

118TH CONGRESS
2D SESSION

H. R. 7023

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2024

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

To amend the Federal Water Pollution Control Act to provide regulatory and judicial certainty for regulated entities and communities, increase transparency, and promote water quality, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Creating Confidence
3 in Clean Water Permitting Act”.

4 **SEC. 2. WATER QUALITY CRITERIA DEVELOPMENT AND**
5 **TRANSPARENCY.**

6 (a) INFORMATION AND GUIDELINES.—Section
7 304(a) of the Federal Water Pollution Control Act (33
8 U.S.C. 1314(a)) is amended by adding at the end the fol-
9 lowing:

10 “(10) ADMINISTRATIVE PROCEDURE.—After
11 the date of enactment of this paragraph, the Admin-
12 istrator shall issue any new or revised water quality
13 criteria under paragraph (1) or (9) by rule.”.

14 (b) ADMINISTRATIVE PROCEDURE AND JUDICIAL
15 REVIEW.—Section 509(b)(1) of the Federal Water Pollu-
16 tion Control Act (33 U.S.C. 1369(b)(1)) is amended—

17 (1) by striking “section 402, and” and inserting
18 “section 402,”; and

19 (2) by inserting “and (H) in issuing any cri-
20 teria for water quality pursuant to section
21 304(a)(10),” after “strategy under section 304(l),”.

22 **SEC. 3. FEDERAL GENERAL PERMITS.**

23 Section 402(a) of the Federal Water Pollution Con-
24 trol Act (33 U.S.C. 1342(a)) is amended by adding at the
25 end the following:

1 “(6)(A) The Administrator is authorized to issue gen-
2 eral permits under this section for discharges of similar
3 types from similar sources.

4 “(B) The Administrator may require submission of
5 a notice of intent to be covered under a general permit
6 issued under this section, including additional information
7 that the Administrator determines necessary.

8 “(C) If a general permit issued under this section will
9 expire and the Administrator decides not to issue a new
10 general permit for discharges similar to those covered by
11 the expiring general permit, the Administrator shall pub-
12 lish in the Federal Register a notice of such decision at
13 least two years prior to the expiration of the general per-
14 mit.

15 “(D) If a general permit issued under this section
16 expires and the Administrator has not published a notice
17 in accordance with subparagraph (C), until such time as
18 the Administrator issues a new general permit for dis-
19 charges similar to those covered by the expired general
20 permit, the Administrator shall—

21 “(i) continue to apply the terms, conditions,
22 and requirements of the expired general permit to
23 any discharge that was covered by the expired gen-
24 eral permit; and

1 “(ii) apply such terms, conditions, and require-
 2 ments to any discharge that would have been cov-
 3 ered by the expired general permit (in accordance
 4 with any relevant requirements for such coverage) if
 5 the discharge had occurred before such expiration.”.

6 **SEC. 4. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
 7 **SYSTEM (NPDES) TERMS.**

8 Section 402(b)(1)(B) of the Federal Water Pollution
 9 Control Act (33 U.S.C. 1342(b)(1)(B)) is amended to read
 10 as follows:

11 “(B) are for fixed terms—

12 “(i) not exceeding 10 years, for a permit
 13 issued to a State or municipality; and

14 “(ii) not exceeding 5 years, for a permit
 15 issued to any person not described in clause (i);
 16 and”.

17 **SEC. 5. CONFIDENCE IN CLEAN WATER PERMITS.**

18 (a) COMPLIANCE WITH PERMITS.—Section 402(k) of
 19 the Federal Water Pollution Control Act (33 U.S.C.
 20 1342(k)) is amended—

21 (1) by striking “(k) Compliance with” and in-
 22 serting the following:

23 “(k) COMPLIANCE WITH PERMITS.—

24 “(1) IN GENERAL.—Subject to paragraph (2),
 25 compliance with”; and

1 (2) by adding at the end the following:

2 “(2) SCOPE.—For purposes of paragraph (1),
3 compliance with the conditions of a permit issued
4 under this section shall be considered compliance
5 with respect to a discharge of—

6 “(A) any pollutant for which an effluent
7 limitation is included in the permit; and

8 “(B) any pollutant for which an effluent
9 limitation is not included in the permit that
10 is—

11 “(i) specifically identified as controlled
12 or monitored through indicator parameters
13 in the permit, the fact sheet for the per-
14 mit, or the administrative record relating
15 to the permit;

16 “(ii) specifically identified during the
17 permit application process as present in
18 discharges to which the permit will apply;
19 or

20 “(iii) whether or not specifically iden-
21 tified in the permit or during the permit
22 application process—

23 “(I) present in any waste
24 streams or processes of the point
25 source to which the permit applies,

1 which waste streams or processes are
 2 specifically identified during the per-
 3 mit application process; or

4 “(II) otherwise within the scope
 5 of any operations of the point source
 6 to which the permit applies, which
 7 scope of operations is specifically iden-
 8 tified during the permit application
 9 process.”.

10 (b) TECHNICAL CORRECTIONS.—Section 402(l)(3) of
 11 the Federal Water Pollution Control Act (33 U.S.C.
 12 1342(l)(3)) is amended—

13 (1) in subparagraph (B)—

14 (A) by striking “section 402” and insert-
 15 ing “this section”; and

16 (B) by striking “federal” and inserting
 17 “Federal”; and

18 (2) in subparagraph (C)—

19 (A) by striking “Section” and inserting
 20 “section”;

21 (B) by striking “402(p)(6)” and inserting
 22 “subsection (p)(6)”;

23 (C) by striking “402(l)(3)(A),” and insert-
 24 ing “subparagraph (A),”; and

1 (D) by striking “402(l)(3)(A).” and insert-
2 ing “such subparagraph.”.

3 (c) **EXPRESSION OF WATER QUALITY-BASED EFFLU-**
4 **ENT LIMITATIONS.**—Section 402 of the Federal Water
5 Pollution Control Act (33 U.S.C. 1342) is amended by
6 adding at the end the following:

7 “(t) **EXPRESSION OF WATER QUALITY-BASED EF-**
8 **FLUENT LIMITATIONS.**—If the Administrator (or a State,
9 in the case of a permit program approved by the Adminis-
10 trator) determines that a water quality-based limitation
11 on a discharge of a pollutant is necessary to include in
12 a permit under this section in addition to any appropriate
13 technology-based effluent limitations included in such per-
14 mit, the Administrator (or the State) may include such
15 water quality-based limitation in such permit only in the
16 form of an effluent limitation that specifies—

17 “(1) the pollutant to which it applies; and

18 “(2) the numerical limit on the discharge of
19 such pollutant, or the precise waterbody conditions
20 to be attained with respect to such pollutant, re-
21 quired to comply with the permit.”.

22 **SEC. 6. REDUCING PERMITTING UNCERTAINTY.**

23 (a) **IN GENERAL.**—Section 404(c) of the Federal
24 Water Pollution Control Act (33 U.S.C. 1344(c)) is
25 amended—

1 (1) by striking “(c) The Administrator” and in-
2 serting the following:

3 “(c) SPECIFICATION OR USE OF DEFINED AREA.—

4 “(1) IN GENERAL.—The Administrator”;

5 (2) in paragraph (1), as so designated, by in-
6 serting “during the period described in paragraph
7 (2) and” before “after notice and opportunity for
8 public hearings”; and

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

10 “(2) PERIOD OF PROHIBITION.—The period
11 during which the Administrator may prohibit the
12 specification (including the withdrawal of specifica-
13 tion) of any defined area as a disposal site, or deny
14 or restrict the use of any defined area for specifica-
15 tion (including the withdrawal of specification) as a
16 disposal site, under paragraph (1) shall—

17 “(A) begin on the date on which an appli-
18 cant submits all the information required to
19 complete an application for a permit under this
20 section; and

21 “(B) end on the date on which the Sec-
22 retary issues the permit.”.

