

CREATING CONFIDENCE IN CLEAN WATER PERMITTING
ACT

FEBRUARY 6, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRAVES of Missouri, from the Committee on Transportation
and Infrastructure, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 7023]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 7023) to amend section 404 of the Fed-
eral Water Pollution Control Act to codify certain regulatory provi-
sions relating to nationwide permits for dredged or fill material,
and for other purposes, having considered the same, reports favor-
ably thereon with amendments and recommends that the bill as
amended do pass.

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The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. WATER QUALITY CRITERIA DEVELOPMENT AND TRANSPARENCY.

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

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

(b) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Section 509(b)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1369(b)(1)) is amended—

- (1) by striking “section 402, and” and inserting “section 402,”; and
- (2) by inserting “and (H) in issuing any criteria for water quality pursuant to section 304(a)(10),” after “strategy under section 304(l),”.

SEC. 3. FEDERAL GENERAL PERMITS.

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

“(6)(A) The Administrator is authorized to issue general permits under this section for discharges of similar types from similar sources.

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

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

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

“(i) continue to apply the terms, conditions, and requirements of the expired general permit to any discharge that was covered by the expired general permit; and

“(ii) apply such terms, conditions, and requirements to any discharge that would have been covered by the expired general permit (in accordance with any relevant requirements for such coverage) if the discharge had occurred before such expiration.”.

SEC. 4. CONFIDENCE IN CLEAN WATER PERMITS.

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

- (1) by striking “(k) Compliance with” and inserting the following:

“(k) COMPLIANCE WITH PERMITS.—

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

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

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

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

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

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

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

“(iii) whether or not specifically identified in the permit or during the permit application process—

“(I) present in any waste streams or processes of the point source to which the permit applies, which waste streams or processes are specifically identified during the permit application process; or

“(II) otherwise within the scope of any operations of the point source to which the permit applies, which scope of operations is specifically identified during the permit application process.”.

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

“(t) **EXPRESSION OF WATER QUALITY-BASED EFFLUENT LIMITATIONS.**—If the Administrator (or a State, in the case of a permit program approved by the Administrator) determines that a water quality-based limitation on a discharge of a pollutant is necessary to include in a permit under this section in addition to any appropriate technology-based effluent limitations included in such permit, the Administrator (or the State) may include such water quality-based limitation in such permit only in the form of an effluent limitation that specifies—

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

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

SEC. 5. REDUCING PERMITTING UNCERTAINTY.

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

(1) by striking “(c) The Administrator” and inserting the following:

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

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

(2) in paragraph (1), as so designated, by inserting “during the period described in paragraph (2) and” before “after notice and opportunity for public hearings”; and

(3) by adding at the end the following:

“(2) **PERIOD OF PROHIBITION.**—The period during which the Administrator may prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, or deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, under paragraph (1) shall—

“(A) begin on the date on which an applicant submits all the information required to complete an application for a permit under this section; and

“(B) end on the date on which the Secretary issues the permit.”.

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

SEC. 6. NATIONWIDE PERMITTING IMPROVEMENT.

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

(1) by striking “(e)(1) In carrying” and inserting the following:

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

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

(2) in paragraph (2)—

(A) by striking “(2) No general” and inserting the following:

“(2) **TERM.**—No general”; and

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

(3) by adding at the end the following:

“(3) **CONSIDERATIONS.**—In determining the environmental effects of an activity under paragraph (1) or (2), the Secretary shall consider only the effects of any discharge of dredged or fill material resulting from such activity.

“(4) **NATIONWIDE PERMITS FOR LINEAR INFRASTRUCTURE PROJECTS.**—

“(A) **IN GENERAL.**—Notwithstanding any other provision of this section, the Secretary shall maintain general permits on a nationwide basis for linear infrastructure projects that do not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project

(as defined in section 330.2 of title 33, Code of Federal Regulations (as in effect on the date of enactment of this paragraph)).

“(B) DEFINITION OF LINEAR INFRASTRUCTURE PROJECT.—In this paragraph, the term ‘linear infrastructure project’ means a project to carry out any activity required for the construction, expansion, maintenance, modification, or removal of infrastructure and associated facility for the transmission from a point of origin to a terminal point of communications or electricity or the transportation from a point of origin to a terminal point of people, water, wastewater, carbon dioxide, or fuel or hydrocarbons (in the form of a liquid, liquescent, gaseous, or slurry substance or supercritical fluid), including oil and gas pipeline facilities.

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

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

“(B) no consultation with a Federal agency pursuant to section 7(a)(2) of such Act (16 U.S.C. 1536(a)(2)) is required; and

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

(b) ADMINISTRATION OF NATIONWIDE PERMIT PROGRAM.—In carrying out section 404(e) of the Federal Water Pollution Control Act (33 U.S.C. 1344), the Secretary of the Army, acting through the Chief of Engineers, may not finalize or implement any modification to—

(1) general condition 15 (relating to single and complete projects), as included in the final rule titled “Reissuance and Modification of Nationwide Permits” and published on January 13, 2021, by the Department of the Army, Corps of Engineers (86 Fed. Reg. 2868);

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

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

SEC. 7. JUDICIAL REVIEW TIMELINE CLARITY.

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

(1) by redesignating subsection (t) as subsection (u);

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

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

“(t) JUDICIAL REVIEW.—

“(1) STATUTE OF LIMITATIONS.—

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

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

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

“(B) SAVINGS PROVISION.—Nothing in subparagraph (A) may be construed to authorize an action seeking judicial review of the structure of, or authorization for, a State permit program approved pursuant to this section.

“(2) LIMITATION ON COMMENCEMENT OF CERTAIN ACTIONS.—Notwithstanding any other provision of law, no action described in paragraph (1)(A) may be commenced unless the action—

“(A) is filed by a party that submitted a comment, during the public comment period for the administrative proceedings related to the applicable action described in such paragraph, which comment was sufficiently detailed to put the Secretary or the State, as applicable, on notice of the issue upon which the party seeks judicial review; and

“(B) is related to such comment.

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

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

“(B) with respect to a determination regarding the issuance of an individual or general permit under this section, the court may not vacate, revoke, enjoin, or otherwise limit the permit, unless the court finds that activities authorized under the permit would present an imminent and substantial danger to human health or the environment for which there is no other equitable remedy available under the law; and

“(C) with respect to a determination regarding a verification that an activity is authorized by a general permit issued under this section, the court may not enjoin the activity, unless the court finds that the activity would present an imminent and substantial danger to human health or the environment for which there is no other equitable remedy available under the law.

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

SEC. 8. IMPLEMENTATION GUIDANCE.

(a) **IN GENERAL.**—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Secretary of the Army, acting through the Chief of Engineers, shall begin a process to issue guidance on the implementation of the final rule published on September 8, 2023, by the Department of the Army, Corps of Engineers, Department of Defense and the Environmental Protection Agency and titled “Revised Definition of ‘Waters of the United States’; Conforming” (88 Fed. Reg. 61964).

(b) **PUBLIC COMMENT.**—In issuing the guidance required under subsection (a), the Administrator and the Secretary shall—

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

(2) ensure that such comments and any responses to such comments are made publicly available.

(c) **COMPLIANCE.**—Any guidance issued pursuant to this section shall comply with the decision of the Supreme 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.

PURPOSE OF LEGISLATION

The purpose of H.R. 7023, as amended, is to provide regulatory and judicial certainty for regulated entities and communities, increase transparency, and promote water quality, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The *Clean Water Act* (CWA) is the primary law governing water quality of the Nation’s surface waters.¹ Congress enacted the 1972 amendments to the *Federal Water Pollution Control Act*, which is commonly referred to as the CWA, with the objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”² To achieve this objective, two goals were established: (1) to eliminate pollutant discharge into navigable waters by

¹ H. COMM. ON TRANSP. & INFRASTRUCTURE, JURISDICTION AND ACTIVITIES OF THE SUBCOMM. ON WATER RESOURCES AND ENVIRONMENT, 118TH CONG., (2023) (on file with Comm.) [hereinafter JURISDICTION AND ACTIVITIES REPORT].

² CWA, Pub. L. 92–500, 86 Stat. 816 [hereinafter CWA].

1985, and (2) where possible, to ensure water quality that is “fishable” and “swimmable” by 1983.³

The CWA consists of two major parts: (1) the authorization of financial assistance for construction of municipal wastewater treatment plants, and (2) the regulatory requirements that apply to those who discharge into navigable waters, including industrial and municipal actors.⁴ Planning, financial, and technical assistance for various regions and issues are also addressed.⁵ Title III of the CWA establishes the authority for the technological and water quality-based effluent limitation guidelines that must be abided by point source dischargers.⁶ Whereas Title III of the CWA largely focuses on the creation of water quality guidelines and limitations, Title IV primarily deals with application of the regulatory program, informed by the guidelines created pursuant to Title III, through which dischargers must receive permits or certifications.⁷

In order to achieve its objectives, the CWA is predicated on the principle that discharges into waters of the United States are only lawful if authorized by a permit.⁸ Therefore, the application of various CWA components require a regulatory program. While certain regulatory programs under the law may only be carried out by the Federal Government, through either the Environmental Protection Agency (EPA) or the United States Army Corps of Engineers (Corps), certain responsibilities can be assumed by states approved by the EPA.⁹

Broadly, H.R. 7023, as amended, strives to once again find balance within the regulatory and permitting process originally envisioned by the CWA by providing a comprehensive package of commonsense reforms to permitting processes for energy producers, agriculture sector, builders, and water utilities. The bill includes necessary reforms to promote regulatory efficiency while increasing transparency and continuing to protect and promote clean water.

One need for Congressional action relates to the term “waters of the United States” (WOTUS). Notably, while the CWA protects “navigable waters,” which are broadly defined in the CWA as the “waters of the United States, including the territorial seas.”¹⁰ The CWA does not further define the term WOTUS. Ultimately, the CWA grants authority to the EPA and the Corps to implement the CWA, and EPA and the Corps have promulgated several sets of rules defining a WOTUS to define the scope of CWA authority. There has been a substantial amount of litigation in the Federal Courts on the scope of CWA jurisdiction over the years, including multiple United States Supreme Court cases. Most recently, the EPA and the Corps published a final rule issuing a new WOTUS definition in response to the Supreme Court’s ruling in *Sackett v. EPA* (*Sackett*).¹¹ The Supreme Court concluded in *Sackett* that the CWA’s jurisdiction encompasses waters that are “relatively perma-

³ LAURA GATZ, CONG. RSCH. SERV. (RL30030), CLEAN WATER ACT: A SUMMARY OF THE LAW, (Updated Oct. 18, 2016), available at <https://www.crs.gov/Reports/RL30030> [hereinafter CRS REPORT RL30030].

