



- Board of Directors  
*Communications and Legislation Committee*

10/11/2011 Board Meeting

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**8-8**

## **Subject**

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Express opposition to S. 711 (Lautenberg, D-NJ) – Secure Water Facilities Act

## **Description**

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S. 711 (Lautenberg, D-NJ), the Secure Water Facilities Act, would establish an expansive new regulatory program under the U.S. Environmental Protection Agency (EPA), aimed at preventing intentional acts of terrorism at some water and wastewater facilities. As proposed, S. 711 ([Attachment 1](#)) would mandate specific actions, including the potential to prescribe chemical treatment technologies, that conflict with Metropolitan's public health and safety responsibilities. Further, the proposed legislation does not take into account extensive security investments made by Metropolitan and other agencies or local conditions, such as source water quality and site constraints.

## **Legislative and Regulatory Background**

Following the terrorist attacks of 9/11, Metropolitan systematically increased security systems and procedures at the water treatment plants and chemical unloading facility where chlorine is stored. As required by the Public Health Protection and Bioterrorism Preparedness and Response Act (Bioterrorism Act) of 2002, staff completed a vulnerability assessment identifying further areas for improvement. Staff members then developed an Emergency Response Plan and submitted the information to the EPA. Guided in part by this assessment, Metropolitan upgraded its chemical safeguards in several ways, including:

- Developing security protocols for all chemical deliveries;
- Increasing the presence of on-site security guards;
- Investing approximately \$130 million to build chlorine containment buildings;
- Ensuring that its chlorine facilities operate within a multi-layered system of physical barriers with 24-hour guard patrols, camera observation, and electronic access controls; and
- Reducing the number of facilities that hold chlorine gas from 17 to 6.

In 2006, Congress directed the U.S. Department of Homeland Security (DHS) to secure certain chemical facilities against terrorist attacks. As a result, DHS promulgated the Chemical Facility Anti-Terrorism Standards (CFATS). This 2007 rule established risk-based performance standards for chemical facilities. Along with more than 300 other chemicals, chlorine gas was designated by the DHS as a chemical of interest in the CFATS regulation. Recognizing the crucial public health mission and existing regulatory requirements, Congress exempted a number of facilities from CFATS. These facilities include those regulated under the Safe Drinking Water Act (drinking water treatment plants), and the Clean Water Act (wastewater treatment plants). Other vital service sectors were also exempted from CFATS, including the Maritime Transportation Security Act (ports), and all Department of Defense, Department of Energy, and Nuclear Regulatory Commission facilities. In establishing the law, Congress recognized that if any regulation of exempt facilities is needed, it should be authorized through their primary enabling legislation, as was done for water with the Bioterrorism Act of 2002.

## **Current Legislative Proposals**

Several bills have been introduced in this 112<sup>th</sup> Congress to reauthorize CFATS, including one, H.R. 2890, which would remove the exemption for water and wastewater agencies. S. 711 would instead create a new regulatory

program under EPA specifically designed to prevent intentional terrorist acts at water and wastewater agencies. However, there are several provisions of S. 711 that raise concerns for Metropolitan.

**Regulation of Water Treatment Plants.** While drinking water systems remain exempt from current regulation under CFATS, representatives of the administration and some members of Congress wish to eliminate what they consider to be a security gap and either remove this exemption or create an additional program specifically for the water and wastewater sector. Metropolitan contends that no security gap exists and that its own substantial security protocols for liquefied chlorine gas render unnecessary any additional regulation. Rather, following Metropolitan's highly proactive approach, periodically updating vulnerability assessments and emergency response plans should suffice to guide water treatment plants in their security efforts.

**Inherently Safer Technology.** S. 711 requires high-risk water treatment plants to investigate and report on "methods to reduce the consequences of a chemical release from an intentional act," including considering Inherently Safer Technology (IST). IST provisions would require facilities that use high-risk chemicals or processes to evaluate alternatives and be subject to mandates by DHS or EPA to adopt those alternatives. For the water treatment industry, this could result in an order to switch from chlorine gas to a much more dilute form of chlorine such as bleach. Drinking water agencies advocate that treatment decisions be based on local needs (e.g., considering source water quality, site constraints, supply chain logistics, and feasibility). Water agencies also argue that they must have the flexibility to appropriately choose chemicals to assure public health protection, while providing security and operational reliability. Under S. 711, once alternatives are evaluated, the burden then falls on the utility to either implement the process change or demonstrate to its regulator that modifications are infeasible. This burden is onerous and does not take into consideration the tremendous effort and expense that an entity such as Metropolitan has already undertaken to secure its current water treatment system.

**System-wide Security.** Regulations under CFATS focus on the protection of chemicals stored on site. However, S. 711 goes beyond the current CFATS provisions and further expands into preventing contamination of drinking water supplies throughout the entire water treatment, storage, and delivery system. Though this objective is important, preventing intentional contamination remains highly complex and technical and remains best addressed through federally funded pilot programs or vulnerability assessments performed by water quality experts, as are currently performed by Metropolitan.

### **Metropolitan's Chemical Security Strategy**

Metropolitan's five water treatment plants rely on liquefied chlorine gas (in addition to ozone) to disinfect raw water and ensure a protective disinfectant residual in the distribution system. Approximately half of the liquefied chlorine gas supply is delivered directly to treatment plants by rail, and the remainder is transloaded from railcars to truck trailers for delivery. Metropolitan's staff has been proactive and conscientious about security and the use of chemicals, such as chlorine.

In 2006, Metropolitan completed its most recent study evaluating potential alternatives to the use of chlorine gas, such as on-site production of dilute hypochlorite (bleach) and the purchase of commercial sodium hypochlorite. Staff ultimately concluded that chlorine gas remains the most reliable and effective water treatment choice to ensure adequate disinfection of drinking water to 19 million consumers and to maintain sufficient chemical reserves following a major earthquake. These findings were presented to the Metropolitan Board in May 2009.

In addition to Metropolitan's voluntary security protocols, substantial bodies of regulation already govern the storage, handling and use of chlorine gas. For example, the EPA's Accidental Release Prevention/Risk Management Program and CalOSHA's Process Safety Management regulations exhaustively prescribe systems and procedures to minimize accidental release and worker exposure to chlorine gas. By their very nature, these regulations also reduce the risk of intentional releases. Thus, Metropolitan has established a clear pattern of responsibility and concern for the prevention and containment of any potential hazards posed by the use of chlorine gas, and remains committed to the highest standards of security for chlorine and other necessary water treatment chemicals.

### Staff Recommendation

Given the significant investment the District has made to secure on-site chemicals, improve security and protect both its workforce and the public, staff recommends the Board authorize the General Manager to express opposition to S. 711 (Lautenberg, D-NJ) - Secure Water Facilities Act, and protect Metropolitan's treatment options.

### Policy

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By Minute Item 48508, dated December 14, 2010, the Board adopted the Federal and State Legislative Strategy.

### California Environmental Quality Act (CEQA)

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CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

### Board Options

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#### Option #1

Adopt the CEQA determination and authorize the General Manager to express opposition to S. 711 (Lautenberg, D-NJ) – Secure Water Facilities Act, and protect Metropolitan's treatment options.

**Fiscal Impact:** None

**Business Analysis:** Legislation could require additional expenditures associated with securing facilities or converting disinfection processes away from liquefied chlorine gas.

#### Option #2

Take no position at this time.

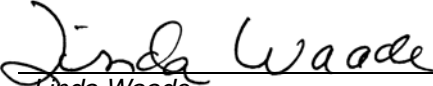
**Fiscal Impact:** None

**Business Analysis:** Potential costs associated with securing facilities or converting disinfection processes and potential lost sunk cost of \$130 million invested in chlorine containment facilities.


### Staff Recommendation

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Option #1

  
 Linda Waade  
 Deputy General Manager, External Affairs

10/5/2011  
 Date

  
 Jeffrey Lightlinger  
 General Manager

10/5/2011  
 Date

**Attachment 1 – S. 711 (posted on Metropolitan's website due to its length -- 107 pages)**

112TH CONGRESS  
1ST SESSION

# S. 711

To amend the Safe Drinking Water Act and the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to reduce or eliminate the risk of releases of hazardous chemicals from public water systems and wastewater treatment works, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 31, 2011

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Safe Drinking Water Act and the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to reduce or eliminate the risk of releases of hazardous chemicals from public water systems and wastewater treatment works, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Secure Water Facilities Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DRINKING WATER SYSTEM SECURITY

Sec. 101. Short title.

Sec. 102. Intentional acts affecting security of covered water systems.

Sec. 103. Study to assess threat of contamination of drinking water distribu-  
tion systems.

TITLE II—WASTEWATER TREATMENT WORKS SECURITY

Sec. 201. Short title.

Sec. 202. Wastewater treatment works security.

Sec. 203. Study to assess threat of contamination of wastewater treatment  
works.

3 **TITLE I—DRINKING WATER**  
4 **SYSTEM SECURITY**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Secure Drinking  
7 Water Facilities Act”.

8 **SEC. 102. INTENTIONAL ACTS AFFECTING SECURITY OF**  
9 **COVERED WATER SYSTEMS.**

10 (a) AMENDMENT.—

11 (1) IN GENERAL.—Section 1433 of the Safe  
12 Drinking Water Act (42 U.S.C. 300i–2) is amended  
13 to read as follows:

14 **“SEC. 1433. INTENTIONAL ACTS AFFECTING SECURITY OF**  
15 **COVERED WATER SYSTEMS.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) COVERED WATER SYSTEM.—The term  
18 ‘covered water system’ means a public water system  
19 that—

1           “(A) is a community water system serving  
2           a population of more than 3,300 individuals; or

3           “(B) as determined by the Administrator,  
4           presents a security risk that requires regulation  
5           under this section.

6           “(2) SECRETARY.—The term ‘Secretary’ means  
7           the Secretary of Homeland Security.

8           “(b) REGULATIONS.—

9           “(1) IN GENERAL.—Not later than 2 years  
10          after the date of enactment of the Secure Water Fa-  
11          cilities Act, the Administrator shall promulgate final  
12          regulations to establish—

13                 “(A) risk-based performance standards for  
14                 the security of covered water systems in accord-  
15                 ance with subsection (c); and

16                 “(B) requirements and deadlines for each  
17                 covered water system—

18                         “(i)(I) to conduct a vulnerability as-  
19                         sessment in accordance with subsection (d)  
20                         and submit the vulnerability assessment to  
21                         the Administrator; or

22                         “(II) if a vulnerability assessment has  
23                         already been conducted relating to the cov-  
24                         ered water system—

1                   “(aa) to revise the assessment in  
2                   accordance with subsection (d); and

3                   “(bb) to submit the revised as-  
4                   sessment to the Administrator;

5                   “(ii) to update and resubmit a vulner-  
6                   ability assessment relating to the covered  
7                   water system—

8                   “(I) not less frequently than once  
9                   every 5 years; and

10                  “(II) promptly after any change  
11                  at the covered water system that  
12                  could cause the reassignment of the  
13                  covered water system to a different  
14                  risk-based tier under subsection (h);

15                  “(iii) to develop, implement, revise (as  
16                  appropriate), and submit to the Adminis-  
17                  trator a site security plan in accordance  
18                  with subsection (e)—

19                  “(I) not less frequently than once  
20                  every 5 years; and

21                  “(II) promptly after any revision  
22                  to the vulnerability assessment of the  
23                  covered water system under clause  
24                  (ii);

1 “(iv)(I)(aa) to develop an emergency  
2 response plan in accordance with sub-  
3 section (f); or

4 “(bb) if an emergency response plan  
5 has already been developed for the covered  
6 water system, to revise the plan in accord-  
7 ance with subsection (f); and

8 “(II) to revise the plan not less fre-  
9 quently than once every 5 years; and

10 “(v) to provide annual training to em-  
11 ployees and contractors of covered water  
12 systems regarding the implementation of  
13 site security plans and emergency response  
14 plans in accordance with subsection (g).

15 “(2) CONSULTATION.—In promulgating regula-  
16 tions pursuant to paragraph (1), the Administrator  
17 shall consult with—

18 “(A) States that exercise primary enforce-  
19 ment responsibility for public water systems;  
20 and

21 “(B) the Secretary and other appropriate  
22 individuals and entities regarding—

23 “(i) a process for the development and  
24 evaluation of vulnerability assessments,



1 site security plans, and emergency re-  
2 sponse plans;

3 “(ii) the development of risk-based  
4 performance standards under subsection  
5 (c);

6 “(iii) the establishment of risk-based  
7 tiers and a process for the assignment of  
8 covered water systems to the risk-based  
9 tiers under subsection (h);

10 “(iv) the designation of substances of  
11 concern under subsection (i);

12 “(v) the provision of threat-related  
13 and other baseline information to covered  
14 water systems under subsection (j);

15 “(vi) the treatment of protected infor-  
16 mation in accordance with subsection (o);  
17 and

18 “(vii) such other matters as the Ad-  
19 ministrator determines to be necessary.

20 “(c) RISK-BASED PERFORMANCE STANDARDS.—

21 “(1) IN GENERAL.—The risk-based perform-  
22 ance standards for site security plans under this  
23 subsection shall be—

24 “(A) delineated by risk-based tier under  
25 subsection (h); and

1                   “(B) increasingly stringent, based on the  
2                   level of risk associated with each risk-based  
3                   tier.

4                   “(2) FACTOR FOR CONSIDERATION.—In devel-  
5                   oping standards under this subsection, the Adminis-  
6                   trator shall take into consideration section 27.230 of  
7                   title 6, Code of Federal Regulations (or successor  
8                   regulations).

9                   “(d) VULNERABILITY ASSESSMENTS.—

10                   “(1) IN GENERAL.—A vulnerability assessment  
11                   under this subsection shall include an evaluation by  
12                   each covered water system of the vulnerability of the  
13                   covered water system to a range of intentional acts,  
14                   including any intentional act that results in a release  
15                   of a substance of concern that is known, or may be  
16                   reasonably anticipated, to cause death, injury, or se-  
17                   rious adverse effects to human health or the environ-  
18                   ment.

19                   “(2) MINIMUM REQUIREMENTS.—At a min-  
20                   imum, a vulnerability assessment under this sub-  
21                   section shall include a review of, with respect to the  
22                   relevant covered water system—

23                   “(A) pipes and constructed conveyances;

24                   “(B) physical barriers;

1           “(C) water collection, pretreatment, treat-  
2           ment, storage, and distribution facilities, includ-  
3           ing fire hydrants;

4           “(D) electronic, computer, and other auto-  
5           mated systems that are used by the covered  
6           water system;

7           “(E) the use, storage, or handling of var-  
8           ious chemicals, including substances of concern;

9           “(F) the operation and maintenance of the  
10          covered water system; and

11          “(G) the resiliency and ability of the cov-  
12          ered water system to ensure continuity of oper-  
13          ations in the event of a disruption caused by an  
14          intentional act.

