

117TH CONGRESS
1ST SESSION

S. 1761

To amend the Federal Water Pollution Control Act to make changes with respect to water quality certification, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Mr. BARRASSO (for himself, Mr. DAINES, Mr. CRAMER, Mrs. CAPITO, Mr. TOOMEY, Ms. LUMMIS, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to make changes with respect to water quality certification, 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 “Water Quality Certifi-
5 cation Improvement Act of 2021”.

6 **SEC. 2. CERTIFICATION.**

7 Section 401 of the Federal Water Pollution Control
8 Act (33 U.S.C. 1341) is amended—

9 (1) in subsection (a)—

- 1 (A) in paragraph (1)—
- 2 (i) in the first sentence—
- 3 (I) by inserting “by the appli-
4 cant” after “any discharge”; and
- 5 (II) by inserting “as a result of
6 the federally licensed or permitted ac-
7 tivity” after “into the navigable
8 waters”;
- 9 (ii) in the second sentence, by striking
10 “activity” and inserting “discharge”;
- 11 (iii) in the third sentence, by striking
12 “applications” each place it appears and
13 inserting “requests”;
- 14 (iv) in the fifth sentence, by striking
15 “act on” and inserting “grant or deny”;
16 and
- 17 (v) by inserting after the fourth sen-
18 tence the following: “The certifying State,
19 interstate agency, or Administrator shall
20 publish the requirements for certification
21 that meet the applicable provisions of sec-
22 tions 301, 302, 303, 306, and 307. The
23 decision to grant or deny a request shall be
24 based only on the applicable provisions of
25 sections 301, 302, 303, 306, and 307 and

1 the grounds for a decision shall be set
2 forth in writing to the applicant.”;

3 (B) in paragraph (2)—

4 (i) in the second sentence—

5 (I) by striking “such a dis-
6 charge” and inserting “a discharge
7 made into the navigable waters by the
8 applicant as described in paragraph
9 (1)”;

10 (II) by inserting “receipt of the”
11 before “notice”; and

12 (III) by striking “of application
13 for such Federal license or permit”
14 and inserting “under the preceding
15 sentence”;

16 (ii) in the third sentence—

17 (I) by striking “such discharge”
18 and inserting “any discharge made
19 into the navigable waters by the appli-
20 cant as described in paragraph (1)”;
21 and

22 (II) by striking “any water qual-
23 ity requirement” and inserting “the
24 applicable provisions of sections 301,
25 302, 303, 306, and 307”;

1 (iii) in the fifth sentence, by striking
2 “insure compliance with applicable water
3 quality requirements.” and inserting “en-
4 sure any discharge into the navigable
5 waters by the applicant as described in
6 paragraph (1) will comply with the applica-
7 ble provisions of sections 301, 302, 303,
8 306, and 307.”; and

9 (iv) by striking the first sentence and
10 inserting “Not later than 90 days after re-
11 ceipt of a request for certification, the cer-
12 tifying State, interstate agency, or Admin-
13 istrator shall identify in writing all specific
14 additional materials or information that
15 are necessary to make a final decision on
16 a request for certification. On receipt of a
17 request for certification, the certifying
18 State or interstate agency, as applicable,
19 shall immediately notify the Administrator
20 of the request.”;

21 (C) in paragraph (3)—

22 (i) in the first sentence, by striking
23 “there will be compliance” and inserting
24 “a discharge made into the navigable

1 waters by the applicant as described in
2 paragraph (1) will comply”; and

3 (ii) in the second sentence—

4 (I) by striking “section” and in-
5 serting “the applicable provisions of
6 sections”; and

7 (II) by striking “or 307 of this
8 Act” and inserting “and 307”;

9 (D) in paragraph (4)—

10 (i) in the first sentence, by striking
11 “applicable effluent limitations” and all
12 that follows through the period at the end
13 and inserting “any discharge made by the
14 applicant into the navigable waters as de-
15 scribed in paragraph (1) will not violate
16 the applicable provisions of sections 301,
17 302, 303, 306, and 307.”;

18 (ii) in the second sentence, by striking
19 “will violate applicable effluent limitations
20 or other limitations or other water quality
21 requirements such Federal” and inserting
22 “will result in a discharge made into the
23 navigable waters by the applicant as de-
24 scribed in paragraph (1) that violates the

1 applicable provisions of sections 301, 302,
2 303, 306, and 307, the Federal”; and

3 (iii) in the third sentence—

4 (I) by striking “such facility or
5 activity” and inserting “a discharge
6 made by the applicant into the navi-
7 gable waters as described in para-
8 graph (1)”; and

9 (II) by striking “section 301,
10 302, 303, 306, or 307 of this Act”
11 and inserting “sections 301, 302, 303,
12 306, and 307”; and

13 (E) in paragraph (5)—

14 (i) by striking “such facility or activ-
15 ity has been operated in” and inserting
16 “any discharge made by the applicant into
17 the navigable waters as described in para-
18 graph (1) is in”; and

19 (ii) by striking “section 301, 302,
20 303, 306, or 307 of this Act” and insert-
21 ing “sections 301, 302, 303, 306, and
22 307”;

23 (2) in subsection (d), by striking “assure that
24 any applicant for a Federal license or permit will
25 comply with any applicable” and inserting the fol-

1 lowing: “ensure that any discharge made by the ap-
2 plicant into the navigable waters as described in sub-
3 section (a)(1) shall comply with the applicable provi-
4 sions of sections 301, 302, 303, 306, and 307. Any
5 limitations or requirements in the preceding sen-
6 tence shall become a condition on any Federal li-
7 cense or permit subject to the provisions of this sec-
8 tion.

9 “(e) DEFINITION OF APPLICABLE PROVISIONS OF
10 SECTIONS 301, 302, 303, 306, AND 307.—In this section,
11 the term ‘applicable provisions of sections 301, 302, 303,
12 306, and 307’ means, as applicable,”; and

13 (3) in subsection (e) (as so redesignated)—
14 (A) by striking “with”;
15 (B) by striking “other appropriate”; and
16 (C) by striking “set forth” and all that fol-
17 lows through the period at the end and insert-
18 ing “implementing water quality criteria under
19 section 303 necessary to support the specified
20 designated use or uses of the receiving navi-
21 gable water.”.

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