⁴ *Id.*

⁵ *Id.*

⁶ See CRS REPORT RL30030, *supra* note 3; see also CWA, *supra* note 2, §§ 301–320.

⁷ See CRS REPORT RL30030, *supra* note 3; see also CWA, *supra* note 2, §§ 301, 402, 404.

⁸ See CRS REPORT RL30030, *supra* note 3.

⁹ See e.g. CWA, *supra* note 2, §§ 401, 402, 404.

¹⁰ *Id.*

¹¹ Revised Definition of “Waters of the United States”; Conforming, 88 Fed. Reg. 61964 (Sept. 8, 2023).

nent, standing or continuously flowing bodies of water ‘forming geographical features’ that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes.’”¹² The Supreme Court also held that jurisdictional wetlands “must be indistinguishably part of a body of water that itself constitutes ‘waters’ under the CWA.”¹³

The recent *Sackett* decision provided additional direction on the WOTUS definition, and therefore, the jurisdiction of the CWA. However, the conforming rule issued by the EPA and the Corps does not include or clarify certain phrases and terms applied in *Sackett*. For example, in a hearing before the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure (Subcommittee), on December 5, 2023, Assistant Secretary for the Army (Civil Works) Michael Connor testified that the agencies will develop additional guidance to implement the “continuous surface connection” test outlined by *Sackett*, while simultaneously working through individual requests for *Clean Water Act* jurisdictional determinations in light of the *Sackett* decision.¹⁴

These ambiguities have caused confusion in applying the rule, especially for Corps districts who are tasked with issuing jurisdictional determinations (JDs).¹⁵ Assistant Secretary Connor also stated during the December 5, 2023, hearing that there was a backlog of more than 4,000 JDs in Corps districts across the country.¹⁶ However, neither the EPA nor the Corps has, to date, publicly issued additional implementation guidance for JDs or initiated a process to do so. The Corps and EPA are providing public information on recent JDs under the CWA post *Sackett* and posting these JDs on the Corps and EPA’s websites.¹⁷ Given this, to help provide additional clarity, Section Eight of H.R. 7023, as amended, would require the EPA and the Corps to initiate a process to receive public comment and issue implementation guidance that is consistent with recent *Sackett* decision.

Additionally, Section 402 of the CWA authorizes the National Pollutant Discharge Elimination System (NPDES) program to regulate discharges of pollutants from point sources into navigable waters.¹⁸ Point sources are defined as “any discernible, confined and discrete conveyance, such as a pipe, ditch, channel, conduit, discrete fissure, or container,”¹⁹ and also include “vessels or other floating craft” from which pollutants may be discharged.²⁰ Section

¹² *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).

¹³ *Id.*

¹⁴ *Water Resources Development Acts: Status of Past Provisions and Future Needs Before the Subcomm. on Water Resources and Environment of the H. Comm. on Transp. And Infrastructure*, 118th Cong. (Dec. 5, 2023) (statement of The Honorable Michael L. Connor, Assistant Secretary of the Army for Civil Works, United States Department of the Army) [hereinafter *Status of Past Provisions*].

¹⁵ Jurisdictional determinations are performed on a property in order to delineate which waters are Waters of the U.S. and are therefore subject to CWA § 404.

¹⁶ *Status of Past Provisions*, *supra* note 14.

¹⁷ See CORPS, *USACE Jurisdictional Determinations and Permit Decisions*, available at <https://permits.ops.usace.army.mil/orm-public> EPA, *Clean Water Act Approved Jurisdictional Determinations*, available at <https://watersgeo.epa.gov/cwa/CWA-JDs/?pageNum=2>.

¹⁸ CWA, *supra* note 2, § 402.

¹⁹ *Id.*

²⁰ *Id.*; see generally also EPA, *NPDES Permit Basics*, available at <https://www.epa.gov/npdes/npdes-permit-basics> [hereinafter *NPDES Permit Basics*].

402 excludes certain agriculture and stormwater runoff from requiring a NPDES permit.²¹

Since all point source dischargers are subject to the NPDES program, a total of more than 65,000 industrial and municipal conventional dischargers are required to obtain permits pursuant to Section 402.²² In addition, NPDES permits are required for stormwater discharges from industrial and municipal sources, including over 150,000 individual sources.²³ NPDES permits require the point source to attain technology-based effluent limits, while specifying the numerical effluent limitations that sources must meet in order to guarantee water quality where possible, and a deadline for compliance.²⁴ Point sources may, in some instances, apply for a NPDES general permit as opposed to a NPDES individual permit. A NPDES individual permit is written for site-specific discharges that are unique to a specific location or discharge.²⁵

The CWA authorizes the EPA to approve individual states and tribes to manage their own NPDES permitting programs.²⁶ Nearly all states have assumed administration of their own NPDES permitting programs, with only three exceptions: Massachusetts, New Hampshire, and New Mexico.²⁷

Under Section 304(a) of the CWA, the EPA is required to develop, publish, and, from time to time, revise criteria for water quality. These criteria serve as recommendations to states for defining ambient surface water conditions of a water body to protect against adverse effects to aquatic life and human health.²⁸ These criteria are often adopted by states and help inform the development of water quality-based effluent limits included in NPDES permits.²⁹ Currently, the EPA voluntarily accepts comments on proposed criteria under 304(a) and subjects them to review from its own Science Advisory Board. In a hearing before the Subcommittee on May 16, 2023, a witness representing the National Association of Clean Water Agencies, Mickey Conway, Chief Executive Officer (CEO) of Metro Water Recovery in Denver, CO, testified, “[a]s utilities face complex and costly infrastructure challenges over the next fifty years, it is critical that the limits imposed in NPDES permits be based on the best available science and a complete record, not political whim or expedience.”³⁰ Section Two of H.R. 7023, as amended, increases the transparency of the process of creating limits for NPDES permits by requiring that water quality criteria are developed through an official rulemaking, which allows outside comments made by stakeholders, experts, and others, to be considered. It also ensures that the rulemaking is subject to limited judicial review.

²¹ *Id.*

²² CRS REPORT RL30030, *supra* note 3.

²³ *Id.*

²⁴ *Id.*

²⁵ See NPDES Permit Basics, *supra* note 20.

²⁶ CRS REPORT RL30030, *supra* note 3.

²⁷ *Id.*

²⁸ EPA, *NPDES Permit Writers' Manual*, available at https://www.epa.gov/sites/default/files/2015-09/documents/pwm_2010.pdf.

²⁹ *Id.*

³⁰ *The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion, Before the Subcomm. on Water Resources and Environment of the H. Comm. on Transp. And Infrastructure*, 118th Cong., (May 16, 2023) (written testimony of Mr. Mickey Conway, CEO, Metro Water Recovery, Denver Colorado, on behalf of National Association of Clean Water Agencies) [hereinafter Conway Testimony].

Section 402(k) of the CWA provides a “permit shield” for permit holders. Under this provision, if a permittee is in compliance with its NPDES permit terms, they are shielded from enforcement action from agencies and third parties. The United States Supreme Court has held that this permit shield serves to “insulate permit holders from changes in various regulations during the period of a permit and to relieve permit holders of having to litigate the question of whether their permits are sufficiently strict. In short, Section 402(k) serves the purpose of giving permits finality.”³¹

The CWA provides for two types of general limits on pollution discharges—a technology-based limit (TBEL) and a more-stringent water quality-based limit (WQBEL) when technology-based limits alone, are insufficient to address local water quality concerns. Permit writers must consider the potential impact of every proposed surface water discharge on the quality of the receiving water. If TBELs are not sufficient to meet the water quality standards in the receiving water, the CWA (section 303(b)(1)(B)) and NPDES regulations (40 C.F.R. 122.44(d)) require that the permit writer develop more stringent, water quality-based effluent limits (WQBELs).³² Some permit holders contend that permit writers are inappropriately incorporating generic requirements within NPDES permits as enforceable effluent limitations, which have attracted legal challenges. For example, the San Francisco Public Utilities Commission (SFPUC) is currently appealing a case before the United States Court of Appeals for the Ninth Circuit in which the court required its NPDES permit to maintain broad language outside of clear effluent limitations mandating it not “cause or contribute to the violation of water quality standards.”³³ Testimony to the Subcommittee from Mickey Conway, from the National Association of Clean Water Agencies, suggests that this language is not unique to the SFPUC permit, and is frequently included in NPDES permits throughout the country.³⁴

Due to this, Section Four of H.R. 7023, as amended, would clarify the scope of the permit shield a 1994 EPA policy guidance document, which specified that permittees are shielded from liability under lawful NPDES permits for (1) pollutants specifically limited in a permit; (2) pollutants specifically identified as present in a permit; or (3) pollutants not specifically identified as present, but which are constituents of operations or processes that are specifically identified in a permit.³⁵ It would also require permit writers to include a “numerical limit” on specified pollutants covered by the permit, or “the precise waterbody conditions to be attained with respect to such pollutant[s],” which will help limit ambiguity and ensure that any discharges authorized by the permit do not violate water quality standards.

Both general and individual NPDES permits are issued for up to five years and must be renewed thereafter if discharge is to con-

³¹ *E. I. du Pont de Nemours & Co. v. Train*, 430 U.S. 112 (1977).

³² EPA, *Permit Limits—TBELs and WQBELs*, available at <https://www.epa.gov/npdes/permit-limits-tbels-and-wqbels>.

³³ *City and County of San Francisco v. U.S. Environmental Protection Agency* (2023).

³⁴ Conway Testimony, *supra* note 30.

³⁵ EPA, *Policy Statement on Scope of Discharge Authorization and Shield Associated with NPDES Permits*, available at <https://www3.epa.gov/npdes/pubs/owm615.pdf>.

tinue.³⁶ However, if the permittee provides a complete application, but is not reissued a permit prior the date of expiration, the permit may be “administratively continued.”³⁷ Permit applications are considered backlogged for new applications if they are not issued or denied within 365 days of receipt, and for extensions if they are administratively continued for 180 days or more.³⁸ Section Three of H.R. 7023, as amended, seeks to provide more certainty for general permit holders by clarifying that if the EPA does not provide at least two years notice to general permit holders that the general permit will not be reissued, existing permit holders are provided continued coverage until a new permit is issued.

Section 404 of the CWA authorizes a separate type of permit required to discharge dredged or fill materials into navigable waters. Activities covered under the Section 404 program include those associated with pipeline projects; water resources projects such as levees and dams; mining projects such as those for critical minerals; infrastructure development such as highways and airports; and other development.³⁹ Some activities are exempt from Section 404 permitting requirements, such as certain farming and forestry activities.⁴⁰ Section 404 permits are typically issued for a term of five years.⁴¹

The EPA and the Corps play complementary roles in implementing the Section 404 program, with the Corps in charge of issuing permits for discharge of dredged or fill material, using a set of environmental guidelines promulgated by the EPA in conjunction with the Corps to evaluate permit applications.⁴² Similar to the NPDES permitting process, the EPA can approve states and tribes to assume authority to grant or deny dredge and fill permits under Section 404, under the condition that states or tribes develop a wetlands permit program consistent with the CWA.⁴³ Currently three states have assumed authority over their Section 404 program: Florida, Michigan, and New Jersey.⁴⁴

Pursuant to Section 404, the Corps issues two types of permits: general and individual. The CWA authorizes the issuance of general permits for discharges that are “similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment”⁴⁵ and are issued on a Nationwide, regional, or state basis for particular categories of activities.⁴⁶ Nationwide Permits (NWP) and Regional General Permits are issued by the Corps on a National basis and are designed to “enhance regulatory efficiency and provide clarity for the regulated public without decreasing en-

³⁶ See NPDES Permit Basics, *supra* note 20 (stating applicants for NPDES permit renewals must complete an application for renewal at least 180 days prior to original expiration).

³⁷ *Id.*

³⁸ *Id.*

³⁹ EPA, *Permit Program under CWA Section 404*, available at <https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404> [hereinafter Permit Program under CWA Section 404].

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² CWA, *supra* note 2, § 404(b); see also CRS REPORT RL30030, *supra* note 3.

⁴³ EPA, *State or Tribal Assumption of the CWA Section 404 Permit Program*, available at <https://www.epa.gov/cwa-404/state-or-tribal-assumption-cwa-section-404-permit-program>.

⁴⁴ EPA, *State and Tribal Assumption of Section 404 of the Clean Water Act*, available at <https://www.epa.gov/cwa404g>.

⁴⁵ CWA, *supra* note 2, § 404(e).

⁴⁶ *Id.*; see also Permit Program under CWA Section 404, *supra* note 39.

vironmental protections.”⁴⁷ The most recent reissuance of NWP went into effect in February 2022, covering 59 distinct activity categories, including mooring buoys, residential developments, utility lines, road crossings, and mining activities.⁴⁸ Similar to other permits, NWPs are often subject to litigation.⁴⁹ Section Six of H.R. 7023, as amended, would, in effect, codify the current process followed by the Corps in relation to its NWP program.

Section 404 also authorizes the EPA to restrict, prohibit, deny, or withdraw the specification by the Corps of a site for the discharge of dredged or fill material, if the agency determines that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.⁵⁰ Section 404(c) is commonly referred to as the EPA’s “veto authority.” Since the CWA’s enactment, the EPA has issued fourteen Section 404(c) determinations, most recently for the Pebble Deposit Area in Alaska.⁵¹ Concerns have been raised about the EPA’s use of the 404(c) authority to retroactively issue a veto after a project has received a permit, or preemptively veto a project before an application for a 404 permit is filed.

For example, in 2007, the Corps issued a permit for the Spruce No. 1 Mine located in Logan Co., West Virginia. After a change in Administration and legal action delaying beginning of construction, the EPA vetoed the permit retroactively in 2011.⁵² In January 2023, the EPA preemptively vetoed a Section 404 permit for mine development at the Pebble Deposit Area in Bristol Bay, Alaska. This determination was made without an active section 404 permit and based on Pebble Limited Partnership’s mine plan from 2020.⁵³ Section Five of H.R. 7023, as amended, would only permit the EPA to issue a veto when there is an active application for a Section 404 permit, providing more certainty to permit seekers and holders, as well as permitted projects. This legislation would not have any retroactive impact on projects that have already underwent a veto process.

In addition to the EPA’s veto authority, the *Administrative Procedure Act* provides a six-year statute of limitations for challenges to Section 404 permits, which provides third parties an opportunity to legally challenge the issuance of a permit.⁵⁴ This six-year window for legal action has caused project delays, added costs, and created uncertainty for permit seekers, as well as for the Federal Gov-

⁴⁷ Press Release, CORPS., *Army Corps of Engineers announces publication of 2021 Nationwide Permits* (Jan. 13, 2021), available at <https://www.usace.army.mil/Media/News-Releases/News-Release-Article-View/Article/2470506/army-corps-of-engineers-announces-publication-of-2021-nationwide-permits>.

⁴⁸ See CORPS., *2021 Nationwide Permit Information*, available at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits>.

⁴⁹ See generally *Sierra Club, Inc. v. Bostick*, CASE NO CIV-12-742-R (W.D. Okla. Dec. 30, 2013) and *Sierra Club v. U.S. Army Corps of Engineers*, 803 F.3d 31 (D.C. Cir. 2015).

⁵⁰ CWA, *supra* note 2, § 404(c); See also EPA, *Clean Water Act Section 404(c) “Veto Authority”*, available at <https://www.epa.gov/sites/default/files/2016-03/documents/404c.pdf>.

⁵¹ EPA, *Chronology of CWA Section 404(c) Actions*, available at <https://www.epa.gov/cwa-404/chronology-cwa-section-404c-actions>.

⁵² EPA, *Final Determination of the U.S. Environmental Protection Agency Pursuant to § 404(c) of the Clean Water Act Concerning the Spruce No. 1 Mine, Logan County, West Virginia*, available at https://www.epa.gov/sites/default/files/2015-12/documents/1_spruce_no_1_mine_final_determination_011311.pdf.

⁵³ Final Determination to Prohibit the Specification of and Restrict the Use for Specification of Certain Waters Within Defined Areas as Disposal Sites; Pebble Deposit Area, Southwest Alaska, 88 Fed. Reg. 7441 (February 3, 2023).

⁵⁴ 28 U.S.C. § 2401(a).

ernment. Mr. Brandon Farris of the National Association of Manufacturers, in response to a question for the record, stated that:

Setting reasonable timelines for bringing legal challenges would significantly improve project certainty. Federal agency actions have routinely been challenged. In some instances, legal challenges were brought forward after significant financial investment in a project or a project had started construction. A lack of a timeline for judicial review introduces substantial project uncertainty for companies that rely on federal decision making.⁵⁵

Section Seven of H.R. 7023, as amended, would apply a 60-day statute of limitations to Section 404 individual permits and general permit verifications. If a court does identify compliance issues with the underlying statute, the court would be required to remand the permit back to the agency with specific timelines to take court-ordered action, generally within 180 days.

HEARINGS

For the purposes of rule XIII, clause 3(c)(6)(A) of the 118th Congress, the following related hearings were held to develop or consider H.R. 7023, as amended:

On February 8, 2023, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing entitled, “Stakeholder Perspectives on the Impacts of the Biden Administration’s Waters of the United States (WOTUS) Rule.” At the hearing Members received testimony from Mr. Garrett Hawkins, President, Missouri Farm Bureau; Ms. Alicia Huey, Chairman, National Association of Home Builders; Mr. Mark Williams, Environmental Manager, Luck Companies, *on behalf of* National Stone, Sand & Gravel Association; Ms. Susan Parker Bodine, Partner, Earth & Water Law LLC; and Mr. Dave Owen, Professor of Law and Faculty Director of Scholarly Publications, UC College of the Law, San Francisco. This hearing examined the EPA and the Corps defining “waters of the United States” under the CWA, and its regulatory impact on stakeholders. During the hearing, witnesses also broadly discussed the need for permitting and regulatory reform under the CWA.

On Tuesday, May 16, 2023, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing entitled, “*The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion.*” The Subcommittee received testimony from Dr. Andrea Travnicek, Director, Department of Resources, State of North Dakota; Hon. Serena Coleman McIlwain, Secretary of the Environment, State of Maryland; Mr. Mickey Conway, CEO, Metro Water Recovery, Denver, Colorado *on behalf of* the National Association of Clean Water Agencies; and Mr. Brandon Farris, Vice President, Energy and Resources Policy, National Association of Manufacturers. This hearing examined proposals on how to modernize the

⁵⁵ *The Next Fifty Years of the Clean Water Act: Examining the Law and Infrastructure Project Completion, Before the Subcomm. on Water Resources and Environment of the H. Comm. on Transp. And Infrastructure*, 118th Cong., (May 16, 2023) (Questions for the Record Submitted by Chairman Rouzer to Brandon Farris, Vice President, Energy and Policy, National Association of Manufacturers).

CWA to ensure the completion of infrastructure and energy projects, reduce supply chain challenges, and promote commerce, while protecting water quality.

On Thursday, June 22, 2023, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing entitled, “*Review of Fiscal Year 2024 Budget Request: Agency Perspectives (Part I)*.” The Subcommittee received testimony from The Honorable Michael L. Connor, Assistant Secretary of the Army for Civil Works, Department of the Army; Major General William “Butch” H. Graham, Deputy Chief of Engineers and Deputy Commanding General, United States Army Corps of Engineers; Mr. Jeff Lyash, President and CEO, Tennessee Valley Authority; and Mr. Adam Tindall-Schlicht, Administrator, Great Lakes St. Lawrence Seaway Development Corporation. This hearing provided Members with an opportunity to review the President’s Fiscal Year 2024 Budget Request, as well as the Administration’s program priorities within the jurisdiction of the Subcommittee, including permitting issues pursuant to the CWA.

On July 13, 2023, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing entitled, “*Review of Fiscal Year 2024 Budget Request: Agency Perspectives (Part II)*.” The hearing gave Members the opportunity to review the Fiscal Year 2024 budget request, as well as the Administration’s program priorities within the jurisdiction of the Subcommittee, including permitting issues pursuant to the CWA. The Subcommittee received testimony from the Honorable Radhika Fox, Assistant Administrator, Office of Water, EPA; Dr. Maria-Elena Giner, Commissioner, IWBC, United States Section; Mr. Louis Aspey, Associate Chief, Natural Resources Conservation Service, United States Department of Agriculture; Dr. Aaron Bernstein, Director, Agency for Toxic Substances and Disease Registry; and Ms. Nicole R. LeBoeuf, Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

On December 5, 2023, the Subcommittee on Water Resources and Environment of the Committee on Transportation and Infrastructure held a hearing entitled, “*Water Resources Development Acts: Status of Past Provisions and Future Needs*.” At the hearing Members received testimony from The Honorable Michael L. Connor, Assistant Secretary of the Army for Civil Works, Department of the Army and Lieutenant General Scott A. Spellmon, Commanding General and Chief of Engineers, United States Army Corps of Engineers. The hearing gave Members the opportunity to review past provisions in *Water Resources Development Acts (WRDAs)* and discuss needs for future WRDAs. Also at the hearing, Members discussed various CWA permitting processes, including implementation of the post-*Sackett* WOTUS rule.

