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113TH CONGRESS
2^D SESSION

H. R. 5077

[Report No. 113-604]

To amend the Federal Water Pollution Control Act to provide guidance and clarification regarding issuing new and renewal permits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mrs. CAPITO introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

SEPTEMBER 18, 2014

Additional sponsors: Mr. MCKINLEY, Mr. BARR, Mr. GUTHRIE, Mr. MURPHY
of Pennsylvania, Mr. BUCSHON, Mr. ROGERS of Kentucky, Mr. ROKITA,
Mr. WHITFIELD, and Mr. ROTHFUS

SEPTEMBER 18, 2014

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on July 11, 2014]

A BILL

To amend the Federal Water Pollution Control Act to provide guidance and clarification regarding issuing new and renewal permits, 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 “Coal Jobs Protection*
5 *Act of 2014”.*

6 **SEC. 2. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
7 **SYSTEM.**

8 *(a) APPLICABILITY OF GUIDANCE.—Section 402 of the*
9 *Federal Water Pollution Control Act (33 U.S.C. 1342) is*
10 *amended by adding at the end the following:*

11 *“(s) APPLICABILITY OF GUIDANCE.—*

12 *“(1) DEFINITIONS.—In this subsection:*

13 *“(A) GUIDANCE.—*

14 *“(i) IN GENERAL.—The term ‘guid-*
15 *ance’ means draft, interim, or final guid-*
16 *ance issued by the Administrator.*

17 *“(ii) INCLUSIONS.—The term ‘guid-*
18 *ance’ includes—*

19 *“(I) the interim guidance memo-*
20 *randum issued by the Administrator*
21 *on April 1, 2010, entitled ‘Detailed*
22 *Guidance: Improving EPA Review of*
23 *Appalachian Surface Coal Mining Op-*
24 *erations under the Clean Water Act,*
25 *National Environmental Policy Act,*

1 *and the Environmental Justice Execu-*
2 *tive Order’;*

3 “(II) the proposed guidance de-
4 scribed in the notice of availability
5 and request for comments entitled
6 ‘EPA and Army Corps of Engineers
7 Guidance Regarding Identification of
8 Waters Protected by the Clean Water
9 Act’ (76 Fed. Reg. 24479 (May 2,
10 2011));

11 “(III) the final guidance memo-
12 randum issued by the Administrator
13 on July 21, 2011, entitled ‘Improving
14 EPA Review of Appalachian Surface
15 Coal Mining Operations Under the
16 Clean Water Act, National Environ-
17 mental Policy Act, and the Environ-
18 mental Justice Executive Order’;

19 “(IV) the proposed guidance sub-
20 mitted to the Office of Information and
21 Regulatory Affairs of the Office of
22 Management and Budget for regu-
23 latory review under Executive Order
24 12866 entitled ‘Guidance on Identi-
25 fying Waters Protected By the Clean

1 *Water Act*’ and dated February 17,
2 2012 (referred to as ‘Clean Water Pro-
3 tection Guidance’, Regulatory Identifi-
4 fier Number (RIN) 2040-ZA11, re-
5 ceived February 21, 2012);

6 “(V) any successor document to,
7 or any substantially similar guidance
8 based in whole or in part on, any of
9 the foregoing guidance documents; and

10 “(VI) any other document or
11 paper proposed or issued by the Ad-
12 ministrator through any process other
13 than the notice and comment rule-
14 making process.

15 “(B) NEW PERMIT.—The term ‘new permit’
16 means a permit covering discharges from a point
17 source—

18 “(i) that is issued under this section by
19 a permitting authority; and

20 “(ii) for which an application is—

21 “(I) pending as of the date of en-
22 actment of this subsection; or

23 “(II) filed on or after the date of
24 enactment of this subsection.

