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OCEAN POLLUTION REDUCTION ACT II

MAY 28, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 587]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 587) to modify permitting requirements with respect to the discharge of any pollutant from the Point Loma Wastewater Treatment Plant in certain circumstances, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 587, the "Ocean Pollution Reduction Act II," introduced by Representative Scott Peters (D–CA), is to provide an

alternative process for the City of San Diego to comply with the *Clean Water Act*'s permitting requirements for the continued operation of the Point Loma Wastewater Treatment Plant, while ensuring continued reductions of pollutant discharges and greater use of reclaimed wastewater associated with the plant.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 587 seeks to clarify that the City of San Diego, California, can utilize the standard *Clean Water Act* National Pollutant Discharge Elimination System (NPDES) permit renewal process and does not need a variance application to continue operating the E.W. Blom Point Loma Metropolitan Wastewater Treatment Plant ("Point Loma Plant") and the Point Loma Ocean Outfall, subject to the implementation of the permitting requirements specified in the bill.

The Clean Water Act

The *Federal Water Pollution Control Act*, more commonly known as the *Clean Water Act*, prohibits the discharge of pollutants into navigable waters unless such discharges are covered by a federal permit as well as establishes national minimum standards for certain discharges, including discharges from publicly owned treatment works.[1] Section 301(b)(1)(B)[2] of the *Clean Water Act* requires that all publicly owned treatment works in existence as of July 1, 1977, achieve effluent limitations based on secondary treatment standards, established by the Administrator of the U.S. Environmental Protection Agency (EPA), and defined pursuant to section 304(d)(1) of the Act.[3] These limitations and standards are implemented through an NPDES permit, issued either by the EPA Administrator or an approved state program, pursuant to section 402 of the *Clean Water Act*.[4] The state of California is currently approved to implement the *Clean Water Act* NPDES program in the state.[5]

Section 301(h) of the *Clean Water Act* also includes a process for certain publicly owned treatment works that discharge into marine waters to continue to operate under a *Clean Water Act* NPDES permit with a limited variance from the secondary treatment standards. Section 301(h) authorizes the EPA Administrator, with state concurrence, to issue such an NPDES variance for discharges that meet the requirements of that subsection.[6] EPA regulations imple-

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[1] See 33 U.S.C. 1311(a).

[2] See 33 U.S.C. 1311(b)(1)(B).

[3] See https://www.epa.gov/npdes/secondary-treatment-standards. Secondary treatment is defined in the regulation (40 CFR Part 133) in terms of effluent quality for total suspended solids (TSS), biochemical oxygen demand (BOD), and pH; see also 33 U.S.C. 1314(d)(1).

[4] See 33 U.S.C. 1342.

[5] See https://www.epa.gov/npdes/npdes-state-program-authority.

[6] 33 U.S.C. 1311(h); the statutory requirements for a 301(h) variance are that:

> (1) there is an applicable water quality standard specific to the pollutant for which the modification is requested;
>
> (2) the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;
>
> (3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

menting section 301(h) require that NPDES variances under section 301(h) must also comply with applicable provisions of state, local, or other federal laws or Executive Orders, including the *Coastal Zone Management Act of 1972* (16 U.S.C. 1451 et seq.); the *Endangered Species Act of 1973* (16 U.S.C. 1531 et seq.); and Title III of the *Marine Protection, Research and Sanctuaries Act* (16 U.S.C. 1431 et seq.).[7] NPDES permits, including those issued with a 301(h) variance, have a duration of five years and must be renewed.[8]

The Point Loma Wastewater Treatment Plant

The Point Loma Plant, located in San Diego, California, began operations in 1963.[9] The Plant treats approximately 175 million gallons of wastewater per day, generated in a 450-square-mile area by more than 2.2 million residents.[10] The Point Loma Plant operates as a chemically-assisted primary treatment plant, and is the terminal treatment facility discharging to the Point Loma Ocean Outfall—a 4.5 mile pipe that extends outward from the Point Loma Plant and discharges treated wastewater into the Pacific Ocean at a depth of more than 300 feet.[11]

In 1979, the City of San Diego applied for a 301(h) variance, which was approved by EPA and the state.[12] Since that time, the Point Loma Plant has generally operated, and is currently operating, under a section 301(h) permit variance [13] to discharge their wastewater with less than full secondary treatment through the Ocean Outfall to the nearby coastal waters. The current 301(h)

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(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) here will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit; and

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

[7] See 40 CFR 125, Subpart G.