On Wednesday, January 17, 2024, the Full Committee on Transportation and Infrastructure held a hearing entitled, “*The State of Transportation*.” At the hearing, Members received testimony from Mr. Stephen A. Edwards, CEO and Executive Director, Virginia Port Authority; Mr. Roger Millar, Secretary of Transportation, Washington State Department of Transportation; Mr. Jeffrey G. Tucker, CEO, Tucker Company Worldwide, *on behalf of* Transportation Intermediaries Association (TIA); and Ms. Lauren Benford,

Controller, Reiman Corporation, *on behalf of* Associated General Contractors of America (AGC). The hearing provided a forum for Members to discuss the current state of transportation infrastructure and supply chain challenges, along with potential improvements that could be made, including streamlining permitting process to provide certainty and efficiency.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 7023, the “*Creating Confidence in Clean Water Permitting Act*,” was introduced in the United States House of Representatives on January 17, 2024, by Mr. Rouzer of North Carolina, and referred to the Committee on Transportation and Infrastructure. Within the Committee on Transportation and Infrastructure, H.R. 7023 was referred to the Subcommittee on Water Resources and Environment. The Subcommittee on Water Resources on Environment was discharged from further consideration of H.R. 7023 on January 31, 2024.

The Committee considered H.R. 7023 on January 31, 2024, and ordered the measure to be reported to the House with a favorable recommendation, as amended, by a recorded vote of 32 ayes to 30 nays.

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 7023, as amended, offered by Mr. Rouzer of North Carolina was AGREED TO by voice vote.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana (Garret Graves 089); Page 11, after line 21, insert the following: SEC. 7. FEDERAL GENERAL PERMITS. Section 402(a) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)) is amended by adding at the end the following: “(6)(A) The Administrator is authorized to issue general permits under this section for discharges of similar types from similar sources. “(B) The Administrator may require submission of a notice of intent to be covered under a general permit issued under this section, including additional information that the Administrator determines necessary. “(C) If a general permit issued under this section will expire and the Administrator decides not to issue a new general permit for discharges similar to those covered by the expiring general permit, the Administrator shall publish in the Federal Register a notice of such decision at least two years prior to the expiration of the general permit. “(D) If a general permit issued under this section expires and the Administrator has not published a notice in accordance with subparagraph (C), until such time as the Administrator issues a new general permit for discharges similar to those covered by the expired general permit, the Administrator shall—“(i) continue to apply the terms, conditions, and requirements of the expired general permit to any discharge that was covered by the expired general permit; and “(ii) apply such terms, conditions, and requirements to any discharge that would have been covered by the expired general permit (in accordance with any relevant requirements for such coverage) if the discharge had occurred before such expiration.”; was AGREED TO by a recorded vote of 34 yeas and 27 nays (Roll Call No. 37).

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Garamendi of California (Garamendi

164 Revision 2); Page 11, after line 21, insert the following: SEC. 7. PROJECTS AND ACTIVITIES ELIGIBLE FOR ASSISTANCE. Section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1383) is amended—(1) in subsection (c)—(A) in paragraph (11)(B) by striking “and” at the end; (B) in paragraph (12)(B) by striking the period at the end and inserting “; and”; and (C) by adding at the end the following: “(13) to any qualified nonprofit entity, as determined by the Administrator, to provide assistance for the construction or acquisition of, or improvements to, a treatment works, or for any other activity described in paragraphs (1) through (10).”; (2) in subsection (i)(3), by adding at the end the following: “(E) CERTAIN ACTIVITIES INELIGIBLE.—A State may not provide additional subsidization under this subsection to a qualified nonprofit entity for assistance described in subsection (c)(13) or to the owner or operator of a privately owned treatment works for assistance described in subsection (k).”; and (3) by adding at the end the following: “(1) SPECIAL RULE FOR PRIVATELY OWNED TREATMENT WORKS.—“(1) IN GENERAL.—In any fiscal year for which the total amount appropriated to carry out this title exceeds \$1,638,861,000, any such amounts appropriated in excess of \$1,638,861,000 for such fiscal year may be used to provide financial assistance under this section to the owner or operator of a privately owned treatment works for—“(A) improvements to such privately owned treatment works; “(B) the construction of, or improvements to, another privately owned treatment works; “(C) measures to reduce the demand for privately owned treatment works capacity through water conservation, efficiency, or reuse; “(D) measures to reduce the energy consumption needs for privately owned treatment works; “(E) measures to increase the security of privately owned treatment works; and “(F) any other activity described in paragraphs (1) through (10) of subsection (c). “(2) LIMITATION.—Financial assistance may only be provided under this subsection to the owner or operator of a privately owned treatment works for activities described in paragraph (1) that primarily and directly benefit the individuals or entities served by the privately owned treatment works, and not the shareholders or owners of the treatment works, as determined by the instrumentality of the State responsible for administering the water pollution control revolving fund through which such financial assistance is provided.”.; was WITHDRAWN.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Huffman of California (Huffman 076); Page 1, strike lines 2 through 3 and insert “This Act may be cited as the ‘Dirty Water Permitting Act’ ”. Page 1, beginning on line 4, strike “WATER QUALITY CRITERIA DEVELOPMENT AND TRANSPARENCY” and insert “DIRTY WATER DEVELOPMENT”. Page 2, line 4, strike “CONFIDENCE IN CLEAN WATER PERMITS” and insert “DIRTY WATER PERMITS”. Page 4, line 16, strike “REDUCING PERMITTING UNCERTAINTY” and insert “EXPANDING DIRTY WATER PERMITTING”. Page 5, line 22, strike “NATIONWIDE PERMITTING IMPROVEMENT” and insert “NATIONWIDE DIRTY WATER PERMITTING”. Page 9, line 3, strike “JUDICIAL REVIEW TIMELINE CLARITY” and insert “PROMOTING THE POLLUTION OF OUR WATERWAYS BY RE-

STRICTING JUDICIAL REVIEW.”; was NOT AGREED TO by voice vote.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Stanton of Arizona (Stanton 040); Page 11, after line 21, insert the following: SEC. 7. DETERMINATION ON WATER SUPPLY SOURCES. This Act, including the amendments made by this Act, shall not take effect until the date on which the Administrator of the Environmental Protection Agency issues a determination that the implementation of this Act, including the amendments made by this Act, will not—(1) result in a surface water body failing to meet its State-designated uses under the Federal Water Pollution Control Act, including use as a source of public water supply; or (2) adversely affect the availability and quality of surface water for communities in arid regions or drought-prone areas.; was NOT AGREED TO by a recorded vote of 30 yeas and 32 nays (Roll Call No. 38).

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Pappas of New Hampshire (Pappas 097); Page 4, after line 15, insert the following (c) MONITORING OF EMERGING CONTAMINANTS.—Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is further amended by adding at the end the following: “(u) MONITORING OF EMERGING CONTAMINANTS.—“(1) IN GENERAL.—Any person who discharges a pollutant pursuant to a permit issued under this section shall monitor and report to the Administrator (or the applicable State, in the case of a permit program approved by the Administrator) discharges of emerging contaminants, including perfluoroalkyl and polyfluoroalkyl substances. “(2) GRANTS AUTHORIZED.—“(A) IN GENERAL.—The Administrator may award grants to owners and operators of publicly owned treatment works to carry out the monitoring and reporting of emerging contaminants required under paragraph (1). “(B) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out the grant program authorized under this paragraph \$20,000,000 for each of fiscal years 2024 through 2028, to remain available until expended.”.; was NOT AGREED TO by voice vote.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Ryan of New York (Ryan 054); Page 11, after line 21, insert the following: SEC. 7. DETERMINATION ON INCREASE IN DISCHARGES. This Act, including the amendments made by this Act, shall not take effect until the date on which the Administrator of the Environmental Protection Agency issues a determination that the implementation of this Act, including the amendments made by this Act, will not result in an increase in the discharge of pollutants (within the meaning of the Federal Water Pollution Control Act), including an increase in the discharge of—(1) any emerging contaminant or forever chemical, as determined by the Administrator, such as a perfluoroalkyl substance or polyfluoroalkyl substance; or (2) any nutrient, including those associated with excessive algae growth and harmful algal blooms.; was NOT AGREED TO by a recorded vote of 30 yeas and 32 nays (Roll Call No. 39).

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana (Garret Graves

090); After line 10 on page 10, insert the following: (2) LIMITATION ON COMMENCEMENT OF ACTION.—Notwithstanding any other provision of law, no action described in paragraph (1)(A) may be commenced unless the action—(A) is filed by a party that submitted a comment, during the public comment period for the administrative proceedings related to the applicable action described in such paragraph, which comment was sufficiently detailed to put the Secretary or the State, as applicable, on notice of the issue upon which the party seeks judicial review; and (B) is related to such comment.”; was AGREED TO by a recorded vote of 33 yeas and 29 nays (Roll Call No. 40).

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Garamendi of California (Garamendi 165); Page 11, after line 21, insert the following: SEC. 7. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) TERMS. (a) IN GENERAL.—Section 402(b)(1)(B) of the Federal Water Pollution Control Act (33 U.S.C. 1342(b)(1)(B)) is amended to read as follows: “(B) are for fixed terms—(i) not exceeding 10 years, for a permit issued to a State or municipality; and (ii) not exceeding 5 years, for a permit issued to any person not described in clause (i); and”. (b) TECHNICAL CORRECTIONS.—Section 402(l)(3) of the Federal Water Pollution Control Act (33 U.S.C. 1342(l)(3)) is amended—(1) in subparagraph (B)—(A) by striking “section 402” and inserting “this section”; and (B) by striking “federal” and inserting “Federal”; and (2) in subparagraph (C)—(A) by striking “Section” and inserting “section”; (B) by striking “402(p)(6)” and inserting “subsection (p)(6)”; (C) by striking “402(l)(3)(A),” and inserting “subparagraph (A),”; and (D) by striking “402(l)(3)(A).” and inserting “such subparagraph.”; was WITHDRAWN.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana (Garret Graves 092 Revision 1); Page 11, after line 21, insert the following: SEC. 7. IMPLEMENTATION GUIDANCE. (a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency and the Secretary of the Army, acting through the Chief of Engineers, shall begin a process to issue guidance on the implementation of the final rule published on September 8, 2023 by the Department of the Army, Corps of Engineers, Department of Defense, and the Environmental Protection Agency and titled “Revised Definition of ‘Waters of the United States’; Conforming” (88 Fed. Reg. 61964). (b) PUBLIC COMMENT.—In issuing the guidance required under subsection (a), the Administrator and the Secretary shall—(1) prior to such issuance, solicit comments from the public on such guidance; and (2) ensure that such comments and any responses to such comments are made publicly available. (c) COMPLIANCE.—Any guidance issued pursuant to this section shall comply with the decision of the Supreme Court in *Sackett v. EPA*, 598 U.S. 651 (2023).; was AGREED TO by voice vote.

An Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana (Garret Graves 091); Page 6, line 21, insert after “section” the following: “and provided that this authorization will not apply to any project that would benefit from financial incentives made available through any

Act that would cost more than the score estimated by the Congressional Budget Office estimate for Public Law 117–169 (commonly known as the Inflation Reduction Act)”; was WITHDRAWN.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

Committee on Transportation and Infrastructure Roll Call Vote No. 037

On: agreeing to Amendment No. 089, an Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana

Agreed to: 34 yeas and 27 nays

Member	Vote	Member	Vote
Mr. Graves of MO	Y	Mr. Larsen of WA	N
Mr. Crawford	Y	<i>Ms. Norton</i>	N
Mr. Webster of FL	Y	Mrs. Napolitano	N
Mr. Massie	Y	Mr. Cohen	N
Mr. Perry	Y	Mr. Garamendi	Y
Mr. Babin .....	.....	Mr. Johnson of GA	N
Mr. Graves of LA	Y	Mr. Carson	N
Mr. Rouzer	Y	Ms. Titus	N
Mr. Bost	Y	Mr. Huffman	N
Mr. LaMalfa	Y	Ms. Brownley	N
Mr. Westerman	Y	Ms. Wilson of FL .....	.....
Mr. Mast	Y	Mr. Payne	N
<i>Mrs. González-Colón</i> .....	.....	Mr. DeSaulnier	N
Mr. Stauber	Y	Mr. Carbajal	N
Mr. Burchett	Y	Mr. Stanton	N
Mr. Johnson of SD	Y	Mr. Allred	N
Mr. Van Drew	Y	Ms. Davids of KS	N
Mr. Nehls	Y	Mr. Garcia of IL	N
Mr. Mann	Y	Mr. Pappas	N
Mr. Owens	Y	Mr. Moulton	N
Mr. Yakym	Y	Mr. Auchincloss	N
Mrs. Chavez-DeRemer	Y	Ms. Strickland	N
Mr. Kean of NJ	Y	Mr. Carter of LA	N
Mr. D'Esposito	Y	Mr. Ryan	N
Mr. Burlison	Y	Mrs. Peltola	Y
Mr. James	Y	Mr. Menendez	N
Mr. Van Orden	Y	Ms. Hoyle of OR	N
Mr. Williams of NY	Y	Mrs. Sykes	N
Mr. Molinaro	Y	Ms. Scholten	N
Mr. Collins	Y	Mrs. Foushee	N
Mr. Ezell	Y		
Mr. Duarte	Y		
Mr. Bean of FL	Y		
Ms. Maloy	Y		

Committee on Transportation and Infrastructure Roll Call Vote No. 038

On: agreeing to Amendment No. 040, an Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Stanton

Not Agreed to: 30 yeas and 32 nays

Member	Vote	Member	Vote
Mr. Graves of MO	N	Mr. Larsen of WA	Y
Mr. Crawford	N	<i>Ms. Norton</i>	Y
Mr. Webster of FL	N	Mrs. Napolitano	Y
Mr. Massie	N	Mr. Cohen	Y
Mr. Perry	N	Mr. Garamendi	Y
Mr. Babin .....	.....	Mr. Johnson of GA	Y
Mr. Graves of LA	N	Mr. Carson	Y
Mr. Rouzer	N	Ms. Titus	Y
Mr. Bost	N	Mr. Huffman	Y
Mr. LaMalfa	N	Ms. Brownley	Y
Mr. Westerman	N	Ms. Wilson of FL	Y
Mr. Mast	N	Mr. Payne	Y
<i>Mrs. González-Colón</i> .....	.....	Mr. DeSaulnier	Y
Mr. Stauber	N	Mr. Carbajal	Y
Mr. Burchett	N	Mr. Stanton	Y
Mr. Johnson of SD	N	Mr. Allred	Y
Mr. Van Drew	N	Ms. Davids of KS	Y
Mr. Nehls	N	Mr. García of IL	Y
Mr. Mann	N	Mr. Pappas	Y
Mr. Owens	N	Mr. Moulton	Y
Mr. Yakym	N	Mr. Auchincloss	Y
Mrs. Chavez-DeRemer	N	Ms. Strickland	Y
Mr. Kean of NJ	N	Mr. Carter of LA	Y
Mr. D'Esposito	N	Mr. Ryan	Y
Mr. Burlison	N	Mrs. Peltola	Y
Mr. James	N	Mr. Menendez	Y
Mr. Van Orden	N	Ms. Hoyle of OR	Y
Mr. Williams of NY	N	Mrs. Sykes	Y
Mr. Molinaro	N	Ms. Scholten	Y
Mr. Collins	N	Mrs. Foushee	Y
Mr. Ezell	N		
Mr. Duarte	N		
Mr. Bean of FL	N		
Ms. Maloy	N		

Committee on Transportation and Infrastructure Roll Call Vote No. 039

On: agreeing to Amendment No. 054, an Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Ryan

Not Agreed to: 30 yeas and 32 nays

Member	Vote	Member	Vote
Mr. Graves of MO	N	Mr. Larsen of WA	Y
Mr. Crawford	N	<i>Ms. Norton</i>	Y
Mr. Webster of FL	N	Mrs. Napolitano	Y
Mr. Massie	N	Mr. Cohen	Y
Mr. Perry	N	Mr. Garamendi	Y
Mr. Babin .....	.....	Mr. Johnson of GA	Y
Mr. Graves of LA	N	Mr. Carson	Y
Mr. Rouzer	N	Ms. Titus	Y
Mr. Bost	N	Mr. Huffman	Y
Mr. LaMalfa	N	Ms. Brownley	Y
Mr. Westerman	N	Ms. Wilson of FL	Y
Mr. Mast	N	Mr. Payne	Y
<i>Mrs. González-Colón</i> .....	.....	Mr. DeSaulnier	Y
Mr. Stauber	N	Mr. Carbajal	Y
Mr. Burchett	N	Mr. Stanton	Y
Mr. Johnson of SD	N	Mr. Allred	Y
Mr. Van Drew	N	Ms. Davids of KS	Y
Mr. Nehls	N	Mr. García of IL	Y
Mr. Mann	N	Mr. Pappas	Y
Mr. Owens	N	Mr. Moulton	Y
Mr. Yakym	N	Mr. Auchincloss	Y

Member	Vote	Member	Vote
Mrs. Chavez-DeRemer	N	Ms. Strickland	Y
Mr. Kean of NJ	N	Mr. Carter of LA	Y
Mr. D'Esposito	N	Mr. Ryan	Y
Mr. Burlison	N	Mrs. Peltola	Y
Mr. James	N	Mr. Menendez	Y
Mr. Van Orden	N	Ms. Hoyle of OR	Y
Mr. Williams of NY	N	Mrs. Sykes	Y
Mr. Molinaro	N	Ms. Scholten	Y
Mr. Collins	N	Mrs. Foushee	Y
Mr. Ezell	N		
Mr. Duarte	N		
Mr. Bean of FL	N		
Ms. Maloy	N		

Committee on Transportation and Infrastructure Roll Call Vote No. 040

On: agreeing to Amendment No. 090, an Amendment to the Amendment in the Nature of a Substitute to H.R. 7023, offered by Mr. Graves of Louisiana
 Agreed to: 33 yeas and 29 nays

Member	Vote	Member	Vote
Mr. Graves of MO	Y	Mr. Larsen of WA	N
Mr. Crawford	Y	Ms. Norton	N
Mr. Webster of FL	Y	Mrs. Napolitano	N
Mr. Massie	Y	Mr. Cohen	N
Mr. Perry	Y	Mr. Garamendi	N
Mr. Babin	Y	Mr. Johnson of GA	N
Mr. Graves of LA	Y	Mr. Carson	N
Mr. Rouzer	Y	Ms. Titus	N
Mr. Bost	Y	Mr. Huffman	N
Mr. LaMalfa	Y	Ms. Brownley	N
Mr. Westerman	Y	Ms. Wilson of FL	N
Mr. Mast	Y	Mr. Payne	N
Mrs. González-Colón	Y	Mr. DeSaulnier	N
Mr. Stauber	Y	Mr. Carbajal	N
Mr. Burchett	Y	Mr. Stanton	N
Mr. Johnson of SD	Y	Mr. Allred	N
Mr. Van Drew	Y	Ms. Davids of KS	N
Mr. Nehls	Y	Mr. García of IL	N
Mr. Mann	Y	Mr. Pappas	N
Mr. Owens	Y	Mr. Moulton	N
Mr. Yakym	Y	Mr. Auchincloss	N
Mrs. Chavez-DeRemer	Y	Ms. Strickland	N
Mr. Kean of NJ	Y	Mr. Carter of LA	N
Mr. D'Esposito	Y	Mr. Ryan	N
Mr. Burlison	Y	Mrs. Peltola	Y
Mr. James	Y	Mr. Menendez	N
Mr. Van Orden	Y	Ms. Hoyle of OR	N
Mr. Williams of NY	Y	Mrs. Sykes	N
Mr. Molinaro	Y	Ms. Scholten	N
Mr. Collins	Y	Mrs. Foushee	N
Mr. Ezell	Y		
Mr. Duarte	Y		
Mr. Bean of FL	Y		
Ms. Maloy	Y		

Committee on Transportation and Infrastructure Roll Call Vote No. 041

On: agreeing to Final Passage, H.R. 7023, as amended
 Agreed to: 32 yeas and 30 nays

Member	Vote	Member	Vote
Mr. Graves of MO	Y	Mr. Larsen of WA	N
Mr. Crawford	Y	<i>Ms. Norton</i>	N
Mr. Webster of FL	Y	Mrs. Napolitano	N
Mr. Massie	Y	Mr. Cohen	N
Mr. Perry	Y	Mr. Garamendi	N
Mr. Babin .....	.....	Mr. Johnson of GA	N
Mr. Graves of LA	Y	Mr. Carson	N
Mr. Rouzer	Y	Ms. Titus	N
Mr. Bost	Y	Mr. Huffman	N
Mr. LaMalfa	Y	Ms. Brownley	N
Mr. Westerman	Y	Ms. Wilson of FL	N
Mr. Mast	Y	Mr. Payne	N
<i>Mrs. González-Colón</i> .....	.....	Mr. DeSaulnier	N
Mr. Stauber	Y	Mr. Carbajal	N
Mr. Burchett	Y	Mr. Stanton	N
Mr. Johnson of SD	Y	Mr. Allred	N
Mr. Van Drew	Y	Ms. Davids of KS	N
Mr. Nehls	Y	Mr. Garcia of IL	N
Mr. Mann	Y	Mr. Pappas	N
Mr. Owens	Y	Mr. Moulton	N
Mr. Yakym	Y	Mr. Auchincloss	N
Mrs. Chavez-DeRemer	Y	Ms. Strickland	N
Mr. Kean of NJ	Y	Mr. Carter of LA	N
Mr. D'Esposito	Y	Mr. Ryan	N
Mr. Burlison	Y	Mrs. Peltola	N
Mr. James	Y	Mr. Menendez	N
Mr. Van Orden	Y	Ms. Hoyle of OR	N
Mr. Williams of NY	Y	Mrs. Sykes	N
Mr. Molinaro	Y	Ms. Scholten	N
Mr. Collins	Y	Mrs. Foushee	N
Mr. Ezell	Y		
Mr. Duarte	Y		
Mr. Bean of FL	Y		
Ms. Maloy	Y		

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but has not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has also requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974* when available the Committee will adopt as its own the cost

estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, when available the Committee will adopt as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide is to provide regulatory and judicial certainty for regulated entities and communities, increase transparency, and promote water quality, and for other purposes.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 7023, as amended, establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

When available the Committee will adopt as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the *Unfunded Mandates Reform Act* (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the *Congressional Budget Act of 1974* requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 7023, as amended, does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the definition of Section 5(b) of the appendix to Title 5, United States Code, are created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section designates the short title of the bill as the “Creating Confidence in Clean Water Permitting Act”.

