

Union Calendar No. 306

118TH CONGRESS
2^D SESSION

H. R. 7023

[Report No. 118-375]

To amend section 404 of the Federal Water Pollution Control Act to codify certain regulatory provisions relating to nationwide permits for dredged or fill material, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2024

Mr. ROUZER introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

FEBRUARY 6, 2024

Reported with amendments, 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 *italie*]

[For text of introduced bill, see copy of bill as introduced on January 17, 2024]

A BILL

To amend section 404 of the Federal Water Pollution Control Act to codify certain regulatory provisions relating to nationwide permits for dredged or fill material, 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 “Creating Confidence in*
5 *Clean Water Permitting Act”.*

6 **SEC. 2. WATER QUALITY CRITERIA DEVELOPMENT AND**
7 **TRANSPARENCY.**

8 *(a) INFORMATION AND GUIDELINES.—Section 304(a)*
9 *of the Federal Water Pollution Control Act (33 U.S.C.*
10 *1314(a)) is amended by adding at the end the following:*

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

15 *(b) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-*
16 *VIEW.—Section 509(b)(1) of the Federal Water Pollution*
17 *Control Act (33 U.S.C. 1369(b)(1)) is amended—*

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

20 *(2) by inserting “and (H) in issuing any cri-*
21 *teria for water quality pursuant to section*
22 *304(a)(10),” after “strategy under section 304(l),”.*

1 **SEC. 3. FEDERAL GENERAL PERMITS.**

2 *Section 402(a) of the Federal Water Pollution Control*
3 *Act (33 U.S.C. 1342(a)) is amended by adding at the end*
4 *the following:*

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

8 *“(B) The Administrator may require submission of a*
9 *notice of intent to be covered under a general permit issued*
10 *under this section, including additional information that*
11 *the Administrator determines necessary.*

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

18 *“(D) If a general permit issued under this section ex-*
19 *pires and the Administrator has not published a notice in*
20 *accordance with subparagraph (C), until such time as the*
21 *Administrator issues a new general permit for discharges*
22 *similar to those covered by the expired general permit, the*
23 *Administrator shall—*

24 *“(i) continue to apply the terms, conditions, and*
25 *requirements of the expired general permit to any dis-*

1 charge that was covered by the expired general per-
2 mit; and

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

8 **SEC. 4. CONFIDENCE IN CLEAN WATER PERMITS.**

9 (a) **COMPLIANCE WITH PERMITS.**—Section 402(k) of
10 the Federal Water Pollution Control Act (33 U.S.C.
11 1342(k)) is amended—

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

14 “(k) **COMPLIANCE WITH PERMITS.**—

15 “(1) **IN GENERAL.**—Subject to paragraph (2),
16 compliance with”; and

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

18 “(2) **SCOPE.**—For purposes of paragraph (1),
19 compliance with the conditions of a permit issued
20 under this section shall be considered compliance with
21 respect to a discharge of—

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

1 “(B) any pollutant for which an effluent
2 limitation is not included in the permit that
3 is—

4 “(i) specifically identified as controlled
5 or monitored through indicator parameters
6 in the permit, the fact sheet for the permit,
7 or the administrative record relating to the
8 permit;

9 “(ii) specifically identified during the
10 permit application process as present in
11 discharges to which the permit will apply;
12 or

13 “(iii) whether or not specifically iden-
14 tified in the permit or during the permit
15 application process—

16 “(I) present in any waste streams
17 or processes of the point source to
18 which the permit applies, which waste
19 streams or processes are specifically
20 identified during the permit applica-
21 tion process; or

22 “(II) otherwise within the scope of
23 any operations of the point source to
24 which the permit applies, which scope
25 of operations is specifically identified

1 *during the permit application proc-*
2 *ess.”.*

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

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

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

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

22 **SEC. 5. REDUCING PERMITTING UNCERTAINTY.**

23 **(a) IN GENERAL.**—*Section 404(c) of the Federal Water*
24 *Pollution Control Act (33 U.S.C. 1344(c)) is 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 insert-
6 ing “*during the period described in paragraph (2)*
7 *and*” before “*after notice and opportunity for public*
8 *hearings*”; and

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

10 “(2) *PERIOD OF PROHIBITION.*—*The period dur-*
11 *ing which the Administrator may prohibit the speci-*
12 *fication (including the withdrawal of specification) of*
13 *any defined area as a disposal site, or deny or re-*
14 *strict the use of any defined area for specification (in-*
15 *cluding the withdrawal of specification) as a disposal*
16 *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 Secretary*
22 *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. 6. NATIONWIDE PERMITTING IMPROVEMENT.**

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

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

8 *“(e) GENERAL PERMITS ON STATE, REGIONAL, OR NA-*
9 *TIONWIDE BASIS.—*

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

11 *(2) in paragraph (2)—*

12 *(A) by striking “(2) No general” and insert-*
13 *ing the following:*

14 *“(2) TERM.—No general”; and*

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

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

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

23 *“(4) NATIONWIDE PERMITS FOR LINEAR INFRA-*
24 *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 effect
9 on the date of enactment of this paragraph)).