[8] See 33 U.S.C. 1342(b)(1)(B).

[9] https://www.sandiego.gov/public-utilities/customer-service/water-wastewater-facilities/point-loma.

[10] See id.

[11] See infra at 15. The ocean outfall consists of an original 11,226-foot-long outfall section that was constructed in 1963 and a 12,246-foot-long extension that was added in 1993. The total length of the outfall system is 23,472 feet, or approximately 4.5 miles.

[12] See United States of America v. City of San Diego, U.S. District Court for the Southern District of California, March 31, 1994; 1994 U.S. Dist. LEXIS 19501 *; 38 ERC (BNA) 1718.

[13] See Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit for the City of San Diego E.W. Blom Point Loma Wastewater Treatment Plant Discharge for the Pacific Ocean Through the Point Loma Ocean Outfall (NPDES No. CA0107409), found at https://www.epa.gov/sites/production/files/2017-08/documents/ca0107409-point_loma_301h_decision_and_tdd_2017-08-04.pdf.

variance was issued on October 1, 2017 and expires September 30, 2022.[14]

According to the city of San Diego, because it is impracticable for the Point Loma Plant to meet the secondary treatment requirements of the *Clean Water Act*, the Point Loma Plant must obtain a section 301(h) variance for its continued operation.[15] The current 301(h) variance provides the Point Loma Plant with a modification related to its discharge levels for Total Suspended Solids (TSS) and Biochemical Oxygen Demand (BOD).[16]

In addition, the city of San Diego is engaged in a long-term effort to reduce discharges from the Point Loma Plant to coastal waters while reclaiming treated wastewater for eventual potable and non-potable reuse in the area.[17] For example, in connection with enactment of the *Ocean Pollution Reduction Act* (Pub. L. 103–431), the city has constructed treatment facilities with the capacity for 45,000,000 gallons of reclaimed wastewater per day, which has also resulted in a reduction in the discharge of TSS and BOD by the facility.

In May 2020, the San Diego Regional Water Quality Control Board issued a new NPDES permit for the North City Water Reclamation and Pure Water Facility (part of San Diego's Pure Water program) to combine tertiary treated recycled water and additional highly advanced treatment (reverse osmosis, oxidation, ultrafiltration, etc.), and then discharge to the Miramar reservoir for eventual drinking water use.[18] Once fully operating, this will re-direct a portion of the Point Loma discharge to the North City/Pure Water facility. However, while the ocean discharges from the Point Loma Plant will be reduced, such discharges will not be eliminated in the foreseeable future.

H.R. 587, the Ocean Pollution Reduction Act II

The purpose of H.R. 587 is to address the long-term *Clean Water Act* permitting requirements for the city of San Diego and other cities that feed into Point Loma Plant for wastewater treatment.

H.R. 587 provides for an alternative process for the Point Loma Plant to achieve compliance with the *Clean Water Act's* NPDES permitting requirements, other than the existing 301(h) variance conditions, while ensuring continued reductions of pollutant discharges and greater use of reclaimed wastewater associated with the plant. The legislation also eliminates the need to reapply for the variance specifically for the Point Loma Plant, and provides di-

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[14] See id.

[15] The City has expressed concern that local geographic limitations, including the adjacency of the Point Loma Wastewater Treatment Plant to the Cabrillo National Monument, the Point Loma Ecological Reserve, and the U.S. Naval Base at Point Loma, California, prevent the construction of treatment facilities that would be required to achieve full compliance with the secondary treatment requirements of the Clean Water Act. The City has also expressed the view that establishing a standard that allows for greater use of reclaimed wastewater to address the long-term water supply needs of the region makes more practical sense than requiring the treatment of wastewater that would ultimately be discharged into the Pacific Ocean.