Section 2. Water quality criteria development and transparency

This section requires that the new development or revision of water quality criteria by the EPA for use under the NPDES program is considered a rulemaking. It also ensures that this rulemaking is subject to judicial review consistent with other CWA rulemaking procedures.

Section 3. Federal general permits

This section codifies the practice of issuing general permits under the NPDES program and allows for a requirement of submission of notice of intent to be covered under a general permit.

Additionally, with respect to expiration of a NPDES general permit, this section (1) requires written notice two years prior to the expiration of a general permit that the EPA Administrator intends not to issue a new general permit, or (2) requires that if a general permit expires without two years notice, discharges that were or would have been covered by the expired permit shall continue to apply until a new permit is issued.

Section 4. Confidence in Clean Water Permits

This section amends section 402 to provide statutory compliance for permit holders and requires additional details for permit writers to use when writing NPDES permits.

Subsection (a) codifies that permittees are shielded from liability under lawful NPDES permits for (1) a pollutant for which an effluent limitation is included in a permit; (2) a pollutant for which an effluent limitation is not included in a permit, but is specifically identified as controlled or monitored or specifically identified as present in discharges; or (3) a pollutant which may or may not be specifically identified, but which are constituents of waste streams, processes, or operations or processes specifically identified during the permit application process.

Subsection (a) does not affect the EPA’s requirement to modify existing permits when new substances are deemed hazardous or if there are errors or malfeasance during the permit application process.

Subsection (b) directs EPA or approved-State permit writers to include specific limitations in a permit for potential water quality based effluent limitations of the permittee.

Section 5. Reducing permitting uncertainty

This section requires that any EPA CWA Section 404(c) veto of a dredge and fill permit take place in the time beginning “on the date on which the applicant submits all the information required to complete an application for a permit” and ending “on the date on which the Secretary issues the permit.”

Section 6. Nationwide Permitting improvement

Subsection (a) modifies the requirements for the issuance of Nationwide Permits (NWP) for general dredge and fill operations governed by Section 404 of the CWA. This subsection extends the period of reissuance for NWPs to ten years, clarifies the scope of “environmental effects” of activities undertaken pursuant to a NWP, requires the Secretary to maintain general permits for linear projects with minimal acreage impacts, codifies the definition of a linear project, and codifies the Corps’ current practice of utilizing an environmental assessment for *National Environmental Policy Act (NEPA)* and would exclude rulemaking to reissue nationwide permits from the consultation requirements of section 7(a)(2) of the *Endangered Species Act (ESA)*.

Subsection (b) requires the Secretary of the Army to maintain the Corps’ current definitions related to single and complete projects in administering linear NWPs.

Section 7. Judicial review timeline clarity

This section sets a 60-day limit on filing lawsuits for Section 404 dredge and fill permit decisions and ensures that only parties who submitted comments during the permit application’s public comment period may file a lawsuit.

This section also requires that if a court rules the Secretary of the Army or a state did not comply with the underlying statute in issuing a dredge and fill permit, with exceptions for certain cases, the court shall remand the decision to the agency to resolve any noncompliance, as opposed to ordering a full stop. In such a case, the court must set and enforce a reasonable schedule and deadline for the Secretary of the Army or a state to take court-ordered action. Generally, the court must provide a timeline that does not exceed 180 days, unless otherwise required by law.

Section 8. Implementation Guidance

This section requires the EPA and the Corps, not more than 30 days after the date of enactment, to begin a process to receive public comment on implementation guidance on the final rule published in the Federal Register on September 8, 2023, titled, “Revised Definition of ‘Waters of the United States’; Conforming”.

This section also requires that such implementation guidance comply with the United States Supreme Court’s decision in *Sackett v. EPA*, 598 U.S. 651 (2023).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * *

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 303, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after the date of enactment of the Clean Water Act of 1977 and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 301(g) of this Act and within six months after the date of enactment of the Clean Water Act of 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 301(h) of this Act and within six months after the date of enactment of Clean Water Act of 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after enactment of the Clean Water Act of 1977 and annually thereafter, for purposes of section 301(h) of this Act publish and revise as appropriate information identifying each water quality standard in effect under this Act or State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(7) GUIDANCE TO STATES.—The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within 9 months after the date of the enactment of the Water Quality Act of 1987, guidance to the States on performing the identification required by section 304(l)(1) of this Act.

(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator, after consultation with appropriate State agencies and within 2 years after the date of the enactment of the Water Quality Act of 1987, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(9) REVISED CRITERIA FOR COASTAL RECREATION WATERS.—

(A) IN GENERAL.—Not later than 5 years after the date of the enactment of this paragraph, after consultation and in cooperation with appropriate Federal, State, tribal, and local officials (including local health officials), the Administrator shall publish new or revised water quality criteria for pathogens and pathogen indicators (including a revised

list of testing methods, as appropriate), based on the results of the studies conducted under section 104(v), for the purpose of protecting human health in coastal recreation waters.

(B) **REVIEWS.**—Not later than the date that is 5 years after the date of publication of water quality criteria under this paragraph, and at least once every 5 years thereafter, the Administrator shall review and, as necessary, revise the water quality criteria.

(10) **ADMINISTRATIVE PROCEDURE.**—*After the date of enactment of this paragraph, the Administrator shall issue any new or revised water quality criteria under paragraph (1) or (9) by rule.*

(b) For the purpose of adopting or revising effluent limitations under this Act the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practical control technology currently available to comply with subsection (b)(1) of section 301 of this Act shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 301 of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed,

the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 301(b)(2)(E) of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after enactment of this title (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of this Act. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after enactment of this title (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after the date of enactment of this title (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 201 of this Act.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after the date of enactment of this subsection guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of this Act.

(4) For the purposes of this subsection, such biological treatment facilities as oxidation ponds, lagoons, and ditches and trickling filters shall be deemed the equivalent of secondary treatment. The Administrator shall provide guidance under paragraph (1) of this subsection on design criteria for such facilities, taking into account pollutant removal efficiencies and, consistent with the objective of the Act, assuring that water quality will not be adversely affected by deeming such facilities as the equivalent of secondary treatment.

(e) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 307(a)(1) or 311 of this Act, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants, to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 301, 302, 306, 307, or 403, as the case may be, in any permit issued to a point source pursuant to section 402 of this Act.

(f) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 208 of this Act, within one year after the effective date of this subsection (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g)(1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) The Administrator shall, within one hundred and eighty days from the date of enactment of this title, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act.

(i) The Administrator shall (1) within sixty days after the enactment of this title promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 402 of this Act, and (2) within sixty days from the date of enactment of this title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) LAKE RESTORATION GUIDANCE MANUAL.—The Administrator shall, within 1 year after the date of the enactment of the Water

Quality Act of 1987 and biennially thereafter, publish and disseminate a lake restoration guidance manual describing methods, procedures, and processes to guide State and local efforts to improve, restore, and enhance water quality in the Nation's publicly owned lakes.

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act and nonpoint source pollution management programs approved under section 319 of this Act.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, \$100,000,000 per fiscal year for the fiscal years 1979 through 1983 and such sums as may be necessary for fiscal years 1984 through 1990.

(1) INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.—

(1) STATE LIST OF NAVIGABLE WATERS AND DEVELOPMENT OF STRATEGIES.—Not later than 2 years after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—

(A) a list of those waters within the State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (i) water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (ii) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

(B) a list of all navigable waters in such State for which the State does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(C) for each segment of the navigable waters included on such lists, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each toxic pollutant discharged by each such source; and

(D) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 402 of this Act and water quality standards under section 303(c)(2)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than 3 years after the date of the establishment of such strategy.

(2) APPROVAL OR DISAPPROVAL.—Not later than 120 days after the last day of the 2-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

(3) ADMINISTRATOR'S ACTION.—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than 1 year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of paragraph (1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

(m) SCHEDULE FOR REVIEW OF GUIDELINES.—

(1) PUBLICATION.—Within 12 months after the date of the enactment of the Water Quality Act of 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan which shall—

(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with subsection (b) of this section;

(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not previously been published; and

(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than 4 years after such date of enactment for categories identified in the first published plan or 3 years after the publication of the plan for categories identified in later published plans.

(2) PUBLIC REVIEW.—The Administrator shall provide for public review and comment on the plan prior to final publication.

* * * * *

TITLE IV—PERMITS AND LICENSES

* * * * *

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899, shall be deemed to be permits issued under this title, and permits issued under this title shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act.

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899, after the date of enactment of this title. Each application for a permit under section 13 of the Act of March 3, 1899, pending on the date of enactment of this Act shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this Act, to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on the date of enactment of this Act and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304(i)(2) of this Act, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this Act. No such permit shall issue if the Administrator objects to such issuance.

(6)(A) *The Administrator is authorized to issue general permits under this section for discharges of similar types from similar sources.*

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

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

(D) *If a general permit issued under this section expires and the Administrator has not published a notice in accordance with subparagraph (C), until such time as the Administrator issues a new general permit for discharges similar to those covered by the expired general permit, the Administrator shall—*

(i) continue to apply the terms, conditions, and requirements of the expired general permit to any discharge that was covered by the expired general permit; and

(ii) apply such terms, conditions, and requirements to any discharge that would have been covered by the expired general permit (in accordance with any relevant requirements for such coverage) if the discharge had occurred before such expiration.

(b) At any time after the promulgation of the guidelines required by subsection (i)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act, or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307, and 308.

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(i)(2) of this Act.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so

notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(4) LIMITATIONS ON PARTIAL PERMIT PROGRAM RETURNS AND WITHDRAWALS.—A State may return to the Administrator administration, and the Administrator may withdraw under paragraph (3) of this subsection approval, of—

(A) a State partial permit program approved under subsection (n)(3) only if the entire permit program being administered by the State department or agency at the time is returned or withdrawn; and

(B) a State partial permit program approved under subsection (n)(4) only if an entire phased component of the permit program being administered by the State at the time is returned or withdrawn.