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

1 “(5) *REISSUANCE OF NATIONWIDE PERMITS.*—*In*
2 *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 Endangered*
6 *Species Act of 1973 (16 U.S.C. 1535(a)) is re-*
7 *quired;*

8 “(B) *no consultation with a Federal agency*
9 *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 by*
14 *preparing an environmental assessment with re-*
15 *spect to such general permit.”.*

16 (b) *ADMINISTRATION OF NATIONWIDE PERMIT PRO-*
17 *GRAM.*—*In carrying out section 404(e) of the Federal Water*
18 *Pollution Control Act (33 U.S.C. 1344), the Secretary of*
19 *the Army, acting through the Chief of Engineers, may not*
20 *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 De-*

1 *partment of the Army, Corps of Engineers (86 Fed.*
2 *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 project,*
7 *as included in section 330.2 of title 33, Code of Fed-*
8 *eral Regulations (as in effect on the date of enactment*
9 *of this Act).*

10 **SEC. 7. JUDICIAL REVIEW TIMELINE CLARITY.**

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

13 *(1) by redesignating subsection (t) as subsection*
14 *(u);*

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

18 *(3) by inserting after subsection (s) the following:*

19 *“(t) JUDICIAL REVIEW.—*

20 *“(1) STATUTE OF LIMITATIONS.—*

21 *“(A) IN GENERAL.—Notwithstanding any*
22 *applicable provision of law relating to statutes of*
23 *limitations, an action seeking judicial review*
24 *of—*

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

5 “(ii) verification that an activity is
6 authorized by a general permit issued under
7 this section shall be filed not later than the
8 date that is 60 days after the date on which
9 such verification was issued.

10 “(B) SAVINGS PROVISION.—Nothing in sub-
11 paragraph (A) may be construed to authorize an
12 action seeking judicial review of the structure of,
13 or authorization for, a State permit program ap-
14 proved pursuant to this section.

15 “(2) LIMITATION ON COMMENCEMENT OF CER-
16 TAIN ACTIONS.—Notwithstanding any other provision
17 of law, no action described in paragraph (1)(A) may
18 be commenced unless the action—

19 “(A) is filed by a party that submitted a
20 comment, during the public comment period for
21 the administrative proceedings related to the ap-
22 plicable action described in such paragraph,
23 which comment was sufficiently detailed to put
24 the Secretary or the State, as applicable, on no-

1 *tice of the issue upon which the party seeks judi-*
2 *cial review; and*

3 *“(B) is related to such comment.*

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

10 *“(A) the court shall remand the matter to*
11 *the Secretary or the State, as applicable, for fur-*
12 *ther proceedings consistent with the court’s deter-*
13 *mination;*

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

23 *“(C) with respect to a determination re-*
24 *garding a verification that an activity is author-*
25 *ized by a general permit issued under this sec-*

1 *tion, the court may not enjoin the activity, un-*
2 *less the court finds that the activity would*
3 *present an imminent and substantial danger to*
4 *human health or the environment for which there*
5 *is no other equitable remedy available under the*
6 *law.*

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

15 **SEC. 8. IMPLEMENTATION GUIDANCE.**

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

1 **(b) PUBLIC COMMENT.**—*In issuing the guidance re-*
2 *quired under subsection (a), the Administrator and the Sec-*
3 *retary shall—*

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

6 (2) *ensure that such comments and any re-*
7 *sponses to such comments are made publicly avail-*
8 *able.*

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

Amend the title so as to read: “A bill 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.”.

Union Calendar No. 306

118TH CONGRESS
2^D SESSION

H. R. 7023

[Report No. 118-375]

A BILL

To amend section 404 of the Federal Water Pollution Control Act to codify certain regulatory provisions relating to nationwide permits for dredged or fill material, and for other purposes.

FEBRUARY 6, 2024

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