1 “(C) *PERMITTING AUTHORITY.*—*The term*
2 *‘permitting authority’ means—*

3 “(i) *the Administrator; or*

4 “(ii) *a State, acting pursuant to a per-*
5 *mit program under subsection (b).*

6 “(2) *PERMITS.*—

7 “(A) *IN GENERAL.*—*Notwithstanding any*
8 *other provision of law, in making a determina-*
9 *tion whether to approve a new permit or a re-*
10 *newed permit, the permitting authority—*

11 “(i) *shall base the determination only*
12 *on compliance with regulations issued by*
13 *the Administrator or the permitting author-*
14 *ity; and*

15 “(ii) *shall not base the determination*
16 *on the extent of adherence of the applicant*
17 *for the new permit or renewed permit to*
18 *guidance.*

19 “(B) *NEW PERMITS.*—*If the permitting au-*
20 *thority does not approve or deny an application*
21 *for a new permit by the date that is 270 days*
22 *after the date of receipt of a substantially com-*
23 *plete application for the new permit, the appli-*
24 *cant may discharge as if the application were*
25 *approved in accordance with Federal law for the*

1 *period of time for which a similar permit would*
2 *be approved.*

3 “(C) *SUBSTANTIAL COMPLETENESS.*—*In de-*
4 *termining whether an application for a new per-*
5 *mit or a renewed permit received under this*
6 *paragraph is substantially complete, the permit-*
7 *ting authority shall use standards for deter-*
8 *mining substantial completeness of similar per-*
9 *mits for similar facilities submitted in fiscal*
10 *year 2007.”.*

11 ***(b) STATE PERMIT PROGRAMS.***—

12 ***(1) IN GENERAL.***—*Section 402 of the Federal*
13 *Water Pollution Control Act (33 U.S.C. 1342) is*
14 *amended by striking subsection (b) and inserting the*
15 *following:*

16 ***(b) STATE PERMIT PROGRAMS.***—

17 ***(1) IN GENERAL.***—*At any time after the pro-*
18 *mulgation of the guidelines required by section*
19 *304(i)(2), the Governor of each State desiring to ad-*
20 *minister a permit program for discharges into navi-*
21 *gable waters within the jurisdiction of the State may*
22 *submit to the Administrator—*

23 ***(A)*** *a full and complete description of the*
24 *program the State proposes to establish and ad-*

1 *minister under State law or under an interstate*
2 *compact; and*

3 “(B) *a statement from the attorney general*
4 *(or the attorney for those State water pollution*
5 *control agencies that have independent legal*
6 *counsel), or from the chief legal officer in the*
7 *case of an interstate agency, that the laws of the*
8 *State, or the interstate compact, as applicable,*
9 *provide adequate authority to carry out the de-*
10 *scribed program.*

11 “(2) *APPROVAL.—The Administrator shall ap-*
12 *prove each program for which a description is sub-*
13 *mitted under paragraph (1) unless the Administrator*
14 *determines that adequate authority does not exist—*

15 “(A) *to issue permits that—*

16 “(i) *apply, and ensure compliance*
17 *with, any applicable requirements of sec-*
18 *tions 301, 302, 306, 307, and 403;*

19 “(ii) *are for fixed terms not exceeding*
20 *5 years;*

21 “(iii) *can be terminated or modified*
22 *for cause, including—*

23 “(I) *a violation of any condition*
24 *of the permit;*

1 “(II) obtaining a permit by mis-
2 representation or failure to disclose
3 fully all relevant facts; and

4 “(III) a change in any condition
5 that requires either a temporary or
6 permanent reduction or elimination of
7 the permitted discharge; and

8 “(iv) control the disposal of pollutants
9 into wells;

10 “(B)(i) to issue permits that apply, and en-
11 sure compliance with, all applicable require-
12 ments of section 308; or

13 “(ii) to inspect, monitor, enter, and require
14 reports to at least the same extent as required in
15 section 308;

16 “(C) to ensure that the public, and any
17 other State the waters of which may be affected,
18 receives notice of each application for a permit
19 and an opportunity for a public hearing before
20 a ruling on each application;

21 “(D) to ensure that the Administrator re-
22 ceives notice and a copy of each application for
23 a permit;

24 “(E) to ensure that any State (other than
25 the permitting State), the waters of which may

1 *be affected by the issuance of a permit may sub-*
2 *mit written recommendations to the permitting*
3 *State and the Administrator with respect to any*
4 *permit application and, if any part of the writ-*
5 *ten recommendations are not accepted by the*
6 *permitting State, that the permitting State will*
7 *notify the affected State and the Administrator*
8 *in writing of the failure of the permitting State*
9 *to accept the recommendations, including the*
10 *reasons for not accepting the recommendations;*