(d)(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after the date of enactment of this paragraph, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this Act.

(e) In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject

to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 309(a) of this Act that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

(j) A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

[(k) Compliance with] (k) COMPLIANCE WITH PERMITS.—

(1) *IN GENERAL.*—*Subject to paragraph (2), compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 301, 306, or 402 of this Act, or (2) section 13 of the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899, the discharge by such source shall not be a violation of this Act if such a source applies for a permit for discharge pursuant to this section within such 180-day period.*

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

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

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

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

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

(iii) whether or not specifically identified in the permit or during the permit application process—

(I) present in any waste streams or processes of the point source to which the permit applies, which waste streams or processes are specifically identified during the permit application process; or

(II) otherwise within the scope of any operations of the point source to which the permit applies, which scope of operations is specifically identified during the permit application process.

(1) LIMITATION ON PERMIT REQUIREMENT.—

(1) AGRICULTURAL RETURN FLOWS.—The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) STORMWATER RUNOFF FROM OIL, GAS, AND MINING OPERATIONS.—The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require a permit, for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with, or do not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(3) SILVICULTURAL ACTIVITIES.—

(A) NPDES PERMIT REQUIREMENTS FOR SILVICULTURAL ACTIVITIES.—The Administrator shall not require a permit under this section nor directly or indirectly require any State to require a permit under this section for a discharge from runoff resulting from the conduct of the following silviculture activities conducted in accordance with standard industry practice: nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance.

(B) OTHER REQUIREMENTS.—Nothing in this paragraph exempts a discharge from silvicultural activity from any

permitting requirement under section 404, existing permitting requirements under section 402, or from any other federal law.

(C) The authorization provided in Section 505(a) does not apply to any non-permitting program established under 402(p)(6) for the silviculture activities listed in 402(l)(3)(A), or to any other limitations that might be deemed to apply to the silviculture activities listed in 402(l)(3)(A).

(m) **ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.**—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to a section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) **PARTIAL PERMIT PROGRAM.**—

(1) **STATE SUBMISSION.**—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) **MINIMUM COVERAGE.**—A partial permit program under this subsection shall cover, at a minimum, administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

(3) **APPROVAL OF MAJOR CATEGORY PARTIAL PERMIT PROGRAMS.**—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

(4) **APPROVAL OF MAJOR COMPONENT PARTIAL PERMIT PROGRAMS.**—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than 5 years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

(o) ANTI-BACKSLIDING.—

(1) GENERAL PROHIBITION.—In the case of effluent limitations established on the basis of subsection (a)(1)(B) of this section, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4).

(2) EXCEPTIONS.—A permit with respect to which paragraph (1) applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant if—

(A) material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) the Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under subsection (a)(1)(B);

(C) a less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) the permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) the permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subparagraph (B) shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumu-

lative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of this Act or for reasons otherwise unrelated to water quality.

(3) LIMITATIONS.—In no event may a permit with respect to which paragraph (1) applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

(p) MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.—

(1) GENERAL RULE.—Prior to October 1, 1994, the Administrator or the State (in the case of a permit program approved under section 402 of this Act) shall not require a permit under this section for discharges composed entirely of stormwater.

(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to the following stormwater discharges:

(A) A discharge with respect to which a permit has been issued under this section before the date of the enactment of this subsection.

(B) A discharge associated with industrial activity.

(C) A discharge from a municipal separate storm sewer system serving a population of 250,000 or more.

(D) A discharge from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

(E) A discharge for which the Administrator or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

(3) PERMIT REQUIREMENTS.—

(A) INDUSTRIAL DISCHARGES.—Permits for discharges associated with industrial activity shall meet all applicable provisions of this section and section 301.

(B) MUNICIPAL DISCHARGE.—Permits for discharges from municipal storm sewers—

(i) may be issued on a system- or jurisdiction-wide basis;

(ii) shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers; and

(iii) shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

(4) PERMIT APPLICATION REQUIREMENTS.—

(A) INDUSTRIAL AND LARGE MUNICIPAL DISCHARGES.—Not later than 2 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraphs (2)(B) and (2)(C). Applications for permits for such discharges shall be filed no later than 3 years after such date of enactment. Not later than 4 years after such date of enactment the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(B) OTHER MUNICIPAL DISCHARGES.—Not later than 4 years after the date of the enactment of this subsection, the Administrator shall establish regulations setting forth the permit application requirements for stormwater discharges described in paragraph (2)(D). Applications for permits for such discharges shall be filed no later than 5 years after such date of enactment. Not later than 6 years after such date of enactment, the Administrator or the State, as the case may be, shall issue or deny each such permit. Any such permit shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the date of issuance of such permit.

(5) STUDIES.—The Administrator, in consultation with the States, shall conduct a study for the purposes of—

(A) identifying those stormwater discharges or classes of stormwater discharges for which permits are not required pursuant to paragraphs (1) and (2) of this subsection;

(B) determining, to the maximum extent practicable, the nature and extent of pollutants in such discharges; and

(C) establishing procedures and methods to control stormwater discharges to the extent necessary to mitigate impacts on water quality.

Not later than October 1, 1988, the Administrator shall submit to Congress a report on the results of the study described in subparagraphs (A) and (B). Not later than October 1, 1989, the Administrator shall submit to Congress a report on the results of the study described in subparagraph (C).

(6) REGULATIONS.—Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum, (A) establish priorities, (B) establish requirements for State stormwater management programs, and (C) establish expeditious deadlines. The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

(q) COMBINED SEWER OVERFLOWS.—

(1) REQUIREMENT FOR PERMITS, ORDERS, AND DECREES.—Each permit, order, or decree issued pursuant to this Act after the date of enactment of this subsection for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (in this subsection referred to as the “CSO control policy”).

(2) WATER QUALITY AND DESIGNATED USE REVIEW GUIDANCE.—Not later than July 31, 2001, and after providing notice and opportunity for public comment, the Administrator shall issue guidance to facilitate the conduct of water quality and designated use reviews for municipal combined sewer overflow receiving waters.

(3) REPORT.—Not later than September 1, 2001, the Administrator shall transmit to Congress a report on the progress made by the Environmental Protection Agency, States, and municipalities in implementing and enforcing the CSO control policy.

(r) DISCHARGES INCIDENTAL TO THE NORMAL OPERATION OF RECREATIONAL VESSELS.—No permit shall be required under this Act by the Administrator (or a State, in the case of a permit program approved under subsection (b)) for the discharge of any graywater, bilge water, cooling water, weather deck runoff, oil water separator effluent, or effluent from properly functioning marine engines, or any other discharge that is incidental to the normal operation of a vessel, if the discharge is from a recreational vessel.

(s) INTEGRATED PLANS.—

(1) DEFINITION OF INTEGRATED PLAN.—In this subsection, the term “integrated plan” means a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.

(2) IN GENERAL.—The Administrator (or a State, in the case of a permit program approved by the Administrator) shall inform municipalities of the opportunity to develop an integrated plan that may be incorporated into a permit under this section.

(3) SCOPE.—

(A) SCOPE OF PERMIT INCORPORATING INTEGRATED PLAN.—A permit issued under this section that incorporates an integrated plan may integrate all requirements under this Act addressed in the integrated plan, including requirements relating to—

- (i) a combined sewer overflow;
- (ii) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;
- (iii) a municipal stormwater discharge;
- (iv) a municipal wastewater discharge; and
- (v) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load.

(B) INCLUSIONS IN INTEGRATED PLAN.—An integrated plan incorporated into a permit issued under this section may include the implementation of—

- (i) projects, including innovative projects, to reclaim, recycle, or reuse water; and

(ii) green infrastructure.

(4) COMPLIANCE SCHEDULES.—

(A) IN GENERAL.—A permit issued under this section that incorporates an integrated plan may include a schedule of compliance, under which actions taken to meet any applicable water quality-based effluent limitation may be implemented over more than 1 permit term if the schedule of compliance—

(i) is authorized by State water quality standards; and

(ii) meets the requirements of section 122.47 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(B) TIME FOR COMPLIANCE.—For purposes of subparagraph (A)(ii), the requirement of section 122.47 of title 40, Code of Federal Regulations, for compliance by an applicable statutory deadline under this Act does not prohibit implementation of an applicable water quality-based effluent limitation over more than 1 permit term.

(C) REVIEW.—A schedule of compliance incorporated into a permit issued under this section may be reviewed at the time the permit is renewed to determine whether the schedule should be modified.

(5) EXISTING AUTHORITIES RETAINED.—

(A) APPLICABLE STANDARDS.—Nothing in this subsection modifies any obligation to comply with applicable technology and water quality-based effluent limitations under this Act.

(B) FLEXIBILITY.—Nothing in this subsection reduces or eliminates any flexibility available under this Act, including the authority of a State to revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (or a successor regulation), subject to the approval of the Administrator under section 303(c).

(6) CLARIFICATION OF STATE AUTHORITY.—

(A) IN GENERAL.—Nothing in section 301(b)(1)(C) precludes a State from authorizing in the water quality standards of the State the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan.

(B) TRANSITION RULE.—In any case in which a discharge is subject to a judicial order or consent decree, as of the date of enactment of this subsection, resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard may not revise a schedule of compliance in that order or decree to be less stringent, unless the order or decree is modified by agreement of the parties and the court.

(t) *EXPRESSION OF WATER QUALITY-BASED EFFLUENT LIMITATIONS.*—*If the Administrator (or a State, in the case of a permit program approved by the Administrator) determines that a water quality-based limitation on a discharge of a pollutant is necessary to include in a permit under this section in addition to any appropriate*

technology-based effluent limitations included in such permit, the Administrator (or the State) may include such water quality-based limitation in such permit only in the form of an effluent limitation that specifies—

- (1) the pollutant to which it applies; and*
- (2) the numerical limit on the discharge of such pollutant, or the precise waterbody conditions to be attained with respect to such pollutant, required to comply with the permit.*

* * * * *

PERMITS FOR DREDGED OR FILL MATERIAL

SEC. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

[(c) The Administrator] (c) *SPECIFICATION OR USE OF DEFINED AREA.*—

(1) *IN GENERAL.*—*The Administrator* is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, *during the period described in paragraph (2) and* after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(2) *PERIOD OF PROHIBITION.*—*The period during which the Administrator may prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, or deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, under paragraph (1) shall—*

- (A) begin on the date on which an applicant submits all the information required to complete an application for a permit under this section; and*

(B) end on the date on which the Secretary issues the permit.