15          “(e) SITE SECURITY PLANS.—In developing and im-  
16          plementing a site security plan under this section, a cov-  
17          ered water system may select layered security and pre-  
18          paredness measures that, in combination, appropriately—

19               “(1) address the security risks identified in the  
20               vulnerability assessment of the covered water sys-  
21               tem; and

22               “(2) comply with the applicable risk-based per-  
23               formance standards required under this section.

24          “(f) EMERGENCY RESPONSE PLANS.—

1           “(1) IN GENERAL.—Each covered water system  
2 shall prepare or revise, as appropriate, an emergency  
3 response plan that incorporates the results of the  
4 most recent vulnerability assessment and site secu-  
5 rity plan of the covered water system.

6           “(2) CONTENTS.—An emergency response plan  
7 under this subsection shall include—

8           “(A) a description of the plans and proce-  
9 dures, and an identification of the equipment,  
10 that can be implemented or used in the event  
11 of an intentional act at the covered water sys-  
12 tem; and

13           “(B) a description of the actions and pro-  
14 cedures, and an identification of the equipment,  
15 that can obviate or significantly lessen the im-  
16 pact on public health and the safety and supply  
17 of drinking water provided to communities and  
18 individuals of an intentional act at the covered  
19 water system.

20           “(3) COORDINATION.—

21           “(A) IN GENERAL.—As part of the emer-  
22 gency response plan of a covered water system,  
23 each covered water system shall provide to the  
24 individuals and entities described in subpara-  
25 graph (B) appropriate information to ensure an

1 effective collective response to an intentional act  
2 at the covered water system.

3 “(B) DESCRIPTION OF INDIVIDUALS AND  
4 ENTITIES.—An individual or entity referred to  
5 in subparagraph (A) is—

6 “(i) a local emergency planning com-  
7 mittee;

8 “(ii) a State emergency response com-  
9 mission;

10 “(iii) a local law enforcement official;  
11 or

12 “(iv) a local emergency response pro-  
13 vider.

14 “(4) CERTIFICATION.—

15 “(A) IN GENERAL.—Not later than 180  
16 days after the date on which a vulnerability as-  
17 sessment is completed or revised, as appro-  
18 priate, for a covered water system under sub-  
19 section (d), the covered water system shall sub-  
20 mit to the Administrator a certification that the  
21 covered water system has completed an emer-  
22 gency response plan in accordance with this  
23 subsection.

24 “(B) UPDATES.—As soon as practicable  
25 after any update of an emergency response plan

1 of a covered water system under this section, a  
2 covered water system shall submit to the Ad-  
3 ministrator an updated certification under sub-  
4 paragraph (A).

5 “(g) ROLE OF EMPLOYEES.—

6 “(1) DESCRIPTION OF ROLE.—Each site secu-  
7 rity plan and emergency response plan required  
8 under this section shall describe the appropriate  
9 roles and responsibilities that employees and con-  
10 tractors of the covered water system are expected to  
11 perform to deter or respond to an intentional act de-  
12 scribed in subsection (h)(2)(C).

13 “(2) TRAINING FOR EMPLOYEES.—Not less fre-  
14 quently than once each year, each covered water sys-  
15 tem shall provide to employees and contractors of  
16 the covered water system with roles or responsibil-  
17 ities described in paragraph (1) not less than 8  
18 hours of training regarding the conduct of those  
19 roles and responsibilities.

20 “(3) EMPLOYEE PARTICIPATION.—In devel-  
21 oping, revising, or updating a vulnerability assess-  
22 ment, site security plan, or emergency response plan  
23 required under this section, a covered water system  
24 shall include—

1           “(A) at least 1 supervisory and at least 1  
2 nonsupervisory employee of the covered water  
3 system; and

4           “(B) at least 1 representative of each cer-  
5 tified or recognized bargaining agent rep-  
6 resenting employees or contractors of the cov-  
7 ered water system with roles or responsibilities  
8 described in paragraph (1), if any, in a collec-  
9 tive bargaining relationship with the private or  
10 public owner or operator of the covered water  
11 system or a contractor to the covered water sys-  
12 tem.

13       “(h) RISK-BASED TIERS.—

14           “(1) ESTABLISHMENT.—The Administrator  
15 shall establish, by regulation, 4 risk-based tiers for  
16 the categorization of covered water systems under  
17 this section, with tier 1 representing the highest de-  
18 gree of security risk.

19           “(2) ASSIGNMENT.—

20           “(A) IN GENERAL.—The Administrator  
21 shall assign (and reassign, as appropriate) each  
22 covered water system to 1 of the risk-based  
23 tiers established under paragraph (1).

24           “(B) SUBMISSION OF INFORMATION.—The  
25 Administrator may require a covered water sys-

1           tem to submit to the Administrator such infor-  
2           mation as the Administrator determines to be  
3           necessary to determine the appropriate risk-  
4           based tier for the covered water system.

5           “(C) FACTORS FOR CONSIDERATION.—In  
6           assigning a covered water system to a risk-  
7           based tier under this paragraph, the Adminis-  
8           trator shall take into consideration—

9                   “(i) the potential consequences (such  
10                   as death, injury, or serious adverse effects  
11                   to human health, the environment, critical  
12                   infrastructure, national security, and the  
13                   national economy) of an intentional act at  
14                   the covered water system—

15                           “(I) to cause a release, including  
16                           a worst-case release, of a substance of  
17                           concern;

18                           “(II)(aa) to introduce a contami-  
19                           nant into the drinking water supply;  
20                           or

21                           “(bb) to disrupt the safe and reli-  
22                           able supply of drinking water; and

23                           “(III) to steal, misappropriate, or  
24                           misuse a substance of concern;



1 “(ii) the size of the population served;

2 and

3 “(iii) the proximity of the water sys-  
4 tem to large population centers.

5 “(3) EXPLANATION FOR RISK-BASED TIER AS-  
6 SIGNMENT.—The Administrator shall provide to  
7 each covered water system assigned to a risk-based  
8 tier under this subsection a written explanation of—

9 “(A) the reasons for the assignment to  
10 that risk-based tier; and

11 “(B) the determination by the Adminis-  
12 trator regarding whether the covered water sys-  
13 tem is required to submit an assessment under  
14 subsection (k)(2).

15 “(i) SUBSTANCES OF CONCERN.—For purposes of  
16 this section, the Administrator, in consultation with the  
17 Secretary—

18 “(1) may designate any chemical substance as  
19 a substance of concern, taking into consideration ap-  
20 pendix A of part 27 of title 6, Code of Federal Reg-  
21 ulations (or successor regulations); and

22 “(2) on the designation of a chemical substance  
23 as a substance of concern under paragraph (1), shall  
24 establish, by regulation, a threshold quantity for the

1 release or theft of the chemical substance, taking  
2 into consideration—

3 “(A) the toxicity, reactivity, volatility,  
4 dispersability, combustibility, and flammability  
5 of the chemical substance; and

6 “(B) the quantity of the chemical sub-  
7 stance that, as a result of a release, is known,  
8 or may be reasonably anticipated, to cause  
9 death, injury, or serious adverse effects to  
10 human health or the environment.

11 “(j) BASELINE INFORMATION.—To facilitate compli-  
12 ance with the requirements of this section, as soon as  
13 practicable after the effective date of the regulations pro-  
14 mulgated pursuant to subsection (b), and thereafter as ap-  
15 propriate, the Administrator, after consultation with ap-  
16 propriate Federal departments and agencies and State,  
17 local, and tribal governments, shall provide baseline infor-  
18 mation to covered water systems regarding the types of  
19 intentional acts that constitute probable threats with re-  
20 spect to—

21 “(1) the substantial disruption of the ability of  
22 the covered water system to provide a safe and reli-  
23 able supply of drinking water;

24 “(2) the release of a substance of concern at  
25 the covered water system; or

1           “(3) the theft, misuse, or misappropriation of a  
2           substance of concern at the covered water system.

3           “(k) METHODS TO REDUCE CONSEQUENCES OF  
4 CHEMICAL RELEASES FROM INTENTIONAL ACTS.—

5           “(1) DEFINITION OF METHOD TO REDUCE THE  
6           CONSEQUENCES OF A CHEMICAL RELEASE FROM AN  
7           INTENTIONAL ACT.—

8           “(A) IN GENERAL.—In this subsection, the  
9           term ‘method to reduce the consequences of a  
10           chemical release from an intentional act’ means  
11           a measure at a covered water system that re-  
12           duces or eliminates the potential consequences  
13           of a release of a substance of concern from an  
14           intentional act.

15           “(B) INCLUSIONS.—The term ‘method to  
16           reduce the consequences of a chemical release  
17           from an intentional act’ includes—

18           “(i) the elimination or reduction in  
19           quantity of a substance of concern pos-  
20           sessed or planned to be possessed by a cov-  
21           ered water system through the use of alter-  
22           nate substances, formulations, or proc-  
23           esses;

1                   “(ii) the modification of the pressure,  
2                   temperature, or concentration of a sub-  
3                   stance of concern; and

4                   “(iii) the reduction or elimination of  
5                   onsite handling of a substance of concern  
6                   through improvement of inventory control  
7                   or chemical use efficiency.

8                   “(2) ASSESSMENT.—

9                   “(A) IN GENERAL.—Each covered water  
10                  system that possesses or plans to possess a sub-  
11                  stance of concern in excess of the release  
12                  threshold quantity established by the Adminis-  
13                  trator under subsection (i)(1)(B) shall—

14                  “(i) include in the site security plan of  
15                  the covered water system an assessment of  
16                  methods to reduce the consequences of a  
17                  chemical release from an intentional act at  
18                  the covered water system; and

19                  “(ii) submit the assessment under  
20                  clause (i) to—

21                          “(I) the Administrator; and

22                          “(II) the State exercising pri-  
23                          mary enforcement responsibility for  
24                          the covered water system, if any.

1           “(B) FACTORS FOR CONSIDERATION.—In  
2           preparing an assessment under this paragraph,  
3           a covered water system shall take into consider-  
4           ation factors appropriate to the security, public  
5           health, and environmental mission of the cov-  
6           ered water system.

7           “(C) INCLUSIONS.—Each assessment  
8           under this paragraph shall include a description  
9           of—

10           “(i) the methods to reduce the con-  
11           sequences of a chemical release from an in-  
12           tentional act at the covered water system;

13           “(ii) the means by which each method  
14           to reduce the consequences of a chemical  
15           release from an intentional act at the cov-  
16           ered water system could, if applied—

17           “(I) reduce the potential extent  
18           of death, injury, or serious adverse ef-  
19           fects to human health resulting from  
20           the chemical release; and

21           “(II) affect the presence of con-  
22           taminants in treated water, human  
23           health, or the environment;

24           “(iii) whether each described method  
25           to reduce the consequences of a chemical

1 release from an intentional act at the cov-  
2 ered water system is feasible (as defined in  
3 section 1412(b)(4)(D)), not including con-  
4 sideration of the costs calculated under  
5 clause (iv);

6 “(iv) the costs (including capital and  
7 operational costs) and avoided costs (in-  
8 cluding savings and liabilities) associated  
9 with applying each method to reduce the  
10 consequences of a chemical release from an  
11 intentional act at the covered water sys-  
12 tem;

13 “(v) any other relevant information  
14 relied on by the covered water system in  
15 conducting the assessment;

16 “(vi) whether the covered water sys-  
17 tem has implemented or plans to imple-  
18 ment 1 or more methods to reduce the con-  
19 sequences of a chemical release from an in-  
20 tentional act, a description of any such  
21 method; and

22 “(vii) in the case of a covered water  
23 system described in paragraph (3)(A), an  
24 explanation of the reasons for any decision  
25 not to implement a method to reduce the

1 consequences of a chemical release from an  
2 intentional act at the covered water sys-  
3 tem.

4 “(3) REQUIRED METHODS.—

5 “(A) APPLICABILITY.—This paragraph ap-  
6 plies to a covered water system that—

7 “(i) is assigned to 1 of the 2 highest  
8 risk-based tiers under subsection (h); and

9 “(ii) possesses or plans to possess a  
10 substance of concern in excess of the re-  
11 lease threshold quantity established by the  
12 Administrator under subsection (i)(1)(B).

13 “(B) HIGHEST-RISK SYSTEMS.—If, on the  
14 basis of an assessment under paragraph (2), a  
15 covered water system described in subparagraph  
16 (A) decides not to implement a method to re-  
17 duce the consequences of a chemical release  
18 from an intentional act at the covered water  
19 system—

20 “(i) the State exercising primary en-  
21 forcement responsibility for the covered  
22 water system (if the covered water system  
23 is located in such a State) shall, in accord-  
24 ance with a timeline established by the Ad-  
25 ministrator—

1                   “(I) determine whether to require  
2                   the covered water system to imple-  
3                   ment the method to reduce the con-  
4                   sequences of a chemical release from  
5                   an intentional act; and

6                   “(II) notify the Administrator of  
7                   the determination; or

8                   “(ii) the Administrator (if the covered  
9                   water system is not located in a State that  
10                  exercises primary enforcement responsi-  
11                  bility for the covered water system) shall  
12                  determine whether to require the covered  
13                  water system to implement the method to  
14                  reduce the consequences of a chemical re-  
15                  lease from an intentional act.

16                  “(C) FACTORS FOR CONSIDERATION.—Be-  
17                  fore making a determination to require imple-  
18                  mentation of a method to reduce consequences  
19                  of a chemical release from an intentional act  
20                  under clause (i)(I) or (ii) of subparagraph (B),  
21                  the State or the Administrator, as applicable,  
22                  shall take into consideration factors appropriate  
23                  to the security, public health, and environ-  
24                  mental missions of covered water systems, in-  
25                  cluding an examination of whether the applica-



1 ble method to reduce the consequences of a  
2 chemical release from an intentional act—

3 “(i) would significantly reduce the  
4 risk of death, injury, or serious adverse ef-  
5 fects to human health resulting directly  
6 from a chemical release from an inten-  
7 tional act at the covered water system;

8 “(ii) would not increase the interim  
9 storage of a substance of concern by the  
10 covered water system;

11 “(iii) would not render the covered  
12 water system unable to comply with—

13 “(I) other requirements of this  
14 Act; or

15 “(II) drinking water standards  
16 established by the State or political  
17 subdivision in which the covered water  
18 system is located; and

19 “(iv) is feasible (as defined in section  
20 1412(b)(4)(D)) to be incorporated into the  
21 operation of the covered water system.

22 “(D) APPEALS.—If a determination is  
23 made to require a covered water system to im-  
24 plement a method to reduce the consequences of  
25 a chemical release from an intentional act

1 under clause (i)(I) or (ii) of subparagraph (B),  
2 the State or the Administrator, as applicable,  
3 shall provide to the affected covered water sys-  
4 tem an opportunity to appeal the determination,  
5 including the opportunity for a determination of  
6 consequences of an intentional act occurring  
7 outside the covered water system pursuant to  
8 subparagraph (E).

9 “(E) CONSEQUENCES OF AN INTENTIONAL  
10 ACT OCCURRING OUTSIDE A COVERED WATER  
11 SYSTEM.—

12 “(i) IN GENERAL.—A covered water  
13 system may request, as part of an appeal  
14 under subparagraph (D), a determination  
15 of whether the implementation of a method  
16 to reduce the consequences of a chemical  
17 release from an intentional act would re-  
18 sult in a significant increase in the existing  
19 potential consequences of an intentional  
20 act occurring outside the covered water  
21 system that is directly related to the meth-  
22 od to reduce consequences of an intentional  
23 act at the covered water system that is the  
24 subject of the appeal.

1                   “(ii) DUTIES UPON RECEIPT OF RE-  
2                   QUEST.—Upon receiving a request under  
3                   clause (i)—

4                   “(I) the State exercising primary  
5                   enforcement responsibility for the cov-  
6                   ered water system (if the covered  
7                   water system is located in such a  
8                   State) shall notify the Administrator,  
9                   and the Administrator shall consult  
10                  with the Secretary, as necessary, to  
11                  quantify whether there will be a sig-  
12                  nificant increase in the existing poten-  
13                  tial consequences of an intentional act  
14                  occurring outside the covered water  
15                  system (that is directly related to the  
16                  method to reduce consequences of an  
17                  intentional act at the covered water  
18                  system that is the subject of the ap-  
19                  peal) as compared to the consequences  
20                  of a chemical release at the covered  
21                  water system that would be reduced  
22                  by the implementation of the method;  
23                  or

24                  “(II) the Administrator (if the  
25                  covered water system is not located in

1 a State exercising primary enforce-  
2 ment responsibility for the covered  
3 water system) shall consult with the  
4 Secretary, as necessary, to quantify  
5 whether there will be a significant in-  
6 crease in the existing potential con-  
7 sequences of an intentional act occur-  
8 ring outside the covered water system  
9 (that is directly related to the method  
10 to reduce consequences of an inten-  
11 tional act at the covered water system  
12 that is the subject of the appeal) as  
13 compared to the consequences of a  
14 chemical release at the covered water  
15 system that would be reduced by the  
16 implementation of the method.

17 “(iii) SIGNIFICANTLY INCREASED  
18 CONSEQUENCES OUTSIDE COVERED WATER  
19 SYSTEM.—If a determination is made pur-  
20 suant to subclause (I) or (II) of clause (ii)  
21 that implementation of a method to reduce  
22 consequences of a chemical release from an  
23 intentional act pursuant to clause (i)(I) or  
24 (ii) of subparagraph (B) would result in a  
25 significant increase in the existing poten-

1            tial consequences of an intentional act oc-  
2            ccurring outside the covered water system  
3            as compared to the reduced consequences  
4            of a chemical release at the covered water  
5            system, the State exercising primary en-  
6            forcement responsibility for the covered  
7            water system (if the covered water system  
8            is located in such a State), or the Adminis-  
9            trator (if the covered water system is not  
10           located in a State exercising primary en-  
11           forcement responsibility for the covered  
12           water system), shall take into consider-  
13           ation the determination made under this  
14           paragraph when making a final determina-  
15           tion under clause (i)(I) or (ii) of subpara-  
16           graph (B).

17           “(4) INCOMPLETE AND LATE ASSESSMENTS.—

18                 “(A) INCOMPLETE ASSESSMENTS.—

19                     “(i) IN GENERAL.—If the Adminis-  
20                     trator determines that a covered water sys-  
21                     tem failed to meet the requirements of this  
22                     subsection in conducting an assessment,  
23                     the Administrator, after notifying the cov-  
24                     ered water system and the State exercising  
25                     primary enforcement responsibility for the

1 covered water system, if any, shall require  
2 the covered water system to submit a re-  
3 vised assessment in accordance with this  
4 subsection by not later than 60 days after  
5 the date of receipt of notification.

6 “(ii) REVIEW.—The State exercising  
7 primary enforcement responsibility for a  
8 covered water system subject to clause (i)  
9 (if the covered water system is located in  
10 such a State) or the Administrator (if the  
11 covered water system is not located in such  
12 a State) shall review a revised assessment  
13 submitted under clause (i) to determine  
14 whether to require the covered water sys-  
15 tem to implement any method to reduce  
16 the consequences of an intentional act pur-  
17 suant to paragraph (3).

18 “(B) LATE ASSESSMENTS.—If the Admin-  
19 istrator determines that a covered water system  
20 failed to complete an assessment under this  
21 subsection in accordance with the deadline es-  
22 tablished for completion by the Administrator,  
23 the Administrator, after notifying the covered  
24 water system and the State exercising primary  
25 enforcement responsibility for the covered water

1 system, if any, may take appropriate enforce-  
2 ment action under subsection (q).

3 “(5) FAILURES BY STATE TO ACT.—

4 “(A) DETERMINATIONS.—

5 “(i) IN GENERAL.—If the Adminis-  
6 trator determines that a State exercising  
7 primary enforcement responsibility for a  
8 covered water system has failed to deter-  
9 mine whether to require the covered water  
10 system to implement a method to reduce  
11 the consequences of a chemical release  
12 from an intentional act, as required by  
13 paragraph (3)(B)(i)(I), the Administrator  
14 shall notify the State and the applicable  
15 covered water system of the determination.

16 “(ii) ACTION BY ADMINISTRATOR.—If  
17 a State has failed to make a determination  
18 required by paragraph (3)(B)(i)(I) by the  
19 date that is 30 days after the date of re-  
20 ceipt of the notice of the Administrator  
21 under clause (i), the Administrator shall—

22 “(I) notify the State and the ap-  
23 plicable covered water system of the  
24 failure by the State to make the de-  
25 termination; and

1                   “(II) determine whether to re-  
2                   quire the covered water system to im-  
3                   plement the applicable method to re-  
4                   duce the consequences of a chemical  
5                   release from an intentional act, based  
6                   on the factors described in paragraph  
7                   (3)(C).

8                   “(B) ENFORCEMENT ACTIONS.—

9                   “(i) IN GENERAL.—If the Adminis-  
10                  trator determines that a covered water sys-  
11                  tem, with respect to a period in which a  
12                  State has primary enforcement responsi-  
13                  bility for the system, has failed to imple-  
14                  ment a method to reduce the consequences  
15                  of a chemical release from an intentional  
16                  act that is required by the State or the Ad-  
17                  ministrator under paragraph (3)(B), or by  
18                  the Administrator under subparagraph  
19                  (A), the Administrator shall notify the  
20                  State and the covered water system of the  
21                  determination.

22                  “(ii) ENFORCEMENT ACTIONS.—If the  
23                  Administrator determines that a State has  
24                  failed to commence an appropriate enforce-  
25                  ment action by the date that is 30 days



1 after the date of notification by the Admin-  
2 istrator under clause (i), the Administrator  
3 shall—

4 “(I) notify the State and the ap-  
5 plicable covered water system of the  
6 determination; and

7 “(II) determine whether to com-  
8 mence an appropriate enforcement ac-  
9 tion against the covered water system  
10 in accordance with subsection (q) to  
11 require the implementation of the rel-  
12 evant method to reduce the con-  
13 sequences of a chemical release from  
14 an intentional act at the covered  
15 water system.

16 “(C) CONSIDERATION OF CONTINUED PRI-  
17 MARY ENFORCEMENT RESPONSIBILITY.—The  
18 Administrator may take into consideration the  
19 failure of a State with primary enforcement re-  
20 sponsibility for a covered water system to make  
21 a determination as described in subparagraph  
22 (A), or to bring an enforcement action as de-  
23 scribed in subparagraph (B), in determining  
24 whether the State may retain primary enforce-

1           ment responsibility for the covered water sys-  
2           tem under this Act.

3           “(6) GUIDANCE FOR COVERED WATER SYS-  
4           TEMS.—

5                   “(A) GUIDANCE.—Not later than 180 days  
6           after the date of enactment of the Secure Water  
7           Facilities Act, the Administrator shall develop,  
8           and update thereafter as appropriate, non-  
9           binding guidance, including guidance regarding  
10          Federal procurement, to assist covered water  
11          systems in assessing and implementing methods  
12          to reduce consequences of a chemical release  
13          from an intentional act by reducing or elimi-  
14          nating reliance on the use of threshold quan-  
15          tities of substances of concern at the covered  
16          water systems, as established under subsection  
17          (i)(1)(B).

18                   “(B) RECOMMENDATIONS.—The Adminis-  
19          trator shall, as appropriate, provide or rec-  
20          ommend tools, methodologies, or computer soft-  
21          ware to assist covered water systems assigned  
22          to tier 3 or tier 4 under subsection (h) and re-  
23          quired to conduct an assessment under para-  
24          graph (2) to achieve compliance with the re-  
25          quirements of this section.

1 “(1) REVIEW BY ADMINISTRATOR.—

2 “(1) IN GENERAL.—Each covered water system  
3 shall submit to the Administrator the vulnerability  
4 assessment and site security plan of the covered  
5 water system, in accordance with such deadline as  
6 the Administrator may establish.

7 “(2) REVIEW.—The Administrator shall—

8 “(A) review each vulnerability assessment  
9 and site security plan submitted under this sub-  
10 section; and

11 “(B)(i) if the assessment or plan has any  
12 significant deficiency described in paragraph  
13 (3), require the covered water system to correct  
14 the deficiency; or

15 “(ii) approve the assessment or plan.

16 “(3) SIGNIFICANT DEFICIENCIES.—

17 “(A) IN GENERAL.—Subject to subpara-  
18 graph (B), a vulnerability assessment or site se-  
19 curity plan of a covered water system has a sig-  
20 nificant deficiency under this paragraph if the  
21 Administrator, in consultation with the State  
22 exercising primary enforcement responsibility  
23 for the covered water system, if any, determines  
24 that—

1                   “(i) the vulnerability assessment does  
2                   not comply with the regulations promul-  
3                   gated pursuant to subsection (b); or

4                   “(ii) the site security plan fails—

5                         “(I) to meet applicable risk-based  
6                         performance standards under sub-  
7                         section (c); or

8                         “(II) to address a vulnerability  
9                         identified in the vulnerability assess-  
10                         ment under subsection (d).

11                   “(B) EXCLUSION.—A deficiency in the  
12                   content or implementation of the portion of the  
13                   site security plan of a covered water system re-  
14                   lating to methods to reduce the consequences of  
15                   a chemical release from an intentional act shall  
16                   not be considered to be a significant deficiency  
17                   under this paragraph.

18                   “(4) IDENTIFICATION OF DEFICIENCIES.—If  
19                   the Administrator identifies a significant deficiency  
20                   in the vulnerability assessment or site security plan  
21                   of a covered water system under paragraph (3), the  
22                   Administrator shall provide to the covered water sys-  
23                   tem a written notification of the deficiency that—

24                         “(A) includes a clear explanation of the de-  
25                         ficiency;

1           “(B) provides guidance to assist the cov-  
2           ered water system in addressing the deficiency;  
3           and

4           “(C) requires the covered water system—  
5           “(i) to correct the deficiency; and  
6           “(ii) by such date as the Adminis-  
7           trator determines to be appropriate, to  
8           submit to the Administrator a revised vul-  
9           nerability assessment or site security plan.

10           “(5) STATE, REGIONAL, AND LOCAL GOVERN-  
11           MENTAL ENTITIES.—No covered water system shall  
12           be required under State, local, or tribal law to pro-  
13           vide a vulnerability assessment or site security plan  
14           under this section to any State, regional, local, or  
15           tribal governmental entity solely due to the require-  
16           ment of paragraph (1) to submit such an assessment  
17           or plan to the Administrator.

18           “(m) MAINTENANCE OF RECORDS.—Each covered  
19           water system shall maintain an updated copy of the vul-  
20           nerability assessment, site security plan, and emergency  
21           response plan of the covered water system.

22           “(n) AUDITS; INSPECTIONS.—

23           “(1) IN GENERAL.—Notwithstanding section  
24           1445(b)(2), the Administrator (or a designee) shall

1       audit and inspect covered water systems as nec-  
2       essary to determine compliance with this section.

3           “(2) ACCESS.—In conducting an audit or in-  
4       spection of a covered water system under this sub-  
5       section, the Administrator shall have access to the  
6       owners, operators, employees, contractors, and em-  
7       ployee representatives, if any, of the covered water  
8       system.

9           “(3) CONFIDENTIAL COMMUNICATION OF IN-  
10       FORMATION; AIDING INSPECTIONS.—

11           “(A) CONFIDENTIAL COMMUNICATION OF  
12       INFORMATION.—The Administrator shall offer  
13       nonsupervisory employees of a covered water  
14       system the opportunity to confidentially com-  
15       municate to the Administrator information rel-  
16       evant to the compliance or noncompliance by  
17       the covered water system with the requirements  
18       of this section (including regulations promul-  
19       gated pursuant to this section).

20           “(B) AIDING INSPECTIONS.—A representa-  
21       tive of each certified or recognized bargaining  
22       agent described in subsection (g)(3)(B), or a  
23       nonsupervisory employee if no such representa-  
24       tive exists, shall be given an opportunity to ac-  
25       company the Administrator during any physical

1 inspection of a covered water system under this  
2 subsection to assist in the inspection, if a rep-  
3 resentative of the covered water system will also  
4 be accompanying the Administrator during the  
5 inspection.