11 *“(F) to ensure that no permit will be issued*
12 *if, in the judgment of the Secretary of the Army*
13 *acting through the Chief of Engineers, after con-*
14 *sultation with the Secretary of the department in*
15 *which the Coast Guard is operating, anchorage*
16 *and navigation of any of the navigable waters*
17 *would be substantially impaired by the issuance*
18 *of the permit;*

19 *“(G) to abate violations of the permit or the*
20 *permit program, including civil and criminal*
21 *penalties and other means of enforcement;*

22 *“(H) to ensure that any permit for a dis-*
23 *charge from a publicly owned treatment works*
24 *includes conditions to require the identification*
25 *in terms of character and volume of pollutants of*

1 *any significant source introducing pollutants*
2 *subject to pretreatment standards under section*
3 *307(b) into the treatment works and a program*
4 *to ensure compliance with those pretreatment*
5 *standards by each source, in addition to ade-*
6 *quate notice, which shall include information on*
7 *the quality and quantity of effluent to be intro-*
8 *duced into the treatment works and any antici-*
9 *pated impact of the change in the quantity or*
10 *quality of effluent to be discharged from the pub-*
11 *licly owned treatment works, to the permitting*
12 *agency of—*

13 “(i) *new introductions into the treat-*
14 *ment works of pollutants from any source*
15 *that would be a new source as defined in*
16 *section 306 if the source were discharging*
17 *pollutants;*

18 “(ii) *new introductions of pollutants*
19 *into the treatment works from a source that*
20 *would be subject to section 301 if the source*
21 *were discharging those pollutants; or*

22 “(iii) *a substantial change in volume*
23 *or character of pollutants being introduced*
24 *into the treatment works by a source intro-*

1 *ducing pollutants into the treatment works*
2 *at the time of issuance of the permit; and*
3 *“(I) to ensure that any industrial user of*
4 *any publicly owned treatment works will comply*
5 *with sections 204(b), 307, and 308.*

6 *“(3) ADMINISTRATION.—Notwithstanding para-*
7 *graph (2), the Administrator may not disapprove or*
8 *withdraw approval of a program under this sub-*
9 *section, or limit Federal financial assistance for such*
10 *program, on the basis of the following:*

11 *“(A) The failure of the program to incor-*
12 *porate or comply with guidance (as defined in*
13 *subsection (s)(1)).*

14 *“(B) The implementation of a water quality*
15 *standard that has been adopted by the State and*
16 *approved by the Administrator under section*
17 *303(c).”.*

18 *(2) CONFORMING AMENDMENTS.—*

19 *(A) FEDERAL ENFORCEMENT.—Section 309*
20 *of the Federal Water Pollution Control Act (33*
21 *U.S.C. 1319) is amended—*

22 *(i) in subsection (c)—*

23 *(I) in paragraph (1)(A), by strik-*
24 *ing “402(b)(8)” and inserting*
25 *“402(b)(2)(H)”;* and

1 (ii) in paragraph (2)(A), by
2 striking “402(b)(8)” and inserting
3 “402(b)(2)(H)”; and

4 (i) in subsection (d), in the first sen-
5 tence, by striking “402(b)(8)” and inserting
6 “402(b)(2)(H)”.

7 (B) *ADDITIONAL PRETREATMENT.*—Section
8 402(m) of the Federal Water Pollution Control
9 Act (33 U.S.C. 1342(m)) is amended in the first
10 sentence by striking “subsection (b)(8) of this
11 section” and inserting “subsection (b)(2)(H)”.

12 (c) *SUSPENSION OF FEDERAL PROGRAM.*—Section
13 402(c) of the Federal Water Pollution Control Act (33
14 U.S.C. 1342(c)) is amended—

15 (1) by redesignating paragraph (4) as para-
16 graph (5); and

17 (2) by inserting after paragraph (3) the fol-
18 lowing:

19 “(4) *LIMITATION ON DISAPPROVAL.*—Notwith-
20 standing paragraphs (1) through (3), the Adminis-
21 trator may not disapprove or withdraw approval of
22 a State program under subsection (b), or limit Fed-
23 eral financial assistance for the State program, on the
24 basis of the following:

