

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4776
OFFERED BY MR. WESTERMAN OF ARKANSAS

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Standardizing Permit-
3 ting and Expediting Economic Development Act” or the
4 “SPEