

116TH CONGRESS
2D SESSION

H. R. 5799

To amend the Federal Water Pollution Control Act with respect to normal farming activities and to require the Corps of Engineers and the Environmental Protection Agency to apply certain decisions of the Secretary of Agriculture when enforcing such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2020

Mr. THOMPSON of Pennsylvania (for himself and Mr. PETERSON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act with respect to normal farming activities and to require the Corps of Engineers and the Environmental Protection Agency to apply certain decisions of the Secretary of Agriculture when enforcing such Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Bridging Responsible
5 Agricultural Conservation Efforts Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of the Environ-
5 mental Protection Agency.

6 (2) CHIEF OF ENGINEERS.—The term “Chief of
7 Engineers” means the Secretary of the Army, acting
8 through the Chief of Engineers.

9 (3) SECRETARY.—The term “Secretary” means
10 the Secretary of Agriculture.

11 **SEC. 3. NORMAL FARMING ACTIVITIES.**

12 (a) IN GENERAL.—Section 404(f)(1)(A) of the Fed-
13 eral Water Pollution Control Act (33 U.S.C.
14 1344(f)(1)(A)) is amended by striking “or upland soil and
15 water conservation practices” and inserting “upland soil
16 and water conservation practices (including changing con-
17 servation systems), crop changes for soil management (in-
18 cluding the use of haying and pasturing for the purpose
19 of harvest or grazing), or activities and practices employed
20 for purposes of expanding production in an operation”.

21 (b) DEADLINE.—Not later than 12 months after the
22 date of enactment of this Act, the Administrator and the
23 Chief of Engineers, jointly with the Secretary, shall issue
24 a rule to revise the regulations implementing section 404
25 of the Federal Water Pollution Control Act to reflect the
26 amendment made by subsection (a). The rule shall also

1 include activities and practices employed for purposes of
2 expanding production in an operation, changing crops pro-
3 duced in an operation, and changing conservation systems
4 in an operation.

5 **SEC. 4. APPLICATION OF FOOD SECURITY ACT OF 1985 TO**
6 **FEDERAL WATER POLLUTION CONTROL ACT**
7 **ENFORCEMENT.**

8 (a) SECRETARY OF AGRICULTURE DECISIONS.—

9 (1) PRIOR CONVERTED CROPLAND.—

10 (A) EFFECT OF DETERMINATION.—For
11 purposes of section 404 of the Federal Water
12 Pollution Control Act, the Chief of Engineers
13 and the Administrator shall consider land to be
14 prior converted cropland if the land has, at any
15 time, been determined by the Secretary to be
16 prior-converted cropland or commenced-conver-
17 sion wetland under the Food Security Act of
18 1985.

19 (B) NO ABANDONMENT.—In carrying out
20 subparagraph (A), the Chief of Engineers and
21 the Administrator may not consider any deter-
22 mination by the Secretary under the Food Se-
23 curity Act of 1985 that land previously deter-
24 mined to be prior-converted cropland or com-

1 menced-conversion wetland has reverted to wet-
2 land due to abandonment.

3 (2) WETLANDS.—For any land with respect to
4 which the Secretary has made a wetland delineation,
5 determination, or certification under section 1222 of
6 the Food Security Act of 1985, the Chief of Engi-
7 neers and the Administrator shall apply such delin-
8 eation, determination, or certification when carrying
9 out section 404 of the Federal Water Pollution Con-
10 trol Act.

11 (b) WATERS OF THE UNITED STATES.—For pur-
12 poses of the Federal Water Pollution Control Act, prior
13 converted croplands under subsection (a)(1), and any par-
14 cel of land that is contiguous to, and owned by the same
15 owner as, such prior converted croplands, are not waters
16 of the United States.

17 (c) RELIANCE.—The first sentence of section
18 1222(a)(6) of the Food Security Act of 1985 shall apply
19 to enforcement actions under section 404 of the Federal
20 Water Pollution Control Act.

21 (d) JUDICIAL REVIEW.—Notwithstanding section
22 706 of title 5, United States Code, a court reviewing any
23 agency action of the Secretary, the Chief of Engineers,
24 or the Administrator that is affected by this section shall
25 decide de novo all relevant questions of law, including the

1 interpretation of constitutional and statutory provisions,
2 and rules made. If the reviewing court determines that a
3 statutory or regulatory provision relevant to its decision
4 contains a gap or ambiguity, the court shall not interpret
5 that gap or ambiguity as an implicit delegation of legisla-
6 tive rule making authority and shall not rely on such gap
7 or ambiguity as a justification either for interpreting agen-
8 cy authority expansively or for deferring to any interpreta-
9 tion of the Secretary, the Chief of Engineers, or the Ad-
10 ministrator on the question of law. Notwithstanding any
11 other provision of law, this subsection shall apply in any
12 action for judicial review of such an agency action author-
13 ized under any provision of law. No law may exempt any
14 civil action for review of such an agency action from the
15 application of this subsection except by specific reference
16 to this subsection.

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