23 (b) APPLICABILITY.—The amendments made by sub-
24 section (a) shall apply to a permit application submitted
25 under section 404 of the Federal Water Pollution Control

1 Act (33 U.S.C. 1344) after the date of enactment of this
 2 Act.

3 **SEC. 7. NATIONWIDE PERMITTING IMPROVEMENT.**

4 (a) IN GENERAL.—Section 404(e) of the Federal
 5 Water Pollution Control Act (33 U.S.C. 1344) is amend-
 6 ed—

7 (1) by striking “(e)(1) In carrying” and insert-
 8 ing the following:

9 “(e) GENERAL PERMITS ON STATE, REGIONAL, OR
 10 NATIONWIDE BASIS.—

11 “(1) PERMITS AUTHORIZED.—In carrying”;

12 (2) in paragraph (2)—

13 (A) by striking “(2) No general” and in-
 14 serting the following:

15 “(2) TERM.—No general”; and

16 (B) by striking “five years” and inserting
 17 “ten years”; and

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

19 “(3) CONSIDERATIONS.—In determining the en-
 20 vironmental effects of an activity under paragraph
 21 (1) or (2), the Secretary shall consider only the ef-
 22 fects of any discharge of dredged or fill material re-
 23 sulting from such activity.

24 “(4) NATIONWIDE PERMITS FOR LINEAR INFRA-
 25 STRUCTURE PROJECTS.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of this section, the Secretary
3 shall maintain general permits on a nationwide
4 basis for linear infrastructure projects that do
5 not result in the loss of greater than 1/2-acre of
6 waters of the United States for each single and
7 complete project (as defined in section 330.2 of
8 title 33, Code of Federal Regulations (as in ef-
9 fect on the date of enactment of this para-
10 graph)).

11 “(B) DEFINITION OF LINEAR INFRASTRUC-
12 TURE PROJECT.—In this paragraph, the term
13 ‘linear infrastructure project’ means a project
14 to carry out any activity required for the con-
15 struction, expansion, maintenance, modification,
16 or removal of infrastructure and associated fa-
17 cility for the transmission from a point of origin
18 to a terminal point of communications or elec-
19 tricity or the transportation from a point of ori-
20 gin to a terminal point of people, water, waste-
21 water, carbon dioxide, or fuel or hydrocarbons
22 (in the form of a liquid, liquescent, gaseous, or
23 slurry substance or supercritical fluid), includ-
24 ing oil and gas pipeline facilities.

1 “(5) REISSUANCE OF NATIONWIDE PERMITS.—

2 In determining whether to reissue a general permit
3 issued under this subsection on a nationwide basis—

4 “(A) no consultation with an applicable
5 State pursuant to section 6(a) of the Endan-
6 gered Species Act of 1973 (16 U.S.C. 1535(a))
7 is required;

8 “(B) no consultation with a Federal agen-
9 cy pursuant to section 7(a)(2) of such Act (16
10 U.S.C. 1536(a)(2)) is required; and

11 “(C) the requirements of section 102(2)(C)
12 of the National Environmental Policy Act of
13 1969 (42 U.S.C. 4332(2)(C)) shall be satisfied
14 by preparing an environmental assessment with
15 respect to such general permit.”.

16 (b) ADMINISTRATION OF NATIONWIDE PERMIT PRO-
17 GRAM.—In carrying out section 404(e) of the Federal
18 Water Pollution Control Act (33 U.S.C. 1344), the Sec-
19 retary of the Army, acting through the Chief of Engineers,
20 may not finalize or implement any modification to—

21 (1) general condition 15 (relating to single and
22 complete projects), as included in the final rule titled
23 “Reissuance and Modification of Nationwide Per-
24 mits” and published on January 13, 2021, by the

1 Department of the Army, Corps of Engineers (86
2 Fed. Reg. 2868);

3 (2) the definition of single and complete linear
4 project, as included in such final rule (86 Fed. Reg.
5 2877); or

6 (3) the definition of single and complete
7 project, as included in section 330.2 of title 33, Code
8 of Federal Regulations (as in effect on the date of
9 enactment of this Act).

