

118TH CONGRESS
2D SESSION

S. 4162

To ensure that certain permit approvals by the Environmental Protection Agency have the force and effect of law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2024

Mr. RUBIO (for himself and Mr. SCOTT of Florida) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To ensure that certain permit approvals by the Environmental Protection Agency have the force and effect of law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Maintaining Coopera-
5 tive Permitting Act of 2024”.

6 **SEC. 2. STATE DISCHARGE OF DREDGED OR FILL MATE-**
7 **RIAL PROGRAMS.**

8 (a) WITHDRAWAL OF APPROVAL WITHOUT CON-
9 GRESSIONAL AUTHORIZATION PROHIBITED.—

1 (1) IN GENERAL.—The permit programs de-
2 scribed in paragraph (2) are ratified, approved, and
3 of full force and effect, and the Administrator of the
4 Environmental Protection Agency (referred to in
5 this section as the “Administrator”) may not with-
6 draw the approval of those permit programs unless
7 the withdrawal is expressly authorized by an Act of
8 Congress enacted after the date of enactment of this
9 Act.

10 (2) PERMIT PROGRAMS DESCRIBED.—The per-
11 mit programs referred to in paragraph (1) are the
12 following State permit programs for the discharge of
13 dredged or fill material approved under section 404
14 of the Federal Water Pollution Control Act (33
15 U.S.C. 1344):

16 (A) The program of the State of Michigan,
17 approved in the notice of the Environmental
18 Protection Agency entitled “Michigan Depart-
19 ment of Natural Resources Section 404 Permit
20 Program Approval” (49 Fed. Reg. 38947 (Oc-
21 tober 2, 1984)) and as described in section
22 233.70 of title 40, Code of Federal Regulations
23 (including any updates to the program de-
24 scribed in a successor Federal Register notice).

1 (B) The program of the State of New Jer-
2 sey, approved in the final rule and notice of the
3 Environmental Protection Agency entitled
4 “New Jersey Department of Environmental
5 Protection and Energy Section 404 Permit Pro-
6 gram Approval” (59 Fed. Reg. 9933 (March 2,
7 1994)) and as described in section 233.71 of
8 title 40, Code of Federal Regulations (including
9 any updates to the program described in a suc-
10 cessor Federal Register notice).

11 (C) The program of the State of Florida,
12 as described in the notice of the Environmental
13 Protection Agency entitled “EPA’s Approval of
14 Florida’s Clean Water Act Section 404 As-
15 sumption Request” (85 Fed. Reg. 83553 (De-
16 cember 22, 2020)) (including any updates to
17 the program described in a successor Federal
18 Register notice), including the Programmatic
19 Biological Opinion with Incidental Take State-
20 ment associated with the program.

21 (3) SAVINGS PROVISION.—Nothing in this sub-
22 section prohibits the Administrator, in accordance
23 with section 404(i) of the Federal Water Pollution
24 Control Act (33 U.S.C. 1344(i)), from withdrawing
25 approval of a permit program described in para-

1 graph (2) if the Administrator determines that a
2 State is not administering the permit program as
3 approved.

4 (b) CLARIFICATION OF PROCESS.—Section 404(h) of
5 the Federal Water Pollution Control Act (33 U.S.C.
6 1344(h)) is amended by adding at the end the following:

7 “(6) NOT A RULE OR REGULATION.—The ap-
8 proval of a State permit program under this section
9 shall not be considered to be a rule or regulation.”.

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