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WATER POLLUTION PROGRAM ENHANCEMENTS ACT OF 2000

OCTOBER 4 (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[to accompany S. 2417]

The Committee on Environment and Public Works, to which was referred a bill (S. 2417) to amend the Federal Water Pollution Control Act to increase funding for State nonpoint source pollution control programs, 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.” To accomplish this objective, the Clean Water Act depends upon cooperative efforts by Federal, state, tribal and local governments to implement the pollution control programs established under the Act. The success of the Clean Water Act depends greatly on adequate funding of grant and loan programs, sufficient personnel, and accurate scientific data. While there is broad consensus that up to this point, the Act has been largely successful, there is clear need for additional funding and scientific data, particularly with respect to nonpoint source pollution. S. 2417 addresses these needs.

The Clean Water Act divides the sources of pollution into two categories: point sources and nonpoint sources. Point sources are discrete conveyances, such as pipes or other man made conveyances. The Clean Water Act requires each point source discharging pollutants into the waters of the United States to obtain a National

Pollutant Discharge Elimination System (NPDES) permit. The purpose of the NPDES program is to protect human health and the environment. To accomplish this goal, NPDES permits contain limitations on discharges in order to meet the State water quality standards. The Clean Water Act requires states to set standards for the levels of quality that are needed for bodies of water in order to support their intended use.

In general, States are responsible for issuing NPDES permits. The Environmental Protection Agency (EPA) issues permits in only seven States which have not received delegated authority for the permit program. Currently, there is a substantial backlog of expired NPDES permits issued by both the States and EPA, that have not been reissued. The States use grants authorized by Section 106 of the Clean Water Act for administering state water quality programs to establish and implement their permit program. States identify a lack of economic resources and staff as a significant reason for their inability to keep up with the requirements and duties under the permit program.

Nonpoint source pollution, unlike pollutants from point sources, comes from diffuse sources. It is caused by rainfall or snow melt moving over and through the ground. States currently address nonpoint source pollution under the Clean Water Act and other Federal and state laws. Unlike point sources, the impacts of nonpoint source programs are difficult to measure because of their diffuse characteristics. Nonpoint sources of pollution are also controlled by a number of programs. Section 319 of the Clean Water Act provides grants to States to support a wide variety of activities including technical assistance, financial assistance education, technology transfer, demonstration projects and monitoring for specific nonpoint source implementation projects. The United States Department of Agriculture (USDA) programs, such as the Buffer Initiative, Wetlands Reserve Program and the Environmental Quality Incentive Program also address nonpoint source problems. In many situations, the USDA and EPA programs work together in an attempt to control nonpoint source pollution. However, a comprehensive examination of the programs and practices currently being used to control nonpoint sources, and their success or failure, is needed. While great strides have been made under all these programs, there is still a need for increased funding, more data, and experienced staff to implement the programs.

State regulators have multiple ways to examine the waters in their state to determine the success, or failure, of environmental programs. States are required to monitor and assess the status of all waters every 2 years under section 305(b) of the Clean Water Act, and report to Congress a summary of their findings as part of this process. States compare monitoring data, or other information, with water quality standards to determine if their waters are meeting the standards. The States have not assessed all their waters. In fact, in the 1998 305(b) Report to Congress, States reported to have assessed only 23 percent of rivers, 42 percent of lakes and 32 percent of the estuaries in the United States. States have been increasing the amount of assessed waters since the enactment of this section, however, progress has been limited due to insufficient funding and staff.

The Clean Water Act requires States to establish a separate list of waters not meeting the State water quality standards under section 303(d). The list prioritizes waters taking into account the severity of the pollution and the uses of the waters. The Clean Water Act then requires states to develop Total Maximum Daily Loads (TMDLs) for those waters on the 303(d) list. A TMDL is a calculation of the maximum amount of a pollutant that a water body can receive and still meet water quality standards. From that total amount, States then allocate specific pollutant limitations or “budgets” to each source of the pollutant on an impaired water. The TMDL program has not been implemented consistently from State to State.

States ability to access their waters under section 305(b) and to list impaired waters under section 303(d) is dependent upon comprehensive and accurate monitoring data, economic resources, and staff. Unfortunately, States currently do not have comprehensive monitoring data for their waters. A significant cause for this is lack of sufficient funding.

OBJECTIVES OF THIS LEGISLATION

The Water Pollution Program Enhancements Act of 2000 will make several significant changes to improve the success of the Clean Water Act.

First, S. 2417 will increase the funding to the Clean Water Act nonpoint source grant program, section 319. This will provide States with a much needed increase in economic resources. These grants will be provided to States to assist landowners in developing and implementing nonpoint source pollution control projects. This should have an immediate impact on state nonpoint source programs.