1 “(A) *The failure of the program to incor-*
2 *porate or comply with guidance (as defined in*
3 *subsection (s)(1)).*

4 “(B) *The implementation of a water quality*
5 *standard that has been adopted by the State and*
6 *approved by the Administrator under section*
7 *303(c).”.*

8 (d) *NOTIFICATION OF ADMINISTRATOR.—Section*
9 *402(d)(2) of the Federal Water Pollution Control Act (33*
10 *U.S.C. 1342(d)(2)) is amended as follows:*

11 (1) *By striking “(2) No” and all that follows*
12 *through the end of the first sentence and inserting the*
13 *following:*

14 “(2) *OBJECTION BY ADMINISTRATOR.—*

15 “(A) *IN GENERAL.—Subject to subpara-*
16 *graph (C), no permit shall issue if—*

17 “(i) *not later than 90 days after the*
18 *date on which the Administrator receives*
19 *notification under subsection (b)(2)(E), the*
20 *Administrator objects in writing to the*
21 *issuance of the permit; or*

22 “(ii) *not later than 90 days after the*
23 *date on which the proposed permit of the*
24 *State is transmitted to the Administrator,*
25 *the Administrator objects in writing to the*

1 issuance of the permit as being outside the
2 requirements of this Act.”.

3 (2) *In the second sentence, by striking “Whenever*
4 *the Administrator” and inserting the following:*

5 “(B) *REQUIREMENTS.—If the Adminis-*
6 *trator”.*

7 (3) *By adding at the end the following:*

8 “(C) *EXCEPTION.—The Administrator may*
9 *not object to or deny the issuance of a permit by*
10 *a State under subsection (b) or (s) based on the*
11 *following:*

12 “(i) *Guidance, as that term is defined*
13 *in subsection (s)(1).*

14 “(ii) *The Administrator’s interpreta-*
15 *tion of a water quality standard that has*
16 *been adopted by the State and approved by*
17 *the Administrator under section 303(c).”.*

18 **SEC. 3. PERMITS FOR DREDGED OR FILL MATERIAL.**

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

21 (1) *by striking “(a) The Secretary may issue”*
22 *and inserting the following:*

23 “(a) *PERMITS.—*

24 “(1) *IN GENERAL.—The Secretary may issue”;*
25 *and*

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

2 “(2) *DEADLINE FOR APPROVAL.—*

3 “(A) *PERMIT APPLICATIONS.—*

4 “(i) *IN GENERAL.—Except as provided*
5 *in clause (ii), if an environmental assess-*
6 *ment or environmental impact statement, as*
7 *appropriate, is required under the National*
8 *Environmental Policy Act of 1969 (42*
9 *U.S.C. 4321 et seq.), the Secretary shall—*

10 “(I) *ensure that the environ-*
11 *mental review process begins not later*
12 *than 90 days after the date on which*
13 *the Secretary receives a permit appli-*
14 *cation; and*

15 “(II) *approve or deny an applica-*
16 *tion for a permit under this subsection*
17 *not later than—*

18 “(aa) *if an agency carries*
19 *out an environmental assessment*
20 *that leads to a finding of no sig-*
21 *nificant impact, the date on*
22 *which the finding of no signifi-*
23 *cant impact is issued; or*

24 “(bb) *if an agency carries*
25 *out an environmental assessment*

1 that leads to a record of decision,
2 15 days after the date on which
3 the record of decision on the envi-
4 ronmental impact statement is
5 issued.

6 “(ii) *PROCESSES.*—Notwithstanding
7 clause (i), regardless of whether the Sec-
8 retary has commenced an environmental as-
9 sessment or environmental impact statement
10 by the date described in clause (i)(I), the
11 following deadlines shall apply:

12 “(I) *An environmental assessment*
13 *carried out under the National Envi-*
14 *ronmental Policy Act of 1969 (42*
15 *U.S.C. 4321 et seq.) shall be completed*
16 *not later than 1 year after the deadline*
17 *for commencing the environmental re-*
18 *view process under clause (i)(I).*

19 “(II) *An environmental impact*
20 *statement carried out under the Na-*
21 *tional Environmental Policy Act of*
22 *1969 (42 U.S.C. 4321 et seq.) shall be*
23 *completed not later than 2 years after*
24 *the deadline for commencing the envi-*