6 “(o) PROTECTION OF INFORMATION.—

7 “(1) DEFINITION OF PROTECTED INFORMA-  
8 TION.—

9 “(A) IN GENERAL.—In this section, the  
10 term ‘protected information’ means—

11 “(i) a vulnerability assessment or site  
12 security plan under this section (including  
13 any assessment developed under subsection  
14 (k)(2));

15 “(ii) any document directly relating to  
16 a review by the Administrator of an assess-  
17 ment or plan described in clause (i), and,  
18 where applicable, review by a State of an  
19 assessment developed under subsection  
20 (k)(2);

21 “(iii) any document directly relating  
22 to an inspection or audit under subsection  
23 (n);

24 “(iv) any order, notice, or letter re-  
25 garding the compliance of a covered water

1 system with the requirements of this sec-  
2 tion;

3 “(v) any information, document, or  
4 record required to be provided to, or cre-  
5 ated by, the Administrator under sub-  
6 section (h);

7 “(vi) any document directly related  
8 to—

9 “(I) a security drill or training  
10 exercise;

11 “(II) a security threat or breach;  
12 or

13 “(III) maintenance, calibration,  
14 or testing of security equipment; and

15 “(vii) any other information, docu-  
16 ment, or record developed exclusively for  
17 purposes of this section, the disclosure of  
18 which, as determined by the Administrator,  
19 by regulation, would be detrimental to the  
20 security of 1 or more covered water sys-  
21 tems.

22 “(B) DETRIMENT REQUIREMENT.—For  
23 purposes of clauses (ii) through (vi) of subpara-  
24 graph (A), the only portion of any document,  
25 record, order, notice, or letter that shall be con-



1           sidered to be protected information is any por-  
2           tion—

3                   “(i) the disclosure of which, as deter-  
4                   mined by the Administrator, by regulation,  
5                   would be detrimental to the security of 1  
6                   or more covered water systems; and

7                   “(ii) that is developed by the Adminis-  
8                   trator, a State, or a covered water system  
9                   for purposes of this section.

10                   “(C) EXCLUSIONS.—The term ‘protected  
11                   information’ does not include—

12                   “(i) any information, other than a vul-  
13                   nerability assessment or site security plan,  
14                   that the Administrator has determined, by  
15                   regulation—

16                   “(I) to be appropriate to dem-  
17                   onstrate compliance by a covered  
18                   water system with the requirements of  
19                   this section; and

20                   “(II) would not be detrimental to  
21                   the security of any covered water sys-  
22                   tem if disclosed; or

23                   “(ii) any information that is obtained  
24                   from another source with respect to which  
25                   the Administrator has not made a deter-

1                   mination under subparagraph (A)(vii) or  
2                   (B), regardless of whether the information  
3                   is included in an assessment or plan under  
4                   this section, including—

5                   “(I) information that is required  
6                   to be made publicly available under  
7                   any other provision of law; and

8                   “(II) information that a covered  
9                   water system has lawfully disclosed  
10                  other than through a submission to  
11                  the Administrator under this section.

12               “(2) PROHIBITION.—Protected information—

13               “(A) shall be exempt from disclosure under  
14               section 552 of title 5, United States Code; and

15               “(B) shall not be made available pursuant  
16               to any State, local, or tribal law requiring dis-  
17               closure of information or records.

18               “(3) INFORMATION SHARING.—

19               “(A) IN GENERAL.—The Administrator  
20               shall promulgate such regulations, and may  
21               issue such orders, as the Administrator deter-  
22               mines to be necessary to prohibit the unauthor-  
23               ized disclosure of protected information.

24               “(B) SHARING OF PROTECTED INFORMA-  
25               TION.—

1                   “(i) IN GENERAL.—The regulations  
2                   under subparagraph (A) shall establish  
3                   standards for, and facilitate, the appro-  
4                   priate sharing of protected information  
5                   among—

6                                 “(I) Federal, State, local, and  
7                                 tribal authorities;

8                                 “(II) first responders;

9                                 “(III) law enforcement officials;

10                                “(IV) designated supervisory and  
11                                nonsupervisory covered water system  
12                                personnel with security, operational,  
13                                or fiduciary responsibility for the cov-  
14                                ered water system; and

15                                “(V) designated employee rep-  
16                                resentatives of covered water systems,  
17                                if any.

18                   “(ii) INCLUSIONS.—The standards es-  
19                   tablished under clause (i) shall include pro-  
20                   cedures for the sharing of all portions of a  
21                   vulnerability assessment or site security  
22                   plan of a covered water system relating to  
23                   the roles and responsibilities of employees  
24                   or contractors of the covered water system  
25                   under subsection (g) with—

1                   “(I) a representative of each cer-  
2                   tified or recognized bargaining agent  
3                   representing those employees and con-  
4                   tractors, if any; or

5                   “(II) if a representative described  
6                   in subclause (I) does not exist, at  
7                   least 1 supervisory and at least 1 non-  
8                   supervisory employee with roles and  
9                   responsibilities described in subsection  
10                  (g).

11                  “(C) PENALTIES.—

12                  “(i) IN GENERAL.—Protected infor-  
13                  mation shall not be shared, except in ac-  
14                  cordance with the standards established  
15                  and orders issued pursuant to subpara-  
16                  graph (A).

17                  “(ii) KNOWING VIOLATION.—Whoever  
18                  discloses protected information in knowing  
19                  violation of the regulations promulgated  
20                  under paragraph (1) shall—

21                  “(I) be fined under title 18,  
22                  United States Code, imprisoned for  
23                  not more than 1 year, or both; and

1                                   “(II) in the case of a Federal of-  
2                                   ficeholder or employee, removed from  
3                                   Federal office or employment.

4                                   “(4) TREATMENT OF INFORMATION IN ADJU-  
5                                   DICATIVE PROCEEDINGS.—In any judicial or admin-  
6                                   istrative proceeding, protected information shall be  
7                                   treated in a manner consistent with the treatment of  
8                                   sensitive security information under section 525 of  
9                                   the Department of Homeland Security Appropria-  
10                                  tions Act, 2007 (Public Law 109–295; 120 Stat.  
11                                  1381).

12                                  “(5) OTHER OBLIGATIONS UNAFFECTED.—Ex-  
13                                  cept as provided in subsection (l)(5), nothing in this  
14                                  section modifies or otherwise affects an obligation of  
15                                  a covered water system—

16                                  “(A) to submit or make available informa-  
17                                  tion to employees of the covered water system,  
18                                  employee organizations, health professionals,  
19                                  emergency response organizations, or a Federal,  
20                                  State, tribal, or local government agency under  
21                                  any other provision of law; or

22                                  “(B) to comply with any other provision of  
23                                  law.

1           “(6) CONGRESSIONAL OVERSIGHT.—Nothing in  
2           this section authorizes the withholding of informa-  
3           tion from Congress.

4           “(7) DISCLOSURE OF INDEPENDENTLY FUR-  
5           NISHED INFORMATION.—Nothing in this section  
6           modifies or otherwise affects any authority or obliga-  
7           tion of a Federal, State, local, or tribal agency to  
8           protect or disclose any record or information that  
9           the Federal, State, local, or tribal agency obtains  
10          from a covered water system or the Administrator  
11          under any other provision of law.

12          “(p) PREEMPTION.—Nothing in this section pre-  
13          cludes or denies the right of any State or political subdivi-  
14          sion of a State to adopt or enforce any regulation, require-  
15          ment, or standard of performance with respect to a cov-  
16          ered water system that is more stringent than a regula-  
17          tion, requirement, or standard of performance established  
18          under this section.

19          “(q) VIOLATIONS.—

20                 “(1) IN GENERAL.—A covered water system  
21                 that violates any requirement of this section (includ-  
22                 ing by failing to implement all or part of an applica-  
23                 ble site security plan by such date as the Adminis-  
24                 trator may require) shall be liable for a civil penalty

1 in an amount equal to not more than \$25,000 for  
2 each day of the violation.

3 “(2) PROCEDURE.—On a determination by the  
4 Administrator that a covered water system is subject  
5 to a civil penalty under paragraph (1), the Adminis-  
6 trator, after consultation with the State for a cov-  
7 ered water system located in a State exercising pri-  
8 mary responsibility for the covered water system,  
9 and after taking into consideration the severity of  
10 the violation or deficiency and the record of the cov-  
11 ered water system in carrying out the requirements  
12 of this section, may—

13 “(A) after providing notice and an oppor-  
14 tunity for the covered water system to be heard,  
15 issue an order—

16 “(i) assessing a penalty under para-  
17 graph (1) for any past or current violation;  
18 and

19 “(ii) requiring compliance immediately  
20 or within a specified time period; or

21 “(B) commence a civil action in the United  
22 States district court in the district in which the  
23 violation occurred for appropriate relief, includ-  
24 ing temporary or permanent injunction.

1           “(3) METHODS TO REDUCE CONSEQUENCES OF  
2           CHEMICAL RELEASES FROM INTENTIONAL ACTS.—  
3           Except as provided in paragraphs (4) and (5) of  
4           subsection (k), if a covered water system is located  
5           in a State exercising primary enforcement responsi-  
6           bility for the covered water system, the Adminis-  
7           trator may not issue an order or commence a civil  
8           action under this section for any deficiency in the  
9           content or implementation of the portion of the site  
10          security plan of the covered water system relating to  
11          methods to reduce the consequences of a chemical  
12          release from an intentional act (as defined in sub-  
13          section (k)(1)).

14          “(r) REPORTS TO CONGRESS.—

15                 “(1) ANNUAL REPORT.—Not later than 3 years  
16                 after the effective date of the regulations promul-  
17                 gated pursuant to subsection (b), and annually  
18                 thereafter for each of the following 8 calendar years,  
19                 the Administrator shall submit to the Committee on  
20                 Environment and Public Works of the Senate and  
21                 the Committee on Energy and Commerce of the  
22                 House of Representatives a report describing the  
23                 progress made during the reporting period in achiev-  
24                 ing compliance with this section, including, at a min-  
25                 imum—



1           “(A) a generalized summary of measures  
2 implemented by covered water systems to meet  
3 each risk-based performance standard estab-  
4 lished under subsection (e); and

5           “(B) a summary of the means by which—  
6           “(i) covered water systems, as cat-  
7 egorized by risk-based tier assignment  
8 under subsection (h), are achieving compli-  
9 ance with the requirements of this section;  
10 and

11           “(ii) the Administrator is imple-  
12 menting and enforcing those requirements,  
13 including a description of—

14           “(I) the number of public water  
15 systems that provided information to  
16 the Administrator pursuant to sub-  
17 section (h)(2)(B);

18           “(II) the number of covered  
19 water systems assigned to each risk-  
20 based tier under subsection (h);

21           “(III) the number of vulnerability  
22 assessments and site security plans—

23           “(aa) submitted by covered  
24 water systems; and

1                   “(bb) approved and dis-  
2                   approved by the Administrator;

3                   “(IV) the number of covered  
4                   water systems without approved vul-  
5                   nerability assessments or site security  
6                   plans in place;

7                   “(V)(aa) the number of covered  
8                   water systems that have been assigned  
9                   to a different risk-based tier or are no  
10                  longer regulated by the Administrator  
11                  under this section due to implementa-  
12                  tion of a method to reduce the con-  
13                  sequences of a chemical release from  
14                  an intentional act; and

15                  “(bb) a description of the types  
16                  of each such method to reduce the  
17                  consequences of a chemical release  
18                  from an intentional act;

19                  “(VI) the number of audits and  
20                  inspections conducted by the Adminis-  
21                  trator (or a designee) under sub-  
22                  section (n);

23                  “(VII) the number of orders for  
24                  compliance issued by the Adminis-  
25                  trator under subsection (q);

1                   “(VIII) the administrative pen-  
2                   alties assessed by the Administrator  
3                   for noncompliance with the require-  
4                   ments of this section;

5                   “(IX) the civil penalties assessed  
6                   by courts for noncompliance with the  
7                   requirements of this section; and

8                   “(X) any other regulatory data  
9                   the Administrator determines to be  
10                  appropriate to describe—

11                  “(aa) compliance by covered  
12                  water systems with the require-  
13                  ments of this section; and

14                  “(bb) the implementation by  
15                  the Administrator of those re-  
16                  quirements.

17                  “(2) PUBLIC AVAILABILITY.—Each report sub-  
18                  mitted under this section shall be made publicly  
19                  available.

20                  “(s) GRANT PROGRAMS.—

21                  “(1) IMPLEMENTATION GRANTS TO STATES.—  
22                  The Administrator may provide grants to, or enter  
23                  into cooperative agreements with, States, based on  
24                  an allocation formula established by the Adminis-

1 trator, to assist the States in implementing this sec-  
2 tion.

3 “(2) RESEARCH, TRAINING, AND TECHNICAL  
4 ASSISTANCE GRANTS.—The Administrator may pro-  
5 vide grants to, or enter into cooperative agreements  
6 with, nonprofit organizations to provide research,  
7 training, and technical assistance to covered water  
8 systems to assist the covered water systems in  
9 achieving compliance with this section.

10 “(3) PREPARATION GRANTS.—

11 “(A) GRANTS.—The Administrator may  
12 provide grants to, or enter into cooperative  
13 agreements with, covered water systems to as-  
14 sist the covered water systems in—

15 “(i) preparing and updating vulner-  
16 ability assessments, site security plans, and  
17 emergency response plans;

18 “(ii) assessing and implementing  
19 methods to reduce the consequences of a  
20 release of a substance of concern from an  
21 intentional act; and

22 “(iii) implementing any other security  
23 reviews or enhancements that are nec-  
24 essary to achieve compliance with this sec-  
25 tion.

1 “(B) PRIORITY.—

2 “(i) NEED.—In providing grants and  
3 entering into cooperative agreements under  
4 subparagraph (A)(i), the Administrator  
5 shall give priority to covered water systems  
6 that, as determined by the Administrator,  
7 have the greatest need.

8 “(ii) SECURITY RISK.—In providing  
9 grants and entering into cooperative agree-  
10 ments under subparagraph (A)(ii), the Ad-  
11 ministrator shall give priority to covered  
12 water systems that, as determined by the  
13 Administrator, present the greatest secu-  
14 rity risk.

15 “(4) WORKER TRAINING GRANTS.—

16 “(A) DEFINITION OF ELIGIBLE ENTITY.—  
17 In this paragraph, the term ‘eligible entity’  
18 means a nonprofit organization with dem-  
19 onstrated experience in implementing and oper-  
20 ating successful worker or first responder  
21 health and safety or security training programs.

22 “(B) GRANTS.—The Administrator shall  
23 establish a program under which the Adminis-  
24 trator shall provide grants to eligible entities to  
25 provide for training and education of—

1                   “(i) employees and contractors of cov-  
2                   ered water systems with roles or respon-  
3                   sibilities described in subsection (g); and

4                   “(ii) first responders and emergency  
5                   response providers who would respond to  
6                   an intentional act at a covered water sys-  
7                   tem.

8                   “(C) ADMINISTRATION.—The Adminis-  
9                   trator shall offer to enter into an agreement  
10                  with the National Institute of Environmental  
11                  Health Sciences to administer the program  
12                  under this paragraph.

13                  “(D) USE OF FUNDS.—An eligible entity  
14                  shall use a grant received under this paragraph  
15                  for—

16                         “(i) training and education of employ-  
17                         ees and contractors with roles or respon-  
18                         sibilities described in subsection (g), in-  
19                         cluding the annual mandatory training  
20                         specified in subsection (g)(2), with priority  
21                         given to covered water systems assigned to  
22                         tier 1 or tier 2 under subsection (h);

23                         “(ii) training of first responders in  
24                         protecting nearby residents and property  
25                         or the environment from the effects of a

1 release of a substance of concern at a cov-  
2 ered water system, with priority given to  
3 covered water systems assigned to tier 1 or  
4 tier 2 under subsection (h); and

5 “(iii) appropriate training for first re-  
6 sponders and emergency response pro-  
7 viders who would respond to an intentional  
8 act at a covered water system.

9 “(t) TIMELY PROVISION OF THREAT-RELATED IN-  
10 FORMATION.—The Secretary shall, upon receipt of infor-  
11 mation concerning a specific threat that is relevant to a  
12 certain covered water system, provide the information in  
13 a timely manner, to the maximum extent practicable under  
14 applicable authority and in the interests of national secu-  
15 rity, to—

16 “(1) the covered water system;

17 “(2) the Administrator; and

18 “(3) appropriate Federal, State, and local law  
19 enforcement officials.

20 “(u) AUTHORIZATION OF APPROPRIATIONS.—

21 “(1) IN GENERAL.—There is authorized to be  
22 appropriated to carry out this section \$340,000,000  
23 for each of fiscal years 2012 through 2016, of  
24 which—

1           “(A) not more than \$30,000,000 may be  
2           used during each fiscal year for administrative  
3           costs incurred by the Administrator or States,  
4           as applicable, in carrying out this section; and

5           “(B) not more than \$225,000,000 may be  
6           used during each fiscal year to implement meth-  
7           ods to reduce the consequences of chemical re-  
8           leases from intentional acts at covered water  
9           systems, with priority given to covered water  
10          systems assigned to tier 1 or tier 2 under sub-  
11          section (h).

12          “(2) SECURITY ENHANCEMENTS.—Amounts  
13          provided under this subsection for basic security en-  
14          hancements shall not be used for—

15                  “(A) personnel costs; or

16                  “(B) monitoring, operation, or mainte-  
17                  nance of facilities, equipment, or systems.

18          “(v) RELATION TO CHEMICAL FACILITY SECURITY  
19          REQUIREMENTS.—No provision of any appropriations Act  
20          relating to chemical facility security, and no law or regula-  
21          tion establishing a chemical facility antiterrorism stand-  
22          ard, shall apply to a covered water system under this sec-  
23          tion.”.

24          (2) EFFECTIVE DATE.—The amendment made  
25          by paragraph (1) takes effect on the date of promul-



1           gation by the Administrator of the Environmental  
2           Protection Agency of final regulations pursuant to  
3           subsection (b)(1) of section 1433 of the Safe Drink-  
4           ing Water Act (42 U.S.C. 300i-2) (as amended by  
5           paragraph (1)).

6           (b) EFFECT OF SECTION.—

7                 (1) IN GENERAL.—Nothing in this section or  
8           the amendment made by this section affects the ap-  
9           plicability of section 1433 of the Safe Drinking  
10          Water Act (42 U.S.C. 300i-2) (as in effect before  
11          the effective date of the amendment made by sub-  
12          section (a)(1)) to any violation of that section that  
13          occurs before that effective date.

14                (2) VIOLATIONS.—The requirements of section  
15          1433 of the Safe Drinking Water Act (42 U.S.C.  
16          300i-2) (as in effect before the effective date of the  
17          amendment made by subsection (a)(1)) shall remain  
18          in effect with respect to violations described in para-  
19          graph (1) until the later of—

20                   (A) the date on which the violation is cor-  
21                   rected; and

22                   (B) the date on which enforcement pro-  
23                   ceedings relating to the violation are completed.

1 **SEC. 103. STUDY TO ASSESS THREAT OF CONTAMINATION**  
2 **OF DRINKING WATER DISTRIBUTION SYS-**  
3 **TEMS.**

4 Not later than 180 days after the date of enactment  
5 of this Act, the Administrator of the Environmental Pro-  
6 tection Agency, in consultation with the Secretary of  
7 Homeland Security, shall—

8 (1) conduct a study to assess—

9 (A) the threat to drinking water posed by  
10 intentional acts of contamination; and

11 (B) the vulnerability of public water sys-  
12 tems, including fire hydrants, to such a threat;  
13 and

14 (2) submit to the Committee on Environment  
15 and Public Works of the Senate and the Committee  
16 on Energy and Commerce of the House of Rep-  
17 resentatives a report describing the results of the  
18 study.

19 **TITLE II—WASTEWATER**  
20 **TREATMENT WORKS SECURITY**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as Secure Wastewater Treat-  
23 ment Facilities Act.

24 **SEC. 202. WASTEWATER TREATMENT WORKS SECURITY.**

25 (a) AMENDMENT.—

1           (1) IN GENERAL.—Title III of the Federal  
2           Water Pollution Control Act (33 U.S.C. 1311 et  
3           seq.) is amended by adding at the end the following:

4           **“SEC. 321. WASTEWATER TREATMENT WORKS SECURITY.**

5           “(a) DEFINITIONS.—In this section:

6           “(1) COVERED TREATMENT WORKS.—The term  
7           ‘covered treatment works’ means a treatment works  
8           that—

9                   “(A) has a treatment capacity of not less  
10                   than 2,500,000 gallons per day; or

11                   “(B) as determined by the Administrator,  
12                   presents a security risk that requires regulation  
13                   under this section.

14           “(2) SECRETARY.—The term ‘Secretary’ means  
15           the Secretary of Homeland Security.

16           “(b) REGULATIONS.—

17           “(1) IN GENERAL.—Not later than 2 years  
18           after the date of enactment of the Secure Water Fa-  
19           cilities Act, the Administrator shall promulgate final  
20           regulations to establish—

21                   “(A) risk-based performance standards for  
22                   the security of covered treatment works in ac-  
23                   cordance with subsection (c); and

24                   “(B) requirements and deadlines for each  
25                   covered treatment works—

1                   “(i)(I) to conduct a vulnerability as-  
2                   sessment in accordance with subsection (d)  
3                   and submit the vulnerability assessment to  
4                   the Administrator; or

5                   “(II) if a vulnerability assessment has  
6                   already been conducted relating to the cov-  
7                   ered treatment works—

8                   “(aa) to revise the assessment in  
9                   accordance with subsection (d); and

10                  “(bb) to submit the revised as-  
11                  sessment to the Administrator;

12                  “(ii) to update and resubmit a vulner-  
13                  ability assessment relating to the covered  
14                  treatment works—

15                  “(I) not less frequently than once  
16                  every 5 years; and

17                  “(II) promptly after any change  
18                  at the covered treatment works that  
19                  could cause the reassignment of the  
20                  covered treatment works to a different  
21                  risk-based tier under subsection (h);

22                  “(iii) to develop, implement, revise (as  
23                  appropriate), and submit to the Adminis-  
24                  trator a site security plan in accordance  
25                  with subsection (e)—

1                   “(I) not less frequently than once  
2                   every 5 years; and

3                   “(II) promptly after any revision  
4                   to the vulnerability assessment of the  
5                   covered treatment works under clause  
6                   (ii);

7                   “(iv)(I)(aa) to develop an emergency  
8                   response plan in accordance with sub-  
9                   section (f); or

10                  “(bb) if an emergency response plan  
11                  has already been developed for the covered  
12                  treatment works, to revise the plan in ac-  
13                  cordance with subsection (f); and

14                  “(II) to revise the plan not less fre-  
15                  quently than once every 5 years; and

16                  “(v) to provide annual training to em-  
17                  ployees and contractors of covered treat-  
18                  ment works regarding the implementation  
19                  of site security plans and emergency re-  
20                  sponse plans in accordance with subsection  
21                  (g).

22                  “(2) CONSULTATION.—In promulgating regula-  
23                  tions pursuant to paragraph (1), the Administrator  
24                  shall consult with—

1                   “(A) States with approved programs under  
2 section 402; and

3                   “(B) the Secretary and other appropriate  
4 individuals and entities regarding—

5                   “(i) a process for the development and  
6 evaluation of vulnerability assessments,  
7 site security plans, and emergency re-  
8 sponse plans;

9                   “(ii) the development of risk-based  
10 performance standards under subsection  
11 (c);

12                   “(iii) the establishment of risk-based  
13 tiers and a process for the assignment of  
14 covered treatment works to the risk-based  
15 tiers under subsection (h);

16                   “(iv) the designation of substances of  
17 concern under subsection (i);

18                   “(v) the provision of threat-related  
19 and other baseline information to covered  
20 treatment works under subsection (j);

21                   “(vi) the treatment of protected infor-  
22 mation in accordance with subsection (o);  
23 and

24                   “(vii) such other matters as the Ad-  
25 ministrator determines to be necessary.

1 “(c) RISK-BASED PERFORMANCE STANDARDS.—

2 “(1) IN GENERAL.—The risk-based perform-  
3 ance standards for site security plans under this  
4 subsection shall be—

5 “(A) delineated by risk-based tier under  
6 subsection (h); and

7 “(B) increasingly stringent, based on the  
8 level of risk associated with each risk-based  
9 tier.

10 “(2) FACTOR FOR CONSIDERATION.—In devel-  
11 oping standards under this subsection, the Adminis-  
12 trator shall take into consideration section 27.230 of  
13 title 6, Code of Federal Regulations (or successor  
14 regulations).

15 “(d) VULNERABILITY ASSESSMENTS.—

16 “(1) IN GENERAL.—A vulnerability assessment  
17 under this subsection shall include an evaluation by  
18 each covered treatment works of the vulnerability of  
19 the covered treatment works to a range of inten-  
20 tional acts, including any intentional act that results  
21 in a release of a substance of concern that is known,  
22 or may be reasonably anticipated, to cause death, in-  
23 jury, or serious adverse effects to human health or  
24 the environment.

1           “(2) MINIMUM REQUIREMENTS.—At a min-  
2           imum, a vulnerability assessment under this sub-  
3           section shall include a review of, with respect to the  
4           relevant covered treatment works—

5                   “(A) intercepting sewers, outfall sewers,  
6                   sewage collection systems, and other con-  
7                   structed conveyances under the control of the  
8                   treatment works;

9                   “(B) physical barriers;

10                   “(C) facilities, systems, and devices used in  
11                   the storage, treatment, recycling, or reclamation  
12                   of municipal sewage or industrial wastes;

13                   “(D) electronic, computer, and other auto-  
14                   mated systems that are used by the covered  
15                   treatment works;

16                   “(E) the use, storage, or handling of var-  
17                   ious chemicals, including substances of concern;

18                   “(F) the operation and maintenance of the  
19                   covered treatment works; and

20                   “(G) the resiliency and ability of the cov-  
21                   ered treatment works to ensure continuity of  
22                   operations in the event of a disruption caused  
23                   by an intentional act.

24           “(e) SITE SECURITY PLANS.—In developing and im-  
25           plementing a site security plan under this section, a cov-



1 ered treatment works may select layered security and pre-  
2 paredness measures that, in combination, appropriately—

3 “(1) address the security risks identified in the  
4 vulnerability assessment of the covered treatment  
5 works; and

6 “(2) comply with the applicable risk-based per-  
7 formance standards required under this section.

8 “(f) EMERGENCY RESPONSE PLANS.—

9 “(1) IN GENERAL.—Each covered treatment  
10 works shall prepare or revise, as appropriate, an  
11 emergency response plan that incorporates the re-  
12 sults of the most recent vulnerability assessment and  
13 site security plan of the covered treatment works.

14 “(2) CONTENTS.—An emergency response plan  
15 under this subsection shall include—

16 “(A) a description of the plans and proce-  
17 dures, and an identification of the equipment,  
18 that can be implemented or used in the event  
19 of an intentional act at the covered treatment  
20 works; and

21 “(B) a description of the actions and pro-  
22 cedures, and an identification of the equipment,  
23 that can obviate or significantly lessen the im-  
24 pact on public health, and the ability of the  
25 treatment works to safely and reliably operate

1 on the occurrence, of an intentional act at the  
2 covered treatment works.

3 “(3) COORDINATION.—

4 “(A) IN GENERAL.—As part of the emer-  
5 gency response plan of a covered treatment  
6 works, each covered treatment works shall pro-  
7 vide to the individuals and entities described in  
8 subparagraph (B) appropriate information to  
9 ensure an effective collective response to an in-  
10 tentional act at the covered treatment works.

11 “(B) DESCRIPTION OF INDIVIDUALS AND  
12 ENTITIES.—An individual or entity referred to  
13 in subparagraph (A) is—

14 “(i) a local emergency planning com-  
15 mittee;

16 “(ii) a State emergency response com-  
17 mission;

18 “(iii) a local law enforcement official;  
19 or

20 “(iv) a local emergency response pro-  
21 vider.

22 “(4) CERTIFICATION.—

23 “(A) IN GENERAL.—Not later than 180  
24 days after the date on which a vulnerability as-  
25 sessment is completed or revised, as appro-

1           priate, for a covered treatment works under  
2           subsection (d), the covered treatment works  
3           shall submit to the Administrator a certification  
4           that the covered treatment works has completed  
5           an emergency response plan in accordance with  
6           this subsection.

7           “(B) UPDATES.—As soon as practicable  
8           after any update of an emergency response plan  
9           of a covered treatment works under this section,  
10          a covered treatment works shall submit to the  
11          Administrator an updated certification under  
12          subparagraph (A).

13          “(g) ROLE OF EMPLOYEES.—

14               “(1) DESCRIPTION OF ROLE.—Each site secu-  
15               rity plan and emergency response plan required  
16               under this section shall describe the appropriate  
17               roles and responsibilities that employees and con-  
18               tractors of the covered treatment works are expected  
19               to perform to deter or respond to an intentional act  
20               described in subsection (h)(2)(C).

21               “(2) TRAINING FOR EMPLOYEES.—Not less fre-  
22               quently than once each year, each covered treatment  
23               works shall provide to employees and contractors of  
24               the covered treatment works with roles or respon-  
25               sibilities described in paragraph (1) not less than 8

1 hours of training regarding the conduct of those  
2 roles and responsibilities.

