

# H. R. 155

To amend the Federal Water Pollution Control **Act** to provide for the use of biological monitoring and whole effluent **toxicity tests** in connection with publicly **owned** treatment **works**, municipal separate **storm sewer systems**, and municipal combined sewer overflows, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1999

Mr. HEFLEY 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 provide for the use of biological monitoring and whole **effluent toxicity tests** in connection with publicly owned treatment works, municipal separate storm sewer systems, and municipal combined 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 “Municipal Biological  
5 Monitoring Use **Act**”.

1 **SEC. 2. BIOLOGICAL MONITORING.**

2 (a) BIOLOGICAL MONITORING CRITERIA.-Section  
3 303(c)(2) of the Federal Water Pollution Control Act (33  
4 U.S.C. 1313(c)(2)) is amended-

5 (1) by inserting after the third sentence of sub-  
6 paragraph (B) the following: "Criteria for biological  
7 monitoring or whole effluent toxicity shall employ an  
8 aquatic species that is indigenous to the type of wa-  
9 ters, a species that is representative of such species,  
10 or such other appropriate species as will indicate the  
11 toxicity of the effluent in the specific receiving wa-  
12 ters. Such criteria shall take into account the natu-  
13 ral biological variability of the species, and shall en-  
14 sure that the accompanying test method accurately  
15 represents actual in-stream conditions, including  
16 conditions associated with dry and wet weather.";

17 (2) by striking the period at the end of sub-  
18 paragraph (B) and inserting the following: "; except  
19 that for publicly owned treatment works, municipal  
20 separate storm sewer systems, and municipal com-  
21 bined sewer overflows (including control facilities)  
22 and other wet weather control facilities, nothing in  
23 this Act shall be construed to authorize the use of  
24 water quality standards or petit effluent limita-  
25 tions which result in the **finding** of a violation upon

1 failure of whole effluent toxicity tests or biological  
2 monitoring tests.”; and

3 (3) by adding at the end the following:

4 “(C) Where the permitting authority determines that  
5 the discharge from a publicly owned treatment works, a  
6 municipal separate storm sewer system, or municipal com-  
7 bined sewer overflows (including control facilities) or other  
8 wet weather control facilities causes, has the reasonable  
9 potential to cause, or contributes to an in-stream excur-  
10 sion above a narrative or numeric criterion for whole efflu-  
11 ent toxicity, the permit may contain terms, conditions, or  
12 limitations requiring further analysis, identification eval-  
13 uation, or reduction evaluation of such effluent toxicity.  
14 Such terms, conditions, or limitations meeting the require-  
15 ments of this section may be utilized in conjunction with  
16 a municipal separate storm sewer system, or municipal  
17 combined sewer overflows (including control facilities) or  
18 other wet weather control facilities only upon a demonstra-  
19 tion that such terms, conditions, or limitations are tech-  
20 nically feasible, accurately represent toxicity associated  
21 with wet weather conditions, and can materially assist in  
22 an identification evaluation or reduction evaluation of such  
23 toxicity.”.

24 (b) INFORMATION ON WATER QUALITY CRITERIA.—  
25 Section 304(a)(8) of such Act (33 U.S.C. 1314(a)(8)) is

1 amended by inserting “, consistent with subparagraphs  
2 (B) and (C) of section 303(e)(2),” after “publish”.

3 (c) USE OF BIOLOGICAL MONITORING OR WHOLE  
4 EFFLUENT TOXICITY TESTING.—Section 402 of such Act  
5 (33 U.S.C. 1342) is amended by adding at the end the  
6 following:

7 “(q) USE OF BIOLOGICAL MONITORING OR WHOLE  
8 EFFLUENT TOXICITY TESTING.—

9 “(1) IN GENERAL.—Where the Administrator  
10 determines that it is necessary in accordance with  
11 subparagraphs (B) and (C) of section 303(e)(2) to  
12 include biological monitoring, whole effluent toxicity  
13 testing, or assessment methods as a term, condition,  
14 or limitation in a permit issued to a publicly owned  
15 treatment works, a municipal separate storm sewer  
16 system, or a municipal combined sewer overflow (in-  
17 cluding a control facility) or other wet weather con-  
18 trol facility, permit term, condition, or limitation  
19 shall be in accordance with such subparagraphs.

20 “(2) RESPONDING TO TEST FAILURES.—If a  
21 permit issued under this section contains terms, con-  
22 ditions, or limitations requiring biological monitoring  
23 or whole effluent toxicity testing designed to meet  
24 criteria for biological monitoring or whole effluent  
25 toxicity, the permit may establish procedures for fur-

1 ther analysis, identification evaluation, or reduction  
2 evaluation of such toxicity. The permit shall allow  
3 the permittee to discontinue such procedures, subject  
4 to future reinitiation of such procedures upon a  
5 showing by the permitting authority of changed con-  
6 ditions, if the source of such toxicity cannot, after  
7 thorough investigation, be identified.

8 “(3) TEST FAILURE NOT A VIOLATION.—The  
9 failure of a biological monitoring test or a whole ef-  
10 fluent toxicity test at a publicly owned treatment  
11 works, a municipal separate storm sewer system, or  
12 a municipal combined sewer overflow (including a  
13 control facility) or other wet weather control facility  
14 shall not result in a finding of a violation under this  
15 Act.”.