1 *ronmental review process under clause*
2 *(i)(I).*

3 *“(B) FAILURE TO ACT.—If the Secretary*
4 *fails to act by the deadline specified in clause (i)*
5 *or (ii) of subparagraph (A)—*

6 *“(i) the application, and the permit re-*
7 *quested in the application, shall be consid-*
8 *ered to be approved;*

9 *“(ii) the Secretary shall issue a permit*
10 *to the applicant; and*

11 *“(iii) the permit shall not be subject to*
12 *judicial review.”.*

13 *(b) STATE PERMITTING PROGRAMS.—Section 404(c) of*
14 *the Federal Water Pollution Control Act (33 U.S.C.*
15 *1344(c)) is amended—*

16 *(1) by striking “(c)” and inserting “(c)(1)”;* and

17 *(2) by adding at the end the following:*

18 *“(2) Paragraph (1) shall not apply to any permit if*
19 *the State in which the discharge originates or will originate*
20 *does not concur with the Administrator’s determination*
21 *that the discharge will result in an unacceptable adverse*
22 *effect as described in paragraph (1).”.*

23 *(c) STATE PROGRAMS.—The first sentence of section*
24 *404(g)(1) of such Act (33 U.S.C. 1344(g)(1)) is amended*

1 *by striking “for the discharge” and inserting “for some or*
2 *all of the discharges”.*

3 *(d) DEADLINE FOR AGENCY COMMENTS.—Section 404*
4 *of such Act (33 U.S.C. 1344) is amended—*

5 *(1) in subsection (m) by striking “ninetieth day”*
6 *and inserting “30th day (or the 60th day if addi-*
7 *tional time is requested)”;* and

8 *(2) in subsection (q)—*

9 *(A) by striking “(q)” and inserting*
10 *“(q)(1)”;* and

11 *(B) by adding at the end the following:*

12 *“(2) The Administrator and the head of a department*
13 *or agency referred to in paragraph (1) shall each submit*
14 *any comments with respect to an application for a permit*
15 *under subsection (a) or (e) not later than the 30th day (or*
16 *the 60th day if additional time is requested) after the date*
17 *of receipt of an application for a permit under that sub-*
18 *section.”.*

19 **SEC. 4. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**
20 **PLOYMENT AND ECONOMIC ACTIVITY.**

21 *(a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-*
22 *MENT AND ECONOMIC ACTIVITY.—*

23 *(1) ANALYSIS.—Before taking a covered action,*
24 *the Administrator shall analyze the impact,*
25 *disaggregated by State, of the covered action on em-*

1 *ployment levels and economic activity, including esti-*
2 *mated job losses and decreased economic activity.*

3 (2) *ECONOMIC MODELS.—*

4 (A) *IN GENERAL.—In carrying out para-*
5 *graph (1), the Administrator shall utilize the*
6 *best available economic models.*

7 (B) *ANNUAL GAO REPORT.—Not later than*
8 *December 31 of each year, the Comptroller Gen-*
9 *eral of the United States shall submit to Con-*
10 *gress a report on the economic models used by*
11 *the Administrator to carry out this subsection.*

12 (3) *AVAILABILITY OF INFORMATION.—With re-*
13 *spect to any covered action, the Administrator shall—*

14 (A) *post the analysis under paragraph (1)*
15 *as a link on the main page of the public Internet*
16 *Web site of the Environmental Protection Agen-*
17 *cy; and*

18 (B) *request that the Governor of any State*
19 *experiencing more than a de minimis negative*
20 *impact post such analysis in the Capitol of such*
21 *State.*

22 (b) *PUBLIC HEARINGS.—*

23 (1) *IN GENERAL.—If the Administrator con-*
24 *cludes under subsection (a)(1) that a covered action*
25 *will have more than a de minimis negative impact on*

1 *employment levels or economic activity in a State, the*
2 *Administrator shall hold a public hearing in the*
3 *State at least 30 days prior to the effective date of the*
4 *covered action.*

5 (2) *TIME, LOCATION, AND SELECTION.*—*A public*
6 *hearing required under paragraph (1) shall be held at*
7 *a convenient time and location for impacted resi-*
8 *dents. In selecting a location for such a public hear-*
9 *ing, the Administrator shall give priority to locations*
10 *in the State that will experience the greatest number*
11 *of job losses.*