3 “(3) EMPLOYEE PARTICIPATION.—In devel-  
4 oping, revising, or updating a vulnerability assess-  
5 ment, site security plan, or emergency response plan  
6 required under this section, a covered treatment  
7 works shall include—

8 “(A) at least 1 supervisory and at least 1  
9 nonsupervisory employee of the covered treat-  
10 ment works; and

11 “(B) at least 1 representative of each cer-  
12 tified or recognized bargaining agent rep-  
13 resenting employees or contractors of the cov-  
14 ered treatment works with roles or responsibil-  
15 ities described in paragraph (1), if any, in a col-  
16 lective bargaining relationship with the owner  
17 or operator of the covered treatment works or  
18 a contractor to the covered treatment works.

19 “(h) RISK-BASED TIERS.—

20 “(1) ESTABLISHMENT.—The Administrator  
21 shall establish, by regulation, 4 risk-based tiers for  
22 the categorization of covered treatment works under  
23 this section, with tier 1 representing the highest de-  
24 gree of security risk.

25 “(2) ASSIGNMENT.—

1           “(A) IN GENERAL.—The Administrator  
2 shall assign (and reassign, as appropriate) each  
3 covered treatment works to 1 of the risk-based  
4 tiers established under paragraph (1).

5           “(B) SUBMISSION OF INFORMATION.—The  
6 Administrator may require a covered treatment  
7 works to submit to the Administrator such in-  
8 formation as the Administrator determines to  
9 be necessary to determine the appropriate risk-  
10 based tier for the covered treatment works.

11           “(C) FACTORS FOR CONSIDERATION.—In  
12 assigning a covered treatment works to a risk-  
13 based tier under this paragraph, the Adminis-  
14 trator shall take into consideration—

15           “(i) the potential consequences (such  
16 as death, injury, or serious adverse effects  
17 to human health, the environment, critical  
18 infrastructure, national security, and the  
19 national economy) of an intentional act at  
20 the covered treatment works—

21           “(I) to cause a release, including  
22 a worst-case release, of a substance of  
23 concern;

1                   “(II) to disrupt the safe and reli-  
2                   able operation of the covered treat-  
3                   ment works; and

4                   “(III) to steal, misappropriate, or  
5                   misuse a substance of concern at the  
6                   covered treatment works;

7                   “(ii) the design flow of the treatment  
8                   works; and

9                   “(iii) the proximity of the treatment  
10                  works to large population centers.

11                  “(3) EXPLANATION FOR RISK-BASED TIER AS-  
12                  SIGNMENT.—The Administrator shall provide to  
13                  each covered treatment works assigned to a risk-  
14                  based tier under this subsection a written expla-  
15                  nation of—

16                  “(A) the reasons for the assignment to  
17                  that risk-based tier; and

18                  “(B) the determination by the Adminis-  
19                  trator regarding whether the covered treatment  
20                  works is required to submit an assessment  
21                  under subsection (k)(2).

22                  “(i) SUBSTANCES OF CONCERN.—For purposes of  
23                  this section, the Administrator, in consultation with the  
24                  Secretary—

1           “(1) may designate any chemical substance as  
2           a substance of concern, taking into consideration ap-  
3           pendix A of part 27 of title 6, Code of Federal Reg-  
4           ulations (or successor regulations); and

5           “(2) on the designation of a chemical substance  
6           as a substance of concern under paragraph (1), shall  
7           establish, by regulation, a threshold quantity for the  
8           release or theft of the chemical substance, taking  
9           into consideration—

10           “(A) the toxicity, reactivity, volatility,  
11           dispersability, combustibility, and flammability  
12           of the chemical substance; and

13           “(B) the quantity of the chemical sub-  
14           stance that, as a result of a release, is known,  
15           or may be reasonably anticipated, to cause  
16           death, injury, or serious adverse effects to  
17           human health or the environment.

18           “(j) BASELINE INFORMATION.—To facilitate compli-  
19           ance with the requirements of this section, as soon as  
20           practicable after the effective date of the regulations pro-  
21           mulgated pursuant to subsection (b), and thereafter as ap-  
22           propriate, the Administrator, after consultation with ap-  
23           propriate Federal departments and agencies and State,  
24           local, and tribal governments, shall provide baseline infor-  
25           mation to covered treatment works regarding the types of

1 intentional acts that constitute probable threats with re-  
2 spect to—

3 “(1) the substantial disruption of the ability of  
4 the covered treatment works to operate safely and  
5 reliably;

6 “(2) the release of a substance of concern at  
7 the covered treatment works; or

8 “(3) the theft, misuse, or misappropriation of a  
9 substance of concern at the covered treatment  
10 works.

11 “(k) METHODS TO REDUCE CONSEQUENCES OF  
12 CHEMICAL RELEASES FROM INTENTIONAL ACTS.—

13 “(1) DEFINITION OF METHOD TO REDUCE THE  
14 CONSEQUENCES OF A CHEMICAL RELEASE FROM AN  
15 INTENTIONAL ACT.—

16 “(A) IN GENERAL.—In this subsection, the  
17 term ‘method to reduce the consequences of a  
18 chemical release from an intentional act’ means  
19 a measure at a covered treatment works that  
20 reduces or eliminates the potential consequences  
21 of a release of a substance of concern from an  
22 intentional act.

23 “(B) INCLUSIONS.—The term ‘method to  
24 reduce the consequences of a chemical release  
25 from an intentional act’ includes—



1                   “(i) the elimination or reduction in  
2                   quantity of a substance of concern pos-  
3                   sessed or planned to be possessed by a cov-  
4                   ered treatment works through the use of  
5                   alternate substances, formulations, or proc-  
6                   esses;

7                   “(ii) the modification of the pressure,  
8                   temperature, or concentration of a sub-  
9                   stance of concern; and

10                   “(iii) the reduction or elimination of  
11                   onsite handling of a substance of concern  
12                   through improvement of inventory control  
13                   or chemical use efficiency.

14                   “(2) ASSESSMENT.—

15                   “(A) IN GENERAL.—Each covered treat-  
16                   ment works that possesses or plans to possess  
17                   a substance of concern in excess of the release  
18                   threshold quantity established by the Adminis-  
19                   trator under subsection (i)(1)(B) shall—

20                   “(i) include in the site security plan of  
21                   the covered treatment works an assessment  
22                   of methods to reduce the consequences of  
23                   a chemical release from an intentional act  
24                   at the covered treatment works; and

1                   “(ii) submit the assessment under  
2                   clause (i) to—

3                   “(I) the Administrator; and

4                   “(II) the State in which the cov-  
5                   ered treatment works is located, if the  
6                   State has an approved program under  
7                   section 402.

8                   “(B) FACTORS FOR CONSIDERATION.—In  
9                   preparing an assessment under this paragraph,  
10                  a covered treatment works shall take into con-  
11                  sideration factors appropriate to the security,  
12                  public health, and environmental mission of the  
13                  covered treatment works.

14                  “(C) INCLUSIONS.—Each assessment  
15                  under this paragraph shall include a description  
16                  of—

17                  “(i) the methods to reduce the con-  
18                  sequences of a chemical release from an in-  
19                  tentional act at the covered treatment  
20                  works;

21                  “(ii) the means by which each method  
22                  to reduce the consequences of a chemical  
23                  release from an intentional act at the cov-  
24                  ered treatment works could, if applied—

1                   “(I) reduce the potential extent  
2                   of death, injury, or serious adverse ef-  
3                   fects to human health resulting from  
4                   the chemical release; and

5                   “(II) affect the presence of con-  
6                   taminants in treated water, human  
7                   health, or the environment;

8                   “(iii) whether each described method  
9                   to reduce the consequences of a chemical  
10                  release from an intentional act at the cov-  
11                  ered treatment works is feasible (as deter-  
12                  mined by the Administrator);

13                  “(iv) the costs (including capital and  
14                  operational costs) and avoided costs (in-  
15                  cluding savings and liabilities) associated  
16                  with applying each method to reduce the  
17                  consequences of a chemical release from an  
18                  intentional act at the covered treatment  
19                  works;

20                  “(v) any other relevant information  
21                  relied on by the covered treatment works  
22                  in conducting the assessment;

23                  “(vi) a statement of whether the cov-  
24                  ered water system has implemented or  
25                  plans to implement 1 or more methods to

1 reduce the consequences of a chemical re-  
2 lease from an intentional act, a description  
3 of any such method; and

4 “(vii) in the case of a covered treat-  
5 ment works described in paragraph (3)(A),  
6 an explanation of the reasons for any deci-  
7 sion not to implement a method to reduce  
8 the consequences of a chemical release  
9 from an intentional act at the covered  
10 treatment works.

11 “(3) REQUIRED METHODS.—

12 “(A) APPLICABILITY.—This paragraph ap-  
13 plies to a covered treatment works that—

14 “(i) is assigned to 1 of the 2 highest  
15 risk-based tiers under subsection (h); and

16 “(ii) possesses or plans to possess a  
17 substance of concern in excess of the re-  
18 lease threshold quantity established by the  
19 Administrator under subsection (i)(1)(B).

20 “(B) HIGHEST-RISK SYSTEMS.—If, on the  
21 basis of an assessment under paragraph (2), a  
22 covered treatment works described in subpara-  
23 graph (A) decides not to implement a method  
24 to reduce the consequences of a chemical re-

1 lease from an intentional act at the covered  
2 treatment works—

3 “(i) the State with an approved pro-  
4 gram under section 402 (if the covered  
5 treatment works is located in such a State)  
6 shall, in accordance with a timeline estab-  
7 lished by the Administrator—

8 “(I) determine whether to require  
9 the covered treatment works to imple-  
10 ment the method to reduce the con-  
11 sequences of a chemical release from  
12 an intentional act; and

13 “(II) notify the Administrator of  
14 the determination; or

15 “(ii) the Administrator (if the covered  
16 treatment works is not located in a State  
17 with an approved program under section  
18 402) shall determine whether to require  
19 the covered treatment works to implement  
20 the method to reduce the consequences of  
21 a chemical release from an intentional act.

22 “(C) FACTORS FOR CONSIDERATION.—In  
23 making a determination under clause (i)(I) or  
24 (ii) of subparagraph (B), the State or the Ad-  
25 ministrator, as applicable, shall take into con-

1           sideration factors appropriate to the security,  
2           public health, and environmental missions of  
3           covered treatment works, including an examina-  
4           tion of whether the applicable method to reduce  
5           the consequences of a chemical release from an  
6           intentional act—

7                   “(i) would significantly reduce the  
8                   risk of death, injury, or serious adverse ef-  
9                   fects to human health resulting directly  
10                  from a chemical release from an inten-  
11                  tional act at the covered treatment works;

12                  “(ii) would not increase the interim  
13                  storage of a substance of concern by the  
14                  covered treatment works;

15                  “(iii) would not render the covered  
16                  treatment works unable to comply with—

17                          “(I) other requirements of this  
18                          Act; or

19                          “(II) applicable standards estab-  
20                          lished by the State or political subdivi-  
21                          sion in which the covered treatment  
22                          works is located; and

23                          “(iv) is feasible (as determined by the  
24                          Administrator), to be incorporated into the  
25                          operation of the covered treatment works.

1           “(D) APPEALS.—If a determination is  
2           made to require a covered treatment works to  
3           implement a method to reduce the consequences  
4           of a chemical release from an intentional act  
5           under clause (i)(I) or (ii) of subparagraph (B),  
6           the State or the Administrator, as applicable,  
7           shall provide to the affected covered treatment  
8           works an opportunity to appeal the determina-  
9           tion, including the opportunity for a determina-  
10          tion of consequences of an intentional act occur-  
11          ring outside the covered treatment works pursu-  
12          ant to subparagraph (E).

13           “(E) CONSEQUENCES OF INTENTIONAL  
14          ACT OCCURRING OUTSIDE COVERED TREAT-  
15          MENT WORKS.—

16           “(i) IN GENERAL.—A covered treat-  
17          ment works may request, as part of an ap-  
18          peal under subparagraph (D), a determina-  
19          tion of whether the implementation of a  
20          method to reduce the consequences of a  
21          chemical release from an intentional act  
22          would result in a significant increase in the  
23          existing potential consequences of an inten-  
24          tional act occurring outside the covered  
25          treatment works that is directly related to

1 the method to reduce consequences of an  
2 intentional act at the covered treatment  
3 works that is the subject of the appeal.

4 “(ii) DUTIES UPON RECEIPT OF RE-  
5 QUEST.—Upon receiving a request under  
6 clause (i)—

7 “(I) the State with an approved  
8 program under section 402 (if the  
9 covered treatment works is located in  
10 such a State), shall notify the Admin-  
11 istrator, and the Administrator shall  
12 consult with the Secretary, as nec-  
13 essary, to quantify whether there  
14 would be a significant increase in the  
15 existing potential consequences of an  
16 intentional act occurring outside the  
17 covered treatment works (that is di-  
18 rectly related to the method to reduce  
19 consequences of an intentional act at  
20 the covered treatment works that is  
21 the subject of the appeal) as com-  
22 pared to the consequences of a chem-  
23 ical release at the covered treatment  
24 works that would be reduced by the  
25 implementation of the method; or



1                   “(II) the Administrator (if the  
2 covered treatment works is not located  
3 in a State with an approved program  
4 under section 402), shall consult with  
5 the Secretary, as necessary, to quan-  
6 tify whether there would be a signifi-  
7 cant increase in the existing potential  
8 consequences of an intentional act oc-  
9 ccurring outside the covered treatment  
10 works (that is directly related to the  
11 method to reduce consequences of an  
12 intentional act at the covered treat-  
13 ment works that is the subject of the  
14 appeal) as compared to the con-  
15 sequences of a chemical release at the  
16 covered treatment works that would  
17 be reduced by the implementation of  
18 the method.

19                   “(iii) SIGNIFICANTLY INCREASED  
20 CONSEQUENCES OUTSIDE COVERED TREAT-  
21 MENT WORKS.—If a determination is made  
22 pursuant to subclause (I) or (II) of clause  
23 (ii) that implementation of a method to re-  
24 duce consequences of a chemical release  
25 from an intentional act pursuant to clause

1 (i)(I) or (ii) of subparagraph (B) would re-  
2 sult in a significant increase in the existing  
3 potential consequences of an intentional  
4 act occurring outside the covered treat-  
5 ment works as compared to the reduced  
6 consequences of a chemical release at the  
7 covered treatment works, the State with an  
8 approved program under section 402 (if  
9 the covered treatment works is located in  
10 such a State), or the Administrator (if the  
11 covered treatment works is not located in  
12 a State), shall take that determination into  
13 consideration in making a final determina-  
14 tion under clause (i)(I) or (ii) of subpara-  
15 graph (B).