10 **SEC. 8. JUDICIAL REVIEW TIMELINE CLARITY.**

11 Section 404 of the Federal Water Pollution Control
12 Act (33 U.S.C. 1344) is amended—

13 (1) by redesignating subsection (t) as sub-
14 section (u);

15 (2) in subsection (u), as so redesignated, by
16 striking “Nothing in the section” and inserting
17 “SAVINGS PROVISION.—Nothing in this section”;
18 and

19 (3) by inserting after subsection (s) the fol-
20 lowing:

21 “(t) JUDICIAL REVIEW.—

22 “(1) STATUTE OF LIMITATIONS.—

23 “(A) IN GENERAL.—Notwithstanding any
24 applicable provision of law relating to statutes

1 of limitations, an action seeking judicial review
2 of—

3 “(i) an individual or general permit
4 issued under this section shall be filed not
5 later than the date that is 60 days after
6 the date on which the permit was issued;
7 and

8 “(ii) verification that an activity is au-
9 thorized by a general permit issued under
10 this section shall be filed not later than the
11 date that is 60 days after the date on
12 which such verification was issued.

13 “(B) SAVINGS PROVISION.—Nothing in
14 subparagraph (A) may be construed to author-
15 ize an action seeking judicial review of the
16 structure of, or authorization for, a State per-
17 mit program approved pursuant to this section.

18 “(2) LIMITATION ON COMMENCEMENT OF CER-
19 TAIN ACTIONS.—Notwithstanding any other provi-
20 sion of law, no action described in paragraph (1)(A)
21 may be commenced unless the action—

22 “(A) is filed by a party that submitted a
23 comment, during the public comment period for
24 the administrative proceedings related to the
25 applicable action described in such paragraph,

1 which comment was sufficiently detailed to put
2 the Secretary or the State, as applicable, on no-
3 tice of the issue upon which the party seeks ju-
4 dicial review; and

5 “(B) is related to such comment.

6 “(3) REMEDY.—If a court determines that the
7 Secretary or the State, as applicable, did not comply
8 with the requirements of this section in issuing an
9 individual or general permit under this section, or in
10 verifying that an activity is authorized by a general
11 permit issued under this section, as applicable—

12 “(A) the court shall remand the matter to
13 the Secretary or the State, as applicable, for
14 further proceedings consistent with the court’s
15 determination;

16 “(B) with respect to a determination re-
17 garding the issuance of an individual or general
18 permit under this section, the court may not va-
19 cate, revoke, enjoin, or otherwise limit the per-
20 mit, unless the court finds that activities au-
21 thorized under the permit would present an im-
22 minent and substantial danger to human health
23 or the environment for which there is no other
24 equitable remedy available under the law; and

1 “(C) with respect to a determination re-
2 garding a verification that an activity is author-
3 ized by a general permit issued under this sec-
4 tion, the court may not enjoin the activity, un-
5 less the court finds that the activity would
6 present an imminent and substantial danger to
7 human health or the environment for which
8 there is no other equitable remedy available
9 under the law.

10 “(4) TIMELINE TO ACT ON COURT ORDER.—If
11 a court remands a matter under paragraph (2), the
12 court shall set and enforce a reasonable schedule
13 and deadline, which may not exceed 180 days from
14 the date on which the court remands such matter,
15 except as otherwise required by law, for the Sec-
16 retary or the State, as applicable, to take such ac-
17 tions as the court may order.”.