12 (c) *NOTIFICATION.*—*If the Administrator concludes*
13 *under subsection (a)(1) that a covered action will have more*
14 *than a de minimis negative impact on employment levels*
15 *or economic activity in a State, the Administrator shall*
16 *give notice of such impact to the State’s congressional dele-*
17 *gation, Governor, and legislature at least 45 days before the*
18 *effective date of the covered action.*

19 (d) *DEFINITIONS.*—*In this section, the following defi-*
20 *nitions apply:*

21 (1) *ADMINISTRATOR.*—*The term “Adminis-*
22 *trator” means the Administrator of the Environ-*
23 *mental Protection Agency.*

24 (2) *COVERED ACTION.*—*The term “covered ac-*
25 *tion” means any of the following actions taken by the*

1 *Administrator under the Federal Water Pollution*
2 *Control Act (33 U.S.C. 1201 et seq.):*

3 (A) *Issuing a regulation, policy statement,*
4 *guidance, response to a petition, or other require-*
5 *ment.*

6 (B) *Implementing a new or substantially*
7 *altered program.*

8 (3) *MORE THAN A DE MINIMIS NEGATIVE IM-*
9 *PACT.—The term “more than a de minimis negative*
10 *impact” means either of the following:*

11 (A) *With respect to employment levels, a*
12 *loss of more than 100 jobs. Any offsetting job*
13 *gains that result from the hypothetical creation*
14 *of new jobs through new technologies or govern-*
15 *ment employment may not be used in the job loss*
16 *calculation.*

17 (B) *With respect to economic activity, a de-*
18 *crease in economic activity of more than*
19 *\$1,000,000 over any calendar year. Any offset-*
20 *ting economic activity that results from the hy-*
21 *pothetical creation of new economic activity*
22 *through new technologies or government employ-*
23 *ment may not be used in the economic activity*
24 *calculation.*

1 **SEC. 5. LIMITATIONS ON AUTHORITY TO MODIFY STATE**
2 **WATER QUALITY STANDARDS.**

3 (a) *STATE WATER QUALITY STANDARDS.*—Section
4 303(c)(4) of the Federal Water Pollution Control Act (33
5 U.S.C. 1313(c)(4)) is amended—

6 (1) by redesignating subparagraphs (A) and (B)
7 as clauses (i) and (ii), respectively;

8 (2) by striking “(4)” and inserting “(4)(A)”;

9 (3) by striking “The Administrator shall pro-
10 mulgate” and inserting the following:

11 “(B) The Administrator shall promulgate”; and

12 (4) by adding at the end the following:

13 “(C) Notwithstanding subparagraph (A)(ii), the Ad-
14 ministrator may not promulgate a revised or new standard
15 for a pollutant in any case in which the State has submitted
16 to the Administrator and the Administrator has approved
17 a water quality standard for that pollutant, unless the State
18 concurs with the Administrator’s determination that the re-
19 vised or new standard is necessary to meet the requirements
20 of this Act.”.

21 (b) *FEDERAL LICENSES AND PERMITS.*—Section
22 401(a) of such Act (33 U.S.C. 1341(a)) is amended by add-
23 ing at the end the following:

24 “(7) With respect to any discharge, if a State or inter-
25 state agency having jurisdiction over the navigable waters
26 at the point where the discharge originates or will originate

1 *determines under paragraph (1) that the discharge will*
2 *comply with the applicable provisions of sections 301, 302,*
3 *303, 306, and 307, the Administrator may not take any*
4 *action to supersede the determination.”.*

5 **SEC. 6. STATE AUTHORITY TO IDENTIFY WATERS WITHIN**
6 **ITS BOUNDARIES.**

7 *Section 303 of the Federal Water Pollution Control Act*
8 *(33 U.S.C. 1313) is amended by striking subsection (d)(2)*
9 *and inserting the following:*

10 *“(2)(A) Each State shall submit to the Administrator*
11 *from time to time, with the first such submission not later*
12 *than 180 days after the date of publication of the first iden-*
13 *tification of pollutants under section 304(a)(2)(D), the*
14 *waters identified and the loads established under para-*
15 *graphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection.*
16 *The Administrator shall approve the State identification*
17 *and load or announce his disagreement with the State iden-*
18 *tification and load not later than 30 days after the date*
19 *of submission, and if—*