16 “(4) INCOMPLETE AND LATE ASSESSMENTS.—

17 “(A) INCOMPLETE ASSESSMENTS.—

18 “(i) IN GENERAL.—If the Adminis-  
19 trator determines that a covered treatment  
20 works failed to meet the requirements of  
21 this subsection in conducting an assess-  
22 ment, the Administrator, after notifying  
23 the covered treatment works and the State  
24 with an approved program under section  
25 402, if applicable, shall require the covered

1 treatment works to submit a revised as-  
2 sessment in accordance with this sub-  
3 section by not later than 60 days after the  
4 date of receipt of notification.

5 “(ii) REVIEW.—The State in which a  
6 covered treatment works subject to clause  
7 (i) is located (if the covered treatment  
8 works is located in a State with an ap-  
9 proved program under section 402) or the  
10 Administrator (if the covered treatment  
11 works is not located in such a State) shall  
12 review a revised assessment submitted  
13 under clause (i) to determine whether to  
14 require the covered treatment works to im-  
15 plement any method to reduce the con-  
16 sequences of an intentional act pursuant to  
17 paragraph (3).

18 “(B) LATE ASSESSMENTS.—If the Admin-  
19 istrator determines that a covered treatment  
20 works failed to complete an assessment under  
21 this subsection in accordance with the deadline  
22 established for completion by the Administrator,  
23 the Administrator, after notifying the covered  
24 treatment works and the State with an ap-  
25 proved program under section 402, if applica-

1           ble, may take appropriate enforcement action  
2           under subsection (q).

3           “(5) FAILURE BY STATE TO ACT.—

4                 “(A) DETERMINATIONS.—

5                         “(i) IN GENERAL.—If the Adminis-  
6                         trator determines that a State with an ap-  
7                         proved program under section 402 has  
8                         failed to determine whether to require a  
9                         covered treatment works to implement a  
10                        method to reduce the consequences of a  
11                        chemical release from an intentional act, as  
12                        required by paragraph (3)(B)(i)(I), the Ad-  
13                        ministrators shall notify the State and the  
14                        applicable covered treatment works of the  
15                        determination.

16                        “(ii) ACTION BY ADMINISTRATOR.—If  
17                        a State has failed to make a determination  
18                        required by paragraph (3)(B)(i)(I), not  
19                        later than 30 days after the date of receipt  
20                        of the notice of the Administrator under  
21                        clause (i) the Administrator shall—

22                                 “(I) notify the State and the ap-  
23                                 plicable covered treatment works of  
24                                 the failure by the State to make the  
25                                 determination; and

1                   “(II) determine whether to re-  
2                   quire the covered treatment works to  
3                   implement the applicable method to  
4                   reduce the consequences of a chemical  
5                   release from an intentional act, based  
6                   on the factors described in paragraph  
7                   (3)(C).

8                   “(B) ENFORCEMENT ACTIONS.—

9                   “(i) IN GENERAL.—If the Adminis-  
10                  trator determines that a covered treatment  
11                  works has failed while located in a State  
12                  with an approved program under section  
13                  402 to implement a method to reduce the  
14                  consequences of a chemical release from an  
15                  intentional act that is required by the  
16                  State or the Administrator under para-  
17                  graph (3)(B), or by the Administrator  
18                  under subparagraph (A), the Adminis-  
19                  trator shall notify the State and the cov-  
20                  ered treatment works of the determination.

21                  “(ii) ENFORCEMENT ACTION.—If the  
22                  Administrator determines that a State has  
23                  failed to commence an appropriate enforce-  
24                  ment action by the date that is 30 days  
25                  after the date of notification by the Admin-

1                    istrator under clause (i), the Administrator  
2                    shall—

3                               “(I) notify the State and the ap-  
4                               plicable covered treatment works of  
5                               the determination; and

6                               “(II) determine whether to com-  
7                               mence an appropriate enforcement ac-  
8                               tion against the covered treatment  
9                               works in accordance with subsection  
10                              (q) to require the implementation of  
11                              the relevant method to reduce the con-  
12                              sequences of a chemical release from  
13                              an intentional act at the covered  
14                              treatment works.

15                             “(C) CONSIDERATION OF CONTINUED PRO-  
16                             GRAM APPROVAL.—The Administrator may take  
17                             into consideration the failure of a State with an  
18                             approved program under section 402 to make a  
19                             determination as described in subparagraph  
20                             (A), or to bring an enforcement action as de-  
21                             scribed in subparagraph (B), in determining  
22                             whether the State may retain the approved pro-  
23                             gram under section 402.

24                             “(6) GUIDANCE FOR COVERED TREATMENT  
25                             WORKS.—

1           “(A) GUIDANCE.—Not later than 180 days  
2 after the date of enactment of the Secure Water  
3 Facilities Act, the Administrator shall develop,  
4 and update thereafter as appropriate, non-  
5 binding guidance, including guidance regarding  
6 Federal procurement, to assist covered treat-  
7 ment works in assessing and implementing  
8 methods to reduce consequences of a chemical  
9 release from an intentional act by reducing or  
10 eliminating reliance on the use of threshold  
11 quantities of substances of concern at the cov-  
12 ered treatment works, as established under sub-  
13 section (i)(1)(B).

14           “(B) RECOMMENDATIONS.—The Adminis-  
15 trator shall, as appropriate, provide or rec-  
16 ommend tools, methodologies, or computer soft-  
17 ware to assist covered treatment works assigned  
18 to tier 3 or tier 4 under subsection (h) and re-  
19 quired to conduct an assessment under para-  
20 graph (2) to achieve compliance with the re-  
21 quirements of this section.

22           “(1) REVIEW BY ADMINISTRATOR.—

23           “(1) IN GENERAL.—Each covered treatment  
24 works shall submit to the Administrator the vulner-  
25 ability assessment and site security plan of the cov-

1           ered treatment works, in accordance with such dead-  
2           line as the Administrator may establish.

3           “(2) REVIEW.—The Administrator shall—

4                   “(A) review each vulnerability assessment  
5                   and site security plan submitted under this sub-  
6                   section; and

7                   “(B)(i) if the assessment or plan has any  
8                   significant deficiency described in paragraph  
9                   (3), require the covered treatment works to cor-  
10                  rect the deficiency; or

11                  “(ii) approve the assessment or plan.

12           “(3) SIGNIFICANT DEFICIENCIES.—

13                   “(A) IN GENERAL.—Subject to subpara-  
14                   graph (B), a vulnerability assessment or site se-  
15                   curity plan of a covered treatment works has a  
16                   significant deficiency under this paragraph if  
17                   the Administrator, in consultation with the  
18                   State with an approved program under section  
19                   402 (if the covered treatment works is located  
20                   in such a State), determines that—

21                   “(i) the vulnerability assessment does  
22                   not comply with the regulations promul-  
23                   gated pursuant to subsection (b); or

24                   “(ii) the site security plan fails—



1                   “(I) to meet applicable risk-based  
2                   performance standards under sub-  
3                   section (c); or

4                   “(II) to address a vulnerability  
5                   identified in the vulnerability assess-  
6                   ment under subsection (d).

7                   “(B) EXCLUSION.—A deficiency in the  
8                   content or implementation of the portion of the  
9                   site security plan of a covered treatment works  
10                  relating to methods to reduce the consequences  
11                  of a chemical release from an intentional act  
12                  shall not be considered to be a significant defi-  
13                  ciency under this paragraph.

14                  “(4) IDENTIFICATION OF DEFICIENCIES.—If  
15                  the Administrator identifies a significant deficiency  
16                  in the vulnerability assessment or site security plan  
17                  of a covered water system under paragraph (3), the  
18                  Administrator shall provide to the covered water sys-  
19                  tem a written notification of the deficiency that—

20                         “(A) includes a clear explanation of the de-  
21                         ficiency;

22                         “(B) provides guidance to assist the cov-  
23                         ered water system in addressing the deficiency;  
24                         and

25                         “(C) requires the covered water system—

1 “(i) to correct the deficiency; and

2 “(ii) by such date as the Adminis-  
3 trator determines to be appropriate, to  
4 submit to the Administrator a revised vul-  
5 nerability assessment or site security plan.

6 “(5) STATE, REGIONAL, AND LOCAL GOVERN-  
7 MENTAL ENTITIES.—No covered treatment works  
8 shall be required under State, local, or tribal law to  
9 provide a vulnerability assessment or site security  
10 plan under this section to any State, regional, local,  
11 or tribal governmental entity solely due to the re-  
12 quirement of paragraph (1) to submit such an as-  
13 sessment or plan to the Administrator.

14 “(m) MAINTENANCE OF RECORDS.—Each covered  
15 treatment works shall maintain an updated copy of the  
16 vulnerability assessment, site security plan, and emer-  
17 gency response plan of the covered treatment works.

18 “(n) AUDITS; INSPECTIONS.—

19 “(1) IN GENERAL.—The Administrator (or a  
20 designee) shall audit and inspect covered treatment  
21 works as necessary to determine compliance with  
22 this section.

23 “(2) ACCESS.—In conducting an audit or in-  
24 spection of a covered treatment works under this  
25 subsection, the Administrator shall have access to

1 the owners, operators, employees, contractors, and  
2 employee representatives, if any, of the covered  
3 treatment works.

4 “(3) CONFIDENTIAL COMMUNICATION OF IN-  
5 FORMATION; AIDING INSPECTIONS.—

6 “(A) CONFIDENTIAL COMMUNICATION OF  
7 INFORMATION.—The Administrator shall offer  
8 nonsupervisory employees of a covered treat-  
9 ment works the opportunity to confidentially  
10 communicate to the Administrator information  
11 relevant to the compliance or noncompliance by  
12 the covered treatment works with the require-  
13 ments of this section (including regulations pro-  
14 mulgated pursuant to this section).

15 “(B) AIDING INSPECTIONS.—A representa-  
16 tive of each certified or recognized bargaining  
17 agent described in subsection (g)(3)(B), or a  
18 nonsupervisory employee if no such representa-  
19 tive exists, shall be given an opportunity to ac-  
20 company the Administrator during any physical  
21 inspection of a covered treatment works under  
22 this subsection to assist in the inspection, if a  
23 representative of the covered treatment works  
24 will also be accompanying the Administrator  
25 during the inspection.

1 “(o) PROTECTION OF INFORMATION.—

2 “(1) DEFINITION OF PROTECTED INFORMA-  
3 TION.—

4 “(A) IN GENERAL.—In this section, the  
5 term ‘protected information’ means—

6 “(i) a vulnerability assessment or site  
7 security plan under this section (including  
8 any assessment developed under subsection  
9 (k)(2));

10 “(ii) any document directly related to  
11 a review by the Administrator of an assess-  
12 ment or plan described in clause (i) and,  
13 where applicable, a review by a State of an  
14 assessment developed under subsection  
15 (k)(2);

16 “(iii) any document directly related to  
17 an inspection or audit under subsection  
18 (n);

19 “(iv) any order, notice, or letter re-  
20 garding the compliance of a covered treat-  
21 ment works with the requirements of this  
22 section;

23 “(v) any information, document, or  
24 record required to be provided to, or cre-

1           ated by, the Administrator under sub-  
2           section (h);

3           “vi) any document directly related  
4           to—

5                       “(I) a security drill or training  
6           exercise;

7                       “(II) a security threat or breach;  
8           or

9                       “(III) maintenance, calibration,  
10          or testing of security equipment; and

11          “(vii) any other information, docu-  
12          ment, or record developed exclusively for  
13          purposes of this section, the disclosure of  
14          which, as determined by the Administrator,  
15          by regulation, would be detrimental to the  
16          security of 1 or more covered treatment  
17          works.

18          “(B) DETRIMENT REQUIREMENT.—For  
19          purposes of clauses (ii) through (vi) of subpara-  
20          graph (A), the only portion of any document,  
21          record, order, notice, or letter that shall be con-  
22          sidered to be protected information is any por-  
23          tion—

24                       “(i) the disclosure of which, as deter-  
25          mined by the Administrator, by regulation,

1 would be detrimental to the security of 1  
2 or more covered treatment works; and

3 “(ii) that is developed by the Adminis-  
4 trator, a State, or a covered treatment  
5 works for purposes of this section.

6 “(C) EXCLUSIONS.—The term ‘protected  
7 information’ does not include—

8 “(i) any information, other than a vul-  
9 nerability assessment or site security plan,  
10 that the Administrator has determined, by  
11 regulation—

12 “(I) to be appropriate to dem-  
13 onstrate compliance by a covered  
14 treatment works with the require-  
15 ments of this section; and

16 “(II) would not be detrimental to  
17 the security of any covered treatment  
18 works if disclosed; or

19 “(ii) any information that is obtained  
20 from another source with respect to which  
21 the Administrator has not made a deter-  
22 mination under subparagraph (A)(vii) or  
23 (B), regardless of whether the information  
24 is included in an assessment or plan under  
25 this section, including—

1                   “(I) information that is required  
2                   to be made publicly available under  
3                   any other provision of law; and

4                   “(II) information that a covered  
5                   treatment works has lawfully disclosed  
6                   other than through a submission to  
7                   the Administrator under this section.

8                   “(2) PROHIBITION.—Protected information—

9                   “(A) shall be exempt from disclosure under  
10                  section 552 of title 5, United States Code; and

11                  “(B) shall not be made available pursuant  
12                  to any State, local, or tribal law requiring dis-  
13                  closure of information or records.

14                  “(3) INFORMATION SHARING.—

15                  “(A) IN GENERAL.—The Administrator  
16                  shall promulgate such regulations, and may  
17                  issue such orders, as the Administrator deter-  
18                  mines to be necessary to prohibit the unauthor-  
19                  ized disclosure of protected information.

20                  “(B) SHARING OF PROTECTED INFORMA-  
21                  TION.—

22                  “(i) IN GENERAL.—The regulations  
23                  under subparagraph (A) shall establish  
24                  standards for, and facilitate, the appro-

1            appropriate sharing of protected information  
2            among—

3                            “(I) Federal, State, local, and  
4                            tribal authorities;

5                            “(II) first responders;

6                            “(III) law enforcement officials;

7                            “(IV) designated supervisory and  
8                            nonsupervisory covered treatment  
9                            works personnel with security, oper-  
10                            ational, or fiduciary responsibility for  
11                            the covered treatment works; and

12                            “(V) designated employee rep-  
13                            resentatives of covered treatment  
14                            works, if any.

