**

Section 406(h) of the Federal Water Pollution Control Act (33 U.S.C. 1346(h)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by moving such subparagraphs 2 ems to the right;

(3) by striking "In the" and inserting the following:

"(1) IN GENERAL.—In the"; and

(4) by adding at the end the following:

"(2) COMPLIANCE REVIEW.—On or before July 31 of each calendar year beginning after the date of

enactment of this paragraph, the Administrator shall—

"(A) prepare a written assessment of compliance with all statutory and regulatory requirements of this section for each State and local government and of compliance with conditions of each grant made under this section to a State or local government;

"(B) notify the State or local government of such assessment; and

"(C) make each of the assessments available to the public in a searchable database on the Internet on or before December 31 of such calendar year.

"(3) CORRECTIVE ACTION.—If a State or local government that the Administrator notifies under paragraph (2) is not in compliance with any requirement or grant condition described in paragraph (2) fails to take such action as may be necessary to comply with such requirement or condition within one year of the date of notification, any grants made under subsection (b) to the State or local government, after the last day of such one-year period and while the State or local government is not in compliance with all requirements and grant conditions de-

scribed in paragraph (2), shall have a Federal share of not to exceed 50 percent.

"(4) GAO REVIEW.—Not later than December 31 of the third calendar year beginning after the date of enactment of this paragraph, the Comptroller General shall conduct a review of the activities of the Administrator under paragraphs (2) and (3) during the first and second calendar years beginning after such date of enactment and submit to Congress a report on the results of such review.".

**SEC. 9. STUDY OF GRANT DISTRIBUTION FORMULA.**

(a) STUDY.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall commence a study of the formula for the distribution of grants under section 406 of the Federal Water Pollution Control Act (33 U.S.C. 1346) for the purpose of identifying potential revisions of such formula.

(b) CONTENTS.—In conducting the study, the Administrator shall consider the base cost to States of developing and maintaining water quality monitoring and notification programs, the States' varied beach monitoring and notification needs, including beach mileage, beach usage, and length of beach season, and other factors that the Administrator determines to be appropriate.

(c) CONSULTATION.—In conducting the study, the Administrator shall consult with appropriate Federal, State, and local agencies.

(d) REPORT.—Not later than 12 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the results of the study, including any recommendation for revision of the distribution formula referred to in subsection (a).

**SEC. 10. PUBLICATION OF COASTAL RECREATION WATERS PATHOGEN LIST.**

Section 304(a)(9) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(9)) is amended by adding at the end the following:

"(C) PUBLICATION OF PATHOGEN AND PATHOGEN INDICATOR LIST.—Upon publication of the new or revised water quality criteria under subparagraph (A), the Administrator shall publish in the Federal Register a list of all pathogens and pathogen indicators studied under section 104(v).".

**SEC. 11. ADOPTION OF NEW OR REVISED CRITERIA AND STANDARDS.**

Section 303(i)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1313(i)(2)(A)) is amended by striking ''paragraph (1)(A)'' each place it appears and inserting ''paragraph (1)''.

**SEC. 12. USE OF MOLECULAR DIAGNOSTICS FOR MONITORING AND ASSESSING COASTAL RECREATION WATERS.**

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study to assess the benefits of using molecular diagnostics for monitoring and assessing the quality of coastal recreation waters adjacent to beaches and similar points of access that are used by the public.

(b) CONTENTS.—In conducting the study, the Administrator shall—

(1) to the extent practicable, evaluate the full range of available rapid testing methods, as defined by section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362), and methods that meet prescribed performance standards, including—

(A) the amplified nucleic acid assay method; and

(B) the indicator organisms enterococci and E. coli; and

(2) compare the use of molecular diagnostics to culture testing of same source water, including the time for obtaining results, accuracy of results, and future applicability.

(c) PARTNERSHIPS.—Notwithstanding chapter 63 of title 31, United States Code, the Administrator may award a grant or cooperative agreement to a public or private organization to assist the Administrator in carrying out the study.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Administrator shall transmit to Congress a report on the results of the study.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**SEC. 13. MONITORING PROTOCOL FOR MERCURY.**

(a) REVIEW AND UPDATE OF EXISTING MONITORING PROTOCOLS.—The Administrator of the Environmental Protection Agency shall review and update existing monitoring protocols as necessary for mercury affecting the coastal recreation waters of the Great Lakes.

(b) RECOMMENDATIONS ON TESTING.—In carrying out subsection (a), the Administrator shall develop updated recommendations on testing for the presence of mer-

cury affecting the coastal recreation waters of the Great Lakes, including the presence of mercury in Great Lakes sediment and fish tissue.

(c) PUBLICATION OF WATER QUALITY CRITERIA.—Nothing in this section shall delay the schedule for publication of new or revised water quality criteria as required by section 304(a)(9) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(9)).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

**SEC. 14. NATIONAL LIST OF BEACHES.**

Section 406(g)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1346(g)(3)) is amended by striking ''The Administrator'' and all that follows through the period and inserting ''Within 12 months after the date of the enactment of the Beach Protection Act of 2008, and biennially thereafter, the Administrator shall update the list described in paragraph (1).''.

**SEC. 15. IMPACT OF CLIMATE CHANGE ON POLLUTION OF COASTAL RECREATION WATERS.**

(a) STUDY.—The Administrator of the Environmental Protection Agency shall conduct a study on the long-term impact of climate change on pollution of coastal recreation waters.

(b) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Administrator shall submit to Congress a report on the results of the study conducted under subsection (a).

(2) INFORMATION ON POTENTIAL CONTAMINANT IMPACTS.—The report shall include information on potential contaminant impacts on ground and surface water resources as well as ecosystem and public health in coastal communities.

(3) MONITORING.—The report shall address monitoring required to document and assess changing conditions of coastal water resources, recreational waters, and ecosystems and review the current ability to assess and forecast impacts associated with long-term change.

(4) FEDERAL ACTIONS.—The report shall highlight necessary Federal actions to help advance the availability of information and tools to assess and mitigate these effects in order to protect public and ecosystem health.

(5) CONSULTATION.—In developing the report, the Administrator shall work in consultation with agencies active in the development of the National Water Quality Monitoring Network and the imple-

1 mentation of the Ocean Research Priorities Plan and
2 Implementation Strategy.

Passed the House of Representatives April 16, 2008.

Attest:

*Clerk.*

110th CONGRESS
2d Session

# H. R. 2537

## AN ACT

To amend the Federal Water Pollution Control Act relating to beach monitoring, and for other purposes.