20 *“(i) the Administrator approves the identifica-*
21 *tion and load submitted by the State in accordance*
22 *with this subsection, such State shall incorporate*
23 *them into its current plan under subsection (e); and*

24 *“(ii) the Administrator announces his disagree-*
25 *ment with the identification and load submitted by*

1 *the State in accordance with this subsection, the Ad-*
2 *ministrator shall submit, not later than 30 days after*
3 *the date on which such announcement is made, to the*
4 *State his written recommendation of those additional*
5 *waters that he identifies and such loads for such*
6 *waters as he believes are necessary to implement the*
7 *water quality standards applicable to such waters.*

8 “(B) Upon receipt of the Administrator’s recommenda-
9 tion the State shall within 30 days either—

10 “(i) disregard the Administrator’s recommenda-
11 tion in full and incorporate its own identification
12 and load into its current plan under subsection (e);

13 “(ii) accept the Administrator’s recommendation
14 in full and incorporate its identification and load as
15 amended by the Administrator’s recommendation into
16 its current plan under subsection (e); or

17 “(iii) accept the Administrator’s recommenda-
18 tion in part, identifying certain additional waters
19 and certain additional loads proposed by the Admin-
20 istrator to be added to such State’s identification and
21 load and incorporate such State’s identification and
22 load as amended into its current plan under sub-
23 section (e).

24 “(C)(i) If the Administrator fails to either approve the
25 State identification and load or announce his disagreement

1 *with the State identification and load within the time spec-*
2 *ified in this subsection, then such State’s identification and*
3 *load is deemed approved and such State shall incorporate*
4 *the identification and load that it submitted into its current*
5 *plan under subsection (e).*

6 “(ii) *If the Administrator announces his disagreement*
7 *with the State identification and load but fails to submit*
8 *his written recommendation to the State within 30 days*
9 *as required by subparagraph (A)(ii) then such State’s iden-*
10 *tification and load is deemed approved and such State shall*
11 *incorporate the identification and load that it submitted*
12 *into its current plan under subsection (e).*

13 “(D) *This paragraph shall apply to any decision made*
14 *by the Administrator under this subsection issued on or*
15 *after March 1, 2013.”.*

16 **SEC. 7. DEFINITION OF FILL MATERIAL.**

17 *Section 502 of the Federal Water Pollution Control Act*
18 *(33 U.S.C. 1362) is amended by adding at the end the fol-*
19 *lowing:*

20 “(27) *FILL MATERIAL.—*

21 “(A) *IN GENERAL.—The term ‘fill material’*
22 *means any material placed in waters of the*
23 *United States where the material has the effect*
24 *of—*

1 “(i) replacing any portion of a water
2 of the United States with dry land; or

3 “(ii) changing the bottom elevation of
4 any portion of a water of the United States.

5 “(B) INCLUSIONS.—The term ‘fill material’
6 includes—

7 “(i) rock;

8 “(ii) sand;

9 “(iii) soil;

10 “(iv) clay;

11 “(v) plastics;

12 “(vi) construction debris;

13 “(vii) wood chips;

14 “(viii) overburden from mining or
15 other excavation activities; and

16 “(ix) materials used to create any
17 structure or infrastructure in the waters of
18 the United States.

19 “(C) EXCLUSIONS.—The term ‘fill material’
20 does not apply to trash or garbage.”.

21 **SEC. 8. APPLICABILITY OF AMENDMENTS.**

22 *Except as otherwise specifically provided, the amend-*
23 *ments made by this Act shall apply to actions taken on*
24 *or after the date of enactment of this Act, including actions*
25 *taken with respect to permit applications pending, or re-*

- 1 *vised or new standards in the process of being promulgated,*
- 2 *on such date of enactment.*

Union Calendar No. 449

113TH CONGRESS
2^D SESSION

H. R. 5077

[Report No. 113-604]

A BILL

To amend the Federal Water Pollution Control Act to provide guidance and clarification regarding issuing new and renewal permits, and for other purposes.

SEPTEMBER 18, 2014

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed