

111TH CONGRESS
2^D SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

Mr. LAUTENBERG (for himself, _____) introduced the following bill; which was read twice and referred to the Committee on _____

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 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 “(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 “(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 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 (1)(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 2011 through 2015, 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 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 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 2011 through 2015, 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.