[16] See supra note 15. According to information provided by EPA, the Point Loma Plant currently removes approximately 80% of TSS, and BOD removal is approximately 55–60%. Existing secondary treatment standards require publicly owned treatment works to meet TSS and BOD removal at 85% minimum.

[17] See "Application for Renewal of NPDES CA0107409 and 301(h) Modified Secondary Treatment Requirements," City of San Diego Public Utilities, Water and Wastewater. January 2015. Accessed at https://www.sandiego.gov/sites/default/files/ploovol2_15.pdf.

[18] See https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/orders2020.html.

rection to EPA for including minimum treatment levels for the NPDES permit to be issued to Point Loma Plant.

HEARINGS

For the purposes of rule XIII, clause 3(c)6(A) of the 117th Congress, no hearings were held to develop or consider H.R. 587 in the 117th Congress, however the Committee held the following hearing in the 116th Congress:

On February 27, 2020, the Subcommittee on Water Resources and Environment held a hearing titled "Proposals for a Water Resources Development Act of 2020: Members' Day Hearing." Representative Scott Peters testified before the Subcommittee on the issues addressed within the legislation.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 587 was introduced in the House on January 28, 2021, by Mr. Peters, Mr. Issa, Ms. Jacobs of California, Mr. Levin of California, and Mr. Vargas and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 587 was referred to the Subcommittee on Water Resources and Environment.

The Subcommittee on Water Resources and Environment was discharged from further consideration of H.R. 587 on March 24, 2021.

The Full Committee considered H.R. 587 on March 24, 2021, and ordered the measure to be reported to the House with a favorable recommendation, by a record vote of 54 yeas and 2 nays (Roll Call Vote No. 17).

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

H.R. 587, was ordered to be favorably reported to the House of Representatives, by a record vote of 54 yeas and 2 nays (Roll Call Vote No. 17). The vote was as follows:

Vote: 17 Measure: H.R. 587

On: agreeing to H.R. 587 and ordering to be reported to the House, favorably

Member	Vote	Member	Vote
Mr. DeFazio	Yea	Mr. Graves of MO	Yea
Ms. Norton	Yea	Mr. Young	
Ms. Johnson of TX	Yea	Mr. Crawford	
Mr. Larsen of WA	Yea	Mr. Gibbs	Nay
Mrs. Napolitano	Yea	Mr. Webster	Yea
Mr. Cohen	Yea	Mr. Massie	Yea
Mr. Sires	Yea	Mr. Perry	Nay
Mr. Garamendi	Yea	Mr. Rodney Davis of IL	Yea
Mr. Johnson of GA	Yea	Mr. Katko	Yea
Mr. Carson	Yea	Mr. Babin	Yea
Ms. Titus	Yea	Mr. Graves of LA	Yea
Mr. Maloney of NY	Yea	Mr. Rouzer	Yea
Mr. Huffman	Yea	Mr. Bost	Yea
Ms. Brownley	Yea	Mr. Weber of TX	Yea
Ms. Wilson of FL		Mr. LaMalfa	Yea

Member	Vote	Member	Vote
Mr. Payne	Yea	Mr. Westerman	Yea
Mr. Lowenthal	Yea	Mr. Mast	Yea
Mr. DeSaulnier	Yea	Mr. Gallagher	
Mr. Lynch	Yea	Mr. Fitzpatrick	Yea
Mr. Carbajal		*Miss González-Colón*	Yea
Mr. Brown	Yea	Mr. Balderson	Yea
Mr. Malinowski		Mr. Stauber	
Mr. Stanton	Yea	Mr. Burchett	Yea
Mr. Allred	Yea	Mr. Johnson of SD	Yea
Ms. Davids of KS	Yea	Mr. Van Drew	Yea
Mr. García of IL	Yea	Mr. Guest	
Mr. Delgado	Yea	Mr. Nehls	Yea
Mr. Pappas	Yea	Ms. Mace	
Mr. Lamb	Yea	Ms. Malliotakis	Yea
Mr. Moulton		Ms. Van Duyne	
Mr. Auchincloss	Yea	Mr. Gimenz	
Ms. Bourdeaux	Yea	Mrs. Steel	Yea
Mr. Kahele	Yea		
Ms. Strickland	Yea		
Ms. Williams of GA	Yea		
Ms. Newman	Yea		
Vacancy			

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 587 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 13, 2021.