15                            “(ii) INCLUSIONS.—The standards es-  
16                            tablished under clause (i) shall include pro-  
17                            cedures for the sharing of all portions of a  
18                            vulnerability assessment or site security  
19                            plan of a covered treatment works relating  
20                            to the roles and responsibilities of employ-  
21                            ees or contractors of the covered treatment  
22                            works under subsection (g) with—

23                            “(I) a representative of each cer-  
24                            tified or recognized bargaining agent



1 representing those employees and con-  
2 tractors, if any; or

3 “(II) if a representative described  
4 in subclause (I) does not exist, at  
5 least 1 supervisory and at least 1 non-  
6 supervisory employee with roles and  
7 responsibilities described in subsection  
8 (g).

9 “(C) PENALTIES.—

10 “(i) IN GENERAL.—Protected infor-  
11 mation shall not be shared, except in ac-  
12 cordance with the standards established  
13 and orders issued pursuant to subpara-  
14 graph (A).

15 “(ii) KNOWING VIOLATION.—Whoever  
16 discloses protected information in knowing  
17 violation of the regulations promulgated  
18 under paragraph (1) shall—

19 “(I) be fined under title 18,  
20 United States Code, imprisoned for  
21 not more than 1 year, or both; and

22 “(II) in the case of a Federal of-  
23 ficeholder or employee, removed from  
24 Federal office or employment.

1           “(4) TREATMENT OF INFORMATION IN ADJU-  
2           DICATIVE PROCEEDINGS.—In any judicial or admin-  
3           istrative proceeding, protected information shall be  
4           treated in a manner consistent with the treatment of  
5           sensitive security information under section 525 of  
6           the Department of Homeland Security Appropria-  
7           tions Act, 2007 (Public Law 109–295; 120 Stat.  
8           1381).

9           “(5) OTHER OBLIGATIONS UNAFFECTED.—Ex-  
10          cept as provided in subsection (1)(5), nothing in this  
11          section modifies or otherwise affects an obligation of  
12          a covered treatment works—

13                 “(A) to submit or make available informa-  
14                 tion to employees of the covered treatment  
15                 works, employee organizations, health profes-  
16                 sionals, emergency response organizations, or a  
17                 Federal, State, tribal, or local government agen-  
18                 cy under any other provision of law; or

19                 “(B) to comply with any other provision of  
20                 law.

21          “(6) CONGRESSIONAL OVERSIGHT.—Nothing in  
22          this section authorizes the withholding of informa-  
23          tion from Congress.

24          “(7) DISCLOSURE OF INDEPENDENTLY FUR-  
25          NISHED INFORMATION.—Nothing in this section

1 modifies or otherwise affects any authority or obliga-  
2 tion of a Federal, State, local, or tribal agency to  
3 protect or disclose any record or information that  
4 the Federal, State, local, or tribal agency obtains  
5 from a covered treatment works or the Adminis-  
6 trator under any other provision of law.

7 “(p) PREEMPTION.—Nothing in this section pre-  
8 cludes or denies the right of any State or political subdivi-  
9 sion of a State to adopt or enforce any regulation, require-  
10 ment, or standard of performance with respect to a cov-  
11 ered treatment works that is more stringent than a regula-  
12 tion, requirement, or standard of performance established  
13 under this section.

14 “(q) VIOLATIONS.—

15 “(1) IN GENERAL.—For purposes of section  
16 309, any violation of a requirement under this sec-  
17 tion (including a regulation promulgated pursuant to  
18 this section) by a covered treatment works shall be  
19 treated in the same manner as a violation of a con-  
20 dition of a permit under section 402.

21 “(2) METHODS TO REDUCE THE CON-  
22 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-  
23 TENTIONAL ACT.—Except as provided in paragraphs  
24 (4) and (5) of subsection (k), if a covered treatment  
25 works is located in a State with an approved pro-

1       gram under section 402, the Administrator may not  
2       issue an order or commence a civil action under this  
3       section for any deficiency in the content or imple-  
4       mentation of the portion of the site security plan of  
5       the covered treatment works relating to methods to  
6       reduce the consequences of a chemical release from  
7       an intentional act (as defined in subsection (k)(1)).

8       “(r) REPORT TO CONGRESS.—

9               “(1) ANNUAL REPORT.—Not later than 3 years  
10       after the effective date of the regulations promul-  
11       gated pursuant to subsection (b), and annually  
12       thereafter for each of the following 8 calendar years,  
13       the Administrator shall submit to the Committee on  
14       Environment and Public Works of the Senate and  
15       the Committee on Transportation and Infrastructure  
16       of the House of Representatives a report describing  
17       the progress made during the reporting period in  
18       achieving compliance with this section, including, at  
19       a minimum—

20               “(A) a generalized summary of measures  
21       implemented by covered treatment works to  
22       meet each risk-based performance standard es-  
23       tablished under subsection (c); and

24               “(B) a summary of the means by which—

1 “(i) covered treatment works, as cat-  
2 egorized by risk-based tier assignment  
3 under subsection (h), are achieving compli-  
4 ance with the requirements of this section;  
5 and

6 “(ii) the Administrator is imple-  
7 menting and enforcing those requirements,  
8 including a description of—

9 “(I) the number of treatment  
10 works that provided information to  
11 the Administrator pursuant to sub-  
12 section (h)(2)(B);

13 “(II) the number of covered  
14 treatment works assigned to each  
15 risk-based tier under subsection (h);

16 “(III) the number of vulnerability  
17 assessments and site security plans—

18 “(aa) submitted by covered  
19 treatment works; and

20 “(bb) approved and dis-  
21 approved by the Administrator;

22 “(IV) the number of covered  
23 treatment works without approved  
24 vulnerability assessments or site secu-  
25 rity plans in place;

1                   “(V)(aa) the number of covered  
2                   treatment works that have been as-  
3                   signed to a different risk-based tier or  
4                   are no longer regulated by the Admin-  
5                   istrator under this section due to im-  
6                   plementation of a method to reduce  
7                   the consequences of a chemical release  
8                   from an intentional act; and

9                   “(bb) a description of the types  
10                  of each such method to reduce the  
11                  consequences of a chemical release  
12                  from an intentional act;

13                  “(VI) the number of audits and  
14                  inspections conducted by the Adminis-  
15                  trator (or a designee) under sub-  
16                  section (n);

17                  “(VII) the number of orders for  
18                  compliance issued by the Adminis-  
19                  trator under subsection (q);

20                  “(VIII) the administrative pen-  
21                  alties assessed by the Administrator  
22                  for noncompliance with the require-  
23                  ments of this section;

1                   “(IX) the civil penalties assessed  
2                   by courts for noncompliance with the  
3                   requirements of this section; and

4                   “(X) any other regulatory data  
5                   the Administrator determines to be  
6                   appropriate to describe—

7                   “(aa) compliance by covered  
8                   treatment works with the re-  
9                   quirements of this section; and

10                  “(bb) the implementation by  
11                  the Administrator of those re-  
12                  quirements.

13                  “(2) PUBLIC AVAILABILITY.—Each report sub-  
14                  mitted under this section shall be made publicly  
15                  available.

16                  “(s) GRANT PROGRAMS.—

17                  “(1) IMPLEMENTATION GRANTS TO STATES.—  
18                  The Administrator may provide grants to, or enter  
19                  into cooperative agreements with, States, based on  
20                  an allocation formula established by the Adminis-  
21                  trator, to assist the States in implementing this sec-  
22                  tion.

23                  “(2) RESEARCH, TRAINING, AND TECHNICAL  
24                  ASSISTANCE GRANTS.—The Administrator may pro-  
25                  vide grants to, or enter into cooperative agreements

1 with, nonprofit organizations to provide research,  
2 training, and technical assistance to covered treat-  
3 ment works to assist the covered treatment works in  
4 achieving compliance with this section.

5 “(3) PREPARATION GRANTS.—

6 “(A) GRANTS.—The Administrator may  
7 provide grants to, or enter into cooperative  
8 agreements with, covered treatment works to  
9 assist the covered treatment works in—

10 “(i) preparing and updating vulner-  
11 ability assessments, site security plans, and  
12 emergency response plans;

13 “(ii) assessing and implementing  
14 methods to reduce the consequences of a  
15 release of a substance of concern from an  
16 intentional act; and

17 “(iii) implementing any other security  
18 reviews or enhancements that are nec-  
19 essary to achieve compliance with this sec-  
20 tion.

21 “(B) PRIORITY.—

22 “(i) NEED.—In providing grants and  
23 entering into cooperative agreements under  
24 subparagraph (A)(i), the Administrator  
25 shall give priority to covered treatment



1 works that, as determined by the Adminis-  
2 trator, have the greatest need.

3 “(ii) SECURITY RISK.—In providing  
4 grants and entering into cooperative agree-  
5 ments under subparagraph (A)(ii), the Ad-  
6 ministrator shall give priority to covered  
7 treatment works that, as determined by  
8 the Administrator, present the greatest se-  
9 curity risk.

10 “(4) WORKER TRAINING GRANTS.—

11 “(A) DEFINITION OF ELIGIBLE ENTITY.—  
12 In this paragraph, the term ‘eligible entity’  
13 means a nonprofit organization with dem-  
14 onstrated experience in implementing and oper-  
15 ating successful worker or first responder  
16 health and safety or security training programs.

17 “(B) GRANTS.—The Administrator shall  
18 establish a program under which the Adminis-  
19 trator shall provide grants to eligible entities to  
20 provide for training and education of—

21 “(i) employees and contractors of cov-  
22 ered treatment works with roles or respon-  
23 sibilities described in subsection (g); and

24 “(ii) first responders and emergency  
25 response providers who would respond to

1 an intentional act at a covered treatment  
2 works.

3 “(C) ADMINISTRATION.—The Adminis-  
4 trator shall offer to enter into an agreement  
5 with the National Institute of Environmental  
6 Health Sciences to administer the program  
7 under this paragraph.

8 “(D) USE OF FUNDS.—An eligible entity  
9 shall use a grant received under this paragraph  
10 for—

11 “(i) training and education of employ-  
12 ees and contractors with roles or respon-  
13 sibilities described in subsection (g), in-  
14 cluding the annual mandatory training  
15 specified in subsection (g)(2), with priority  
16 given to covered treatment works assigned  
17 to tier 1 or tier 2 under subsection (h);

18 “(ii) training of first responders in  
19 protecting nearby residents and property  
20 or the environment from the effects of a  
21 release of a substance of concern at a cov-  
22 ered treatment works, with priority given  
23 to covered treatment works assigned to tier  
24 1 or tier 2 under subsection (h); and

1                   “(iii) appropriate training for first re-  
2                   sponders and emergency response pro-  
3                   viders who would respond to an intentional  
4                   act at a covered treatment works.

5           “(t) TIMELY PROVISION OF THREAT-RELATED IN-  
6   FORMATION.—The Secretary shall, upon receipt of infor-  
7   mation concerning a specific threat that is relevant to a  
8   certain covered water treatment works, provide the infor-  
9   mation in a timely manner, to the maximum extent prac-  
10   ticable under applicable authority and in the interests of  
11   national security, to—

12                   “(1) covered treatment works;

13                   “(2) the Administrator; and

14                   “(3) the appropriate Federal, State, and local  
15   law enforcement officials.

16           “(u) AUTHORIZATION OF APPROPRIATIONS.—

17                   “(1) IN GENERAL.—There are authorized to be  
18   appropriated to carry out this section \$200,000,000  
19   for each of fiscal years 2012 through 2016, of  
20   which—

21                   “(A) not more than \$30,000,000 may be  
22   used during each fiscal year for administrative  
23   costs incurred by the Administrator or States,  
24   as applicable, in carrying out this section; and

1           “(B) not more than \$150,000,000 may be  
2           used during each fiscal year to implement meth-  
3           ods to reduce the consequences of chemical re-  
4           leases from intentional acts at covered treat-  
5           ment works, with priority given to covered  
6           treatment works assigned to tier 1 or tier 2  
7           under subsection (h).

8           “(2) SECURITY ENHANCEMENTS.—Amounts  
9           provided under this subsection for basic security en-  
10          hancements shall not be used for—

11                   “(A) personnel costs; or

12                   “(B) monitoring, operation, or mainte-  
13                  nance of facilities, equipment, or systems.

14          “(v) RELATION TO CHEMICAL FACILITY SECURITY  
15          REQUIREMENTS.—No provision of any appropriations Act  
16          relating to chemical facility security, and no law or regula-  
17          tion establishing a chemical facility antiterrorism stand-  
18          ard, shall apply to a covered treatment works under this  
19          section.”.

20          (2) EFFECTIVE DATE.—The amendment made  
21          by paragraph (1) takes effect on the date of promul-  
22          gation by the Administrator of the Environmental  
23          Protection Agency of final regulations pursuant to  
24          subsection (b)(1) of section 321 of the Federal

1 Water Pollution Control Act (as amended by para-  
2 graph (1)).

3 (b) EFFECT OF SECTION.—

4 (1) IN GENERAL.—Nothing in this section or  
5 the amendment made by this section affects the ap-  
6 plicability of any provision of title III of the Federal  
7 Water Pollution Control Act (33 U.S.C. 1311 et  
8 seq.) (as in effect before the effective date of the  
9 amendment made by subsection (a)(1)).

10 (2) VIOLATIONS.—

11 (A) IN GENERAL.—Nothing in this section  
12 or the amendment made by this section affects  
13 the applicability of any provision of title III of  
14 the Federal Water Pollution Control Act (33  
15 U.S.C. 1311 et seq.) (as in effect before the ef-  
16 fective date of the amendment made by sub-  
17 section (a)(1)) to any violation of that Act that  
18 occurs before that effective date.

19 (B) REQUIREMENTS.—The requirements  
20 of title III of the Federal Water Pollution Con-  
21 trol Act (33 U.S.C. 1311 et seq.) (as in effect  
22 before the effective date of the amendment  
23 made by subsection (a)(1)) shall remain in ef-  
24 fect with respect to violations described in sub-  
25 paragraph (A) until the later of—

- 1 (i) the date on which the violation is  
2 corrected; and  
3 (ii) the date on which enforcement  
4 proceedings relating to the violation are  
5 completed.

6 **SEC. 203. STUDY TO ASSESS THREAT OF CONTAMINATION**  
7 **OF WASTEWATER TREATMENT WORKS.**

8 Not later than 180 days after the date of enactment  
9 of this Act, the Administrator of the Environmental Pro-  
10 tection Agency, in consultation with the Secretary of  
11 Homeland Security, shall—

12 (1) conduct a study to assess—

13 (A) the threat to wastewater treatment  
14 posed by intentional acts of contamination; and

15 (B) the vulnerability of wastewater treat-  
16 ment works to such a threat; and

17 (2) submit to the Committee on Environment  
18 and Public Works of the Senate and the Committee  
19 on Energy and Commerce of the House of Rep-  
20 resentatives a report describing the results of the  
21 study.

○