

FEBRUARY 1, 2024

RULES COMMITTEE PRINT 118–25
TEXT OF H.R. 7023, CREATING CONFIDENCE IN
CLEAN WATER PERMITTING ACT

**[Showing the text of H.R. 7023, as ordered reported by the
Committee on Transportation and Infrastructure]**

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

1 (2) by inserting “and (H) in issuing any cri-
2 teria for water quality pursuant to section
3 304(a)(10),” after “strategy under section 304(l),”.

4 **SEC. 3. FEDERAL GENERAL PERMITS.**

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

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

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

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

22 “(D) If a general permit issued under this section
23 expires and the Administrator has not published a notice
24 in accordance with subparagraph (C), until such time as
25 the Administrator issues a new general permit for dis-

1 charges similar to those covered by the expired general
2 permit, the Administrator shall—

3 “(i) continue to apply the terms, conditions,
4 and requirements of the expired general permit to
5 any discharge that was covered by the expired gen-
6 eral permit; and

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

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

13 (a) COMPLIANCE WITH PERMITS.—Section 402(k) of
14 the Federal Water Pollution Control Act (33 U.S.C.
15 1342(k)) is amended—

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

18 “(k) COMPLIANCE WITH PERMITS.—

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

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

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

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

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

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

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

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

18 “(I) present in any waste
19 streams or processes of the point
20 source to which the permit applies,
21 which waste streams or processes are
22 specifically identified during the per-
23 mit application process; or

24 “(II) otherwise within the scope
25 of any operations of the point source

1 to which the permit applies, which
2 scope of operations is specifically identified during the permit application
3 process.”.

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

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

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

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

1 **SEC. 5. REDUCING PERMITTING UNCERTAINTY.**

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

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

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

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

9 (2) in paragraph (1), as so designated, by in-
10 serting “during the period described in paragraph
11 (2) and” before “after notice and opportunity for
12 public hearings”; and

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

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

21 “(A) begin on the date on which an appli-
22 cant submits all the information required to
23 complete an application for a permit under this
24 section; and

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

1 (b) APPLICABILITY.—The amendments made by sub-
2 section (a) shall apply to a permit application submitted
3 under section 404 of the Federal Water Pollution Control
4 Act (33 U.S.C. 1344) after the date of enactment of this
5 Act.

6 **SEC. 6. NATIONWIDE PERMITTING IMPROVEMENT.**

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

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

12 “(e) GENERAL PERMITS ON STATE, REGIONAL, OR
13 NATIONWIDE BASIS.—

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

15 (2) in paragraph (2)—

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

18 “(2) TERM.—No general”; and

19 (B) by striking “five years” and inserting
20 “ten years”; and

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

22 “(3) CONSIDERATIONS.—In determining the en-
23 vironmental effects of an activity under paragraph
24 (1) or (2), the Secretary shall consider only the ef-

1 fects of any discharge of dredged or fill material re-
2 sulting from such activity.

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

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

15 “(B) DEFINITION OF LINEAR INFRASTRUC-
16 TURE PROJECT.—In this paragraph, the term
17 ‘linear infrastructure project’ means a project
18 to carry out any activity required for the con-
19 struction, expansion, maintenance, modification,
20 or removal of infrastructure and associated fa-
21 cility for the transmission from a point of origin
22 to a terminal point of communications or elec-
23 tricity or the transportation from a point of ori-
24 gin to a terminal point of people, water, waste-
25 water, carbon dioxide, or fuel or hydrocarbons

1 (in the form of a liquid, liquescent, gaseous, or
2 slurry substance or supercritical fluid), includ-
3 ing oil and gas pipeline facilities.

4 “(5) REISSUANCE OF NATIONWIDE PERMITS.—
5 In determining whether to reissue a general permit
6 issued under this subsection on a nationwide basis—

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

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

14 “(C) the requirements of section 102(2)(C)
15 of the National Environmental Policy Act of
16 1969 (42 U.S.C. 4332(2)(C)) shall be satisfied
17 by preparing an environmental assessment with
18 respect to such general permit.”.

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

24 (1) general condition 15 (relating to single and
25 complete projects), as included in the final rule titled

1 “Reissuance and Modification of Nationwide Per-
2 mits” and published on January 13, 2021, by the
3 Department of the Army, Corps of Engineers (86
4 Fed. Reg. 2868);

5 (2) the definition of single and complete linear
6 project, as included in such final rule (86 Fed. Reg.
7 2877); or

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

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

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

15 (1) by redesignating subsection (t) as sub-
16 section (u);

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

21 (3) by inserting after subsection (s) the fol-
22 lowing:

23 “(t) JUDICIAL REVIEW.—

24 “(1) STATUTE OF LIMITATIONS.—

1 “(A) IN GENERAL.—Notwithstanding any
2 applicable provision of law relating to statutes
3 of limitations, an action seeking judicial review
4 of—

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

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

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

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

24 “(A) is filed by a party that submitted a
25 comment, during the public comment period for

1 the administrative proceedings related to the
2 applicable action described in such paragraph,
3 which comment was sufficiently detailed to put
4 the Secretary or the State, as applicable, on no-
5 tice of the issue upon which the party seeks ju-
6 dicial review; and

7 “(B) is related to such comment.

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

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

18 “(B) with respect to a determination re-
19 garding the issuance of an individual or general
20 permit under this section, the court may not va-
21 cate, revoke, enjoin, or otherwise limit the per-
22 mit, unless the court finds that activities au-
23 thorized under the permit would present an im-
24 minent and substantial danger to human health

1 or the environment for which there is no other
2 equitable remedy available under the law; and

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

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

20 **SEC. 8. IMPLEMENTATION GUIDANCE.**

21 (a) IN GENERAL.—Not later than 30 days after the
22 date of enactment of this Act, the Administrator of the
23 Environmental Protection Agency and the Secretary of the
24 Army, acting through the Chief of Engineers, shall begin
25 a process to issue guidance on the implementation of the

1 final rule published on September 8, 2023, by the Depart-
2 ment of the Army, Corps of Engineers, Department of De-
3 fense and the Environmental Protection Agency and titled
4 “Revised Definition of ‘Waters of the United States’; Con-
5 forming” (88 Fed. Reg. 61964).

6 (b) PUBLIC COMMENT.—In issuing the guidance re-
7 quired under subsection (a), the Administrator and the
8 Secretary shall—

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

11 (2) ensure that such comments and any re-
12 sponses to such comments are made publicly avail-
13 able.

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