Hon. PETER A. DEFAZIO,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 587, the Ocean Pollution Reduction Act II.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 587, Ocean Pollution Reduction Act II
As ordered reported by the House Committee on Transportation and Infrastructure on March 24, 2021

By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Statutory pay-as-you-go procedures apply?	No	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -$500,000 and $500,000.

The National Pollutant Discharge Elimination System (NPDES) program controls water pollution by regulating point sources of discharge into the waters of the United States. Under that program, publicly owned wastewater treatment works must meet secondary treatment standards specified by law. The Environmental Protection Agency (EPA) generally delegates the authority to administer the NPDES program to individual states.

Under current law, the Point Loma Plant in San Diego, California, can apply to be exempted from secondary treatment standards if it meets certain conditions. H.R. 587 would eliminate the need for an application and would allow that exemption under the plant's normal NPDES permit if it meets additional conditions that include implementing pretreatment and water reuse programs and providing ocean monitoring data and analysis to EPA.

Using information from EPA, CBO estimates that implementing the bill would have an insignificant effect on EPA's costs to administer the NPDES program over the 2021–2026 period. CBO expects that the agency's costs to administer the Point Loma Plant secondary treatment standard waiver would shift to administering and evaluating its performance under the NPDES permit.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide an alternative process for the city of San Diego to achieve compliance with the *Clean Water Act's* permitting requirements for the continued operation of the Point Loma Wastewater Treatment Plan, while ensuring continued reductions of pollutant discharges and greater use of reclaimed wastewater associated with the plant.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 587 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 587 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the "Ocean Pollution Reduction Act II".

Sec. 2. San Diego Point Loma permitting requirements

Subsection (a) authorizes the EPA Administrator, in coordination with the State, to issue an NPDES permit (under section 402 of the Clean Water Act) for a discharge from the Point Loma Plant that complies with the requirements of subsection (b).

Subsection (b) directs that a permit issued pursuant to this legislation for the Point Loma Plant require the permittee to—

(1) Maintain the current Point Loma Ocean Outfall;

(2) Attain explicit annual limits for the discharge of TSS, which decrease from a level of 12,000 metric tons on the date of enactment to not more than 9,942 tons by December 31, 2027;

(3) Comply with designated discharge limits of TSS on a 30-day average;

(4) Require the removal of not less than 80 percent of TSS from the discharge on a monthly average, and not less than 58 percent of BOD on an annual average;

(5) Attain all other effluent limitations of secondary treatment, as determined by the Administrator;

(6) Comply with other applicable requirements of sections 401 (state certification requirements), 402 (NPDES permit requirements), and 403 (ocean outfall requirements) of the Clean Water Act;

(7) Comply with pretreatment requirements of the Clean Water Act;

(8) Provide the Administrator with 10 consecutive years of ocean monitoring data to assist in determining compliance with this Act and the Clean Water Act; and

(9) Demonstrate that at least 83,000,000 gallons per day on an annual average of water suitable for potable reuse will be provided by December 31, 2035.

Subsection (c) requires the Administrator, in coordination with the State, to develop and incorporate into the NPDES permit milestones for compliance with the requirements of this Act.

Subsection (d) allows the permittee to pursue the construction of facilities to comply with the normal secondary treatment requirements of the Clean Water Act.

Subsection (e) defines the terms "Administrator", "biochemical oxygen demand", "City", "Point Loma Plant", and "State".

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As reported by the Committee, H.R. 587 makes no changes in existing law.

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