Second, S. 2417 will increase the funding to the Clean Water Act point source grant program, section 106. These funds will be used for water quality monitoring, preparing TMDLs and developing watershed strategies. The increase in data that results from this monitoring will greatly benefit all of the Clean Water Act programs.

Finally, S. 2417 will require two studies to be provided to the Congress. These studies will provide a comprehensive analysis of the wide range of programs being used to protect water quality and their costs and benefits. The studies will examine programs under the Clean Water Act and other state and Federal water quality related programs.

S. 2417 will have an immediate and long lasting impact on the success of the Clean Water Act. It will greatly benefit both policy-makers and those regulators currently implementing water quality programs.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

Section 1 designates the bill as the “Water Pollution Program Enhancement Act of 2000.”

Sec. 2. Definitions

Section 2 defines “Administrator,” “NAPA Study,” and “NAS Study.”

Sec. 3. Funding For Water Pollution Control Measures

Section 3 amends section 106(a) of the Clean Water Act to increase the authorization from the existing level of \$75,000,000 to \$250,000,000 for each of the fiscal years 2001 through 2007. Of that amount, \$50,000,000 shall be made available for monitoring, improving the listing process under 303(d), preparing of TMDLs and developing watershed management strategies.

This increase, if funded, would have an immediate impact on States’ water quality programs. It would greatly improve the States’ ability to implement the NPDES permit program, collect reliable data, improve the listing process under section 303(d), and develop TMDLs.

Section 319(j) is amended to from the eauthorize \$500,000,000 for each of the fiscal years 2001 through 2007. The current authorized level for section 319 is \$130,000,000. Of the amount authorized under Section 319(j), not more than \$7,500,000 may be made available to carry out groundwater quality projects under 319(i). Section 319(j)(3) requires \$200,000,000 of the \$500,000,000 authorized under this section, to be made available to the States for grants to landowners to develop and implement nonpoint source pollution control activities and projects to accomplish the goals of the Clean Water Act. The State will prioritize the use of these funds. The Federal share of the costs of these projects shall not exceed 90 percent. These funds cannot be used to accomplish activities required under Federal or State law. This restriction is intended only to ensure that recipients cannot use these funds to comply with permit requirements or other legal restrictions, such as those imposed under section 9 of the Endangered Species Act. Grant recipients may use other Federal programs and eligible in-kind contributions to satisfy the non- Federal share.

The State nonpoint source programs will greatly benefit by these additional funds. Additional resources will allow States to fund a broad range of projects to control nonpoint source pollution, resulting in real, on the ground improvements. It will also substantially increase states ability to gather complete and accurate scientific data in order to make accurate conclusions about their water quality.

Sec. 4. Reports to Congress

Section 4 requires the Administrator of the Environmental Protection Agency, no later than 18 months after enactment of this Act, to submit two reports to the Congress.

The first report is to be conducted by the National Academy of Sciences (NAS) to study the scientific basis underlying the development and implementation of the total maximum daily loads under the Clean Water Act Section 303(d). The study should also examine the availability and effectiveness of alternative programs or mechanisms in producing quantifiable reductions of pollution from point and nonpoint sources. The Congress authorizes \$2,000,000 to carry out this study.

The NAS study will provide the Congress with a comprehensive examination of the current status of the TMDL program from a scientific perspective. States are using various programs and methods to accomplish the goals of the Clean Water Act, and this study should provide an analysis of those programs. This will not only greatly benefit the Congress, but other States that may learn of more effective programs to control pollution.

The second report is to be conducted by the National Academy of Public Administrators (NAPA) to examine the effectiveness of existing voluntary and other programs being implemented in producing quantifiable reductions in pollution from point and nonpoint sources in order to attain water quality standards. The study will also analyze the costs and benefits associated with these programs. The Congress authorizes \$3,000,000 to carry out this study.

There is a great need to have information not only on the universe of programs that exist to reduce pollution from point and nonpoint sources, but also on the costs and benefits associated with those programs. This data will be extremely beneficial for both State and Federal policymakers as they evaluate the most cost effective ways to reduce pollution.

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 (P.L. 104-4), the committee makes the following evaluation of the Federal mandates contained in the reported bill: S. 2417 imposes no Federal intergovernmental mandates on State, local or tribal governments.