18 **SEC. 9. LIMITATION ON PERMIT ISSUANCE.**

19 Title IV of the Federal Water Pollution Control Act
20 (33 U.S.C. 1341 et seq.) is amended by adding at the end
21 the following:

22 **“SEC. 407. LIMITATION ON PERMIT ISSUANCE.**

23 “(a) PROHIBITION.—No permit may be issued under
24 this title for any discharge from a point source that is
25 owned or operated by an entity that—

1 “(1) is subject to the jurisdiction of a foreign
2 country of concern (as defined in section 9901(7) of
3 the William M. (Mac) Thornberry National Defense
4 Authorization Act for Fiscal Year 2021 (15 U.S.C.
5 4651(7)); or

6 “(2) is a subsidiary of an entity that is subject
7 to the jurisdiction of a foreign country of concern
8 (as so defined).

9 “(b) APPLICATION.—This section shall be applied in
10 a manner consistent with the obligations of the United
11 States under applicable international agreements.”.

12 **SEC. 10. IMPLEMENTATION GUIDANCE.**

13 (a) IN GENERAL.—Not later than 30 days after the
14 date of enactment of this Act, the Administrator of the
15 Environmental Protection Agency and the Secretary of the
16 Army, acting through the Chief of Engineers, shall begin
17 a process to issue guidance on the implementation of the
18 final rule published on September 8, 2023, by the Depart-
19 ment of the Army, Corps of Engineers, Department of De-
20 fense and the Environmental Protection Agency and titled
21 “Revised Definition of ‘Waters of the United States’; Con-
22 forming” (88 Fed. Reg. 61964).

23 (b) PUBLIC COMMENT.—In issuing the guidance re-
24 quired under subsection (a), the Administrator and the
25 Secretary shall—

1 (1) prior to such issuance, solicit comments
2 from the public on such guidance; and

3 (2) ensure that such comments and any re-
4 sponses to such comments are made publicly avail-
5 able.

6 (c) COMPLIANCE.—Any guidance issued pursuant to
7 this section shall comply with the decision of the Supreme
8 Court in *Sackett v. EPA*, 598 U.S. 651 (2023).

9 **SEC. 11. RULE OF CONSTRUCTION.**

10 Nothing in this Act, including the amendments made
11 by this Act, may be construed as affecting the ban on oil
12 and gas development in the Great Lakes described in sec-
13 tion 386 of the Energy Policy Act of 2005 (42 U.S.C.
14 15941).

15 **SEC. 12. REPORT ON CORPS STAFFING NEEDS.**

16 Not later than 60 days after the date of enactment
17 of this Act, the Administrator of the Environmental Pro-
18 tection Agency and the Secretary of the Army, acting
19 through the Chief of Engineers, shall submit to Congress
20 a report on—

21 (1) the staffing needs of the Environmental
22 Protection Agency and the Corps of Engineers to
23 process applications for, and issue, permits under
24 the Federal Water Pollution Control Act, based on
25 the number of such applications submitted during

1 the 5-year period preceding such date of enactment;
2 and

3 (2) the impact that funding for additional full-
4 time employees would have on processing timelines
5 for such permits.

6 **SEC. 13. SAVINGS CLAUSE RELATING TO PFAS.**

7 Nothing in this Act, including the amendments made
8 by this Act, shall affect the authority of the Administrator
9 of the Environmental Protection Agency to conduct re-
10 search on perfluoroalkyl and polyfluoroalkyl substances.

11 **SEC. 14. APPROVAL OF FLORIDA PERMIT PROGRAM.**

12 The notice of the Environmental Protection Agency
13 approving the State of Florida’s request to carry out a
14 permit program for the discharge of dredged or fill mate-
15 rial pursuant to section 404 of the Federal Water Pollu-
16 tion Control Act (33 U.S.C. 1344), published on Decem-
17 ber 22, 2020, and titled “EPA’s Approval of Florida’s
18 Clean Water Act Section 404 Assumption Request” (85
19 Fed. Reg. 83553) shall have the force and effect of law.

Passed the House of Representatives March 21,
2024.

Attest: KEVIN F. MCCUMBER,
Clerk.