(d) The term “Secretary” as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

[(e)(1) In carrying] (e) *GENERAL PERMITS ON STATE, REGIONAL, OR NATIONWIDE BASIS.*—

(1) *PERMITS AUTHORIZED.*—*In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.*

[(2) No general]

(2) *TERM.*—*No general permit issued under this subsection shall be for a period of more than [five years] ten years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.*

(3) *CONSIDERATIONS.*—*In determining the environmental effects of an activity under paragraph (1) or (2), the Secretary shall consider only the effects of any discharge of dredged or fill material resulting from such activity.*

(4) *NATIONWIDE PERMITS FOR LINEAR INFRASTRUCTURE PROJECTS.*—

(A) *IN GENERAL.*—*Notwithstanding any other provision of this section, the Secretary shall maintain general permits on a nationwide basis for linear infrastructure projects that do not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project (as defined in section 330.2 of title 33, Code of Federal Regulations (as in effect on the date of enactment of this paragraph)).*

(B) *DEFINITION OF LINEAR INFRASTRUCTURE PROJECT.*—*In this paragraph, the term “linear infrastructure project” means a project to carry out any activity required for the construction, expansion, maintenance, modification, or removal of infrastructure and associated facility for the transmission from a point of origin to a terminal point of communications or electricity or the transportation from a point of origin to a terminal point of people, water, wastewater, carbon dioxide, or fuel or hydrocarbons (in the form of a liquid, liquescent, gaseous, or slurry substance or supercritical fluid), including oil and gas pipeline facilities.*

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

(A) no consultation with an applicable State pursuant to section 6(a) of the Endangered Species Act of 1973 (16 U.S.C. 1535(a)) is required;

(B) no consultation with a Federal agency pursuant to section 7(a)(2) of such Act (16 U.S.C. 1536(a)(2)) is required; and

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

(f)(1) Except as provided in paragraph (2) of this subsection, the discharge of dredged or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g)(1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural

condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto) within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h)(1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 307 and 403 of this Act;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(2) If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State—

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer

any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant

to subsection (h)(1)(E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

(k) In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

(o) A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

(q) Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and

the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.

(r) The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for such construction.

(s)(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(4) Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation. In determining the amount of

a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.

(t) JUDICIAL REVIEW.—

(1) STATUTE OF LIMITATIONS.—

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

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

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

(B) SAVINGS PROVISION.—Nothing in subparagraph (A) may be construed to authorize an action seeking judicial review of the structure of, or authorization for, a State permit program approved pursuant to this section.

(2) LIMITATION ON COMMENCEMENT OF CERTAIN ACTIONS.—Notwithstanding any other provision of law, no action described in paragraph (1)(A) may be commenced unless the action—

(A) is filed by a party that submitted a comment, during the public comment period for the administrative proceedings related to the applicable action described in such paragraph, which comment was sufficiently detailed to put the Secretary or the State, as applicable, on notice of the issue upon which the party seeks judicial review; and

(B) is related to such comment.

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

(A) the court shall remand the matter to the Secretary or the State, as applicable, for further proceedings consistent with the court's determination;

(B) with respect to a determination regarding the issuance of an individual or general permit under this section, the court may not vacate, revoke, enjoin, or otherwise limit the permit, unless the court finds that activities authorized under the permit would present an imminent and substantial danger to human health or the environment for which there is no other equitable remedy available under the law; and

(C) with respect to a determination regarding a verification that an activity is authorized by a general permit issued under this section, the court may not enjoin the activity, unless the court finds that the activity would present an imminent and substantial danger to human

health or the environment for which there is no other equitable remedy available under the law.

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

[(t) Nothing in the section] (u) *SAVINGS PROVISION.*—Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

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TITLE V—GENERAL PROVISIONS

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ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) For purposes of obtaining information under section 305 of this Act, or carrying out section 507(e) of this Act, the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpoenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under

sections 304 (b) and (c) of this Act. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpoena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, 306, or 405, (F) in issuing or denying any permit under [section 402, and] *section 402*, (G) in promulgating any individual control strategy under section 304(l), and (H) in *issuing any criteria for water quality pursuant to section 304(a)(10)*, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such 120th day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(3) AWARD OF FEES.—In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.

(4) DISCHARGES INCIDENTAL TO NORMAL OPERATION OF VESSELS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any interested person may file a petition for review of a final agency action under section 312(p) of the Administrator or the Secretary of the department in which the Coast Guard is operating in accordance with the requirements of this subsection.

(B) VENUE EXCEPTION.—Subject to section 312(p)(7)(C)(v), a petition for review of a final agency action under section 312(p) of the Administrator or the Secretary of the department in which the Coast Guard is operating may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Ad-

ministrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

* * * * *

MINORITY VIEWS

We oppose H.R. 7023. This bill significantly restricts U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) oversight and regulatory authorities under the *Clean Water Act (CWA)*. The *Clean Water Act*, enacted over 50 years ago, is the nation's bedrock environmental law for "restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters" and water resources.

However, the changes in H.R. 7023 defy the overarching intent of the *Clean Water Act* and gut the independent authority of both agencies to ensure that projects and activities are carried out with only minimal impacts to water resources. This partisan bill weakens CWA protections while providing exemptions, legal shields, and limited oversight for special interests, polluters, and large-scale projects that demand higher scrutiny.

The bill disregards Congressional intent in establishing EPA's independent oversight authority over CWA permits; undermines permitting requirements; eliminates judicial review and public engagement; rolls back oversight of mining companies and industrial polluters; inadvertently slows down permit processing with increased bureaucracy and complicates state-determined decisions.

This legislation offers these anti-CWA changes as a salve to specific projects and grievances rather than a sustainable solution to permitting. Large-scale mining proposals, such as Pebble Mine in Alaska or Spruce Mine in West Virginia, or ecologically devastating flood control projects, such as the Yazoo Pumps in Mississippi, were blocked by bipartisan presidential administrations under the EPA's Section 404(c) authority once the impacts were thoroughly evaluated. Although EPA has utilized this authority very sparingly (only 14 times since its creation in 1972), H.R. 7023 will effectively eliminate the authority altogether.

H.R. 7023 also seeks to alter the review of "linear" projects, which includes oil and gas pipelines, electrical transmission lines, and similar projects. These projects often span hundreds of miles and cross multiple state lines; however, H.R. 7023 will limit the consideration of the environmental impacts of these projects, in apparent violation of the *Clean Water Act* requirement that such projects have only a minimal cumulative adverse impact on the environment. The bill also prevents judicial review by vastly shortening the statute of limitations; limiting standing to file suit; and limiting the Court's options for recourse. In short, H.R. 7023 will greenlight large projects with minimal review while also limiting opportunities for legal challenges to ecologically damaging permits or projects.

If this sounds familiar, that is because it is. The changes proposed in H.R. 7023 will remove opportunities for local communities to review and, where appropriate, challenge the ecological, eco-

nomic, and public health effects of projects with potentially significant local impacts. H.R. 7023 seeks to allow private industry and development to steamroll through towns and states, constructing projects with minimal review and disregard of local perspectives. If H.R. 7023 is enacted, the potential adverse impacts to waterbodies (such as reduced water quality or availability); to the environment (such as increased greenhouse gas emissions or other contamination); and to residents (such as perpetuating environmental justice concerns) will be borne by the local and surrounding communities without a voice or venue to have their concerns heard.

Lastly, H.R. 7023 contradicts itself by slowing down permitting processes, sowing uncertainty, and decreasing flexibility. As one example, Section 2 of H.R. 7023 will add a formal rulemaking process in place of an existing and more efficient guidance process. This will slow down the issuance of water quality standards without increasing transparency or public participation and remove flexibility for updates. It will also open the standards to judicial review.

The impacts of the CWA rollbacks in H.R. 7023 are exacerbated by the context in which this bill is considered. In May 2023, the U.S. Supreme Court's decision in *Sackett v. EPA* severely restricted the waters that are subject to CWA protections. It is estimated that the decision removed protection nationwide from at least 50% of wetlands, and at least 60% of streams. With a much smaller number of waters subject to permitting or CWA requirements, additional limitations, expediting, and loopholes to the process are the opposite of what Congress needs to be doing to protect our water resources. Exposing the waters and wetlands that remain under *Clean Water Act* protections to additional pollution or destruction will do nothing to restore and maintain water quality.

During consideration of H.R. 7023, Committee Democrats sought to lessen the negative impacts of this legislation and require EPA to verify that the changes in the bill would not have negative impacts to water quality and availability issues that communities currently face nationwide.

Representative Pat Ryan (NY) offered an amendment to delay the effective date of the bill until the EPA Administrator determines that the changes will not result in increased discharges of forever chemicals (such as PFAS) or nutrients that cause harmful algal blooms. Providing legal cover for chemicals in waste streams from mines or other industrial polluters and limiting technologies that could remove pollution could certainly lead to increased discharges and pollution levels. The amendment would have ensured that communities are not left with the environmental and economic burden of cleaning up and removing such pollutants.

Representative Greg Stanton (AZ) offered an amendment to prohibit changes made by the bill from taking effect until the EPA Administrator determines that the bill will not result in contamination of state-designated drinking water sources, reduce surface water availability or reduce water quality in drought-prone areas. Additional fill activities or pollutants could severely limit public drinking water sources for communities in arid or drought-stricken areas.

Representative Chris Pappas (NH) offered an amendment to require permittees to conduct proactive monitoring for emerging con-

taminants and forever chemicals at wastewater treatment plants in order to receive the permit shield offered under the legislation. Industrial polluters should not be incentivized to hide potential discharges of forever chemicals, such as PFAS pollution. Instead, we must work to identify and measure these chemicals in our waste streams.

The *Clean Water Act* has been an effective tool for improving the health of our rivers, streams, lakes, and wetlands. Unfortunately, progress restoring impaired waterbodies has slowed and, in some areas, reversed. Communities face new challenges from emerging contaminants, impacts of climate change, and declines in Federal assistance. Waterbodies subject to the CWA have already shrunk significantly. H.R. 7023 ignores all these realities and provides additional loopholes for polluters, industry, and developers.

In our view, this legislation is unnecessary, unwarranted, and a further attack on clean water nationwide. For these reasons, we oppose H.R. 7023.

RICK LARSEN,
Ranking Member.
 GRACE F. NAPOLITANO,
Ranking Member, Subcommittee on Water Resources and Environment.
 ELEANOR HOLMES NORTON.
 STEVE COHEN.
 HENRY C. "HANK" JOHNSON, Jr.
 ANDRÉ CARSON.
 DINA TITUS.
 JARED HUFFMAN.
 JULIA BROWNLEY.
 FREDERICA S. WILSON.
 DONALD M. PAYNE, Jr.
 MARK DESAULNIER.
 SALUD CARBAJAL.
 JESÚS "CHUY" GARCÍA.
 CHRIS PAPPAS.
 SETH MOULTON.
 MARILYN STRICKLAND.
 PAT RYAN.
 ROB MENENDEZ.
 VAL HOYLE.
 HILLARY SCHOLTEN.
 VALERIE P. FOUSHEE.