LEGISLATIVE HISTORY

On April 13, 2000, Senator Michael D. Crapo introduced S. 2417, a bill to amend the Federal Water Pollution Control Act to increase funding for State nonpoint source pollution control programs, and for other purposes. On May 18, 2000, the Committee on the Environment and Public Works Subcommittee on Fisheries, Wildlife, and Drinking Water held a hearing on the "Water Pollution Program Enhancement Act of 2000." On July 26, 2000, the Committee on the Environment and Public Works held a business meeting to consider S. 2417 and it was favorably reported by the committee 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, August 14, 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. 2417, the Water Pollution Program Enhancements Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2417, Water Pollution Program Enhancements Act of 2000, as ordered reported by the Senate Committee on Environment and Public Works on July 26, 2000

Summary

S. 2417 would authorize the appropriation of \$750 million for each of fiscal years 2001 through 2007 for the Environmental Protection Agency (EPA) to continue activities associated with the prevention, reduction, and elimination of water pollutants and nonpoint source water pollution. The bill also would authorize a one-time appropriation of \$3 million for the National Academy of Sciences (NAS) to study the total maximum daily load program, and a one-time appropriation of \$2 million for the National Academy of Public Administrators (NAPA) to study State and local government programs for reducing water pollution.

CBO estimates that implementing this legislation would cost almost \$2 billion over the next 5 years, assuming appropriation of the authorized amounts. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S.2417 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no other costs on State, local, or tribal governments.

Estimated Cost to the Federal Government

The estimated budgetary impact of S.2417 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and the environment). For the purpose of this estimate, CBO assumes that S. 2417 will be enacted near the start of fiscal year 2001 and that the full amounts authorized by the bill will be appropriated for each fiscal year. Outlay estimates are based on historical spending patterns for this program.

By Fiscal Year, in Millions of Dollars

	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority ^a	316	0	0	0	0	0
Estimated Outlays	205	230	220	142	47	0
Proposed Changes	205	230	220	142	47	0
Water Pollution Programs:						
Authorization Level	0	750	750	750	750	750
Estimated Outlays	0	38	150	375	600	713
NAS and NAPA Studies:						
Authorization Level	0	5	0	0	0	0
Estimated Outlays	0	3	2	0	0	0
Spending Under S. 2417:						
Authorization Level ^a	316	755	750	750	750	750
Estimated Outlays	205	271	372	517	647	713

^a The 2000 level includes the amount appropriated for that year for the water pollution control programs that S. 2417 would reauthorize.

Pay-As-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact

S. 2417 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no other costs on State, local, or tribal governments. The bill would authorize \$750 million annually from 2001 through 2007 for grants to States and interstate agencies to implement programs to control water pollution, including managing nonpoint sources of pollution.

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: Lauren Marks (226–2940)

Estimate approved by: Peter H. Fontaine Deputy 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.

* * * * *

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. [(a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

[(1) \$60,000,000 for the fiscal year ending June 30, 1973; and

[(2) \$75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, \$100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980, \$75,000,000 per fiscal year for the fiscal years 1981 and 1982, such sums as may be necessary for fiscal years 1983 through 1985, and \$75,000,000 per fiscal year for each of the fiscal years 1986 through 1990;

[for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.]

(a) FUNDING.—

(1) IN GENERAL.—*There are authorized to be appropriated \$250,000,000 for each of fiscal years 2001 through 2007, to remain available until expended, for grants to States and interstate agencies to be used in carrying out this section, including—*

(A) the administration of programs for the prevention, reduction, and elimination of pollutants; and

(B) enforcement carried out directly or through appropriate State law enforcement officers and agencies.

(2) STATE ACTIVITIES.—*Of the amount authorized under paragraph (1) for any fiscal year, \$50,000,000 shall be made available to States for—*

(A) the collection of reliable monitoring data;

(B) the improvement of lists prepared under section 303(d)(1);

(C) the preparation of total maximum daily load allocations under section 303(d); and

(D) the development of watershed management strategies.

* * * * *

SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

(a) STATE ASSESSMENT REPORTS.—

* * * * *

[(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsections (h) and (i) not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i). Sums appropriated pursuant to this subsection shall remain available until expended.]

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) *IN GENERAL.*—Subject to paragraphs (2) and (3), there is authorized to be appropriated to carry out subsections (h) and (i) \$500,000,000 for each of fiscal years 2001 through 2007, to remain available until expended.

(2) *GROUNDWATER QUALITY.*—Of the amount authorized under paragraph (1) for any fiscal year, not more than \$7,500,000 may be made available to carry out subsection (i).

(3) *PROJECT GRANTS.*—

(A) *IN GENERAL.*—Of the amount authorized under paragraph (1) for any fiscal year, \$200,000,000 shall be made available to States to provide grants to landowners to develop and implement nonpoint source pollution control projects or activities to restore or improve the water quality of impaired water that has been identified by a State as a priority for restoration.

(B) *COST SHARING.*—

(i) *FEDERAL SHARE.*—The Federal share of the costs of any project or activity funded under this paragraph shall not exceed 90 percent.

(ii) *NON-FEDERAL SHARE.*—The recipient of a grant under this paragraph may use funds from other Federal programs and eligible in-kind contributions to satisfy the non-Federal share.

(C) *LIMITATION.*—Grants under this paragraph shall not be made available for projects or activities that are required to be carried out under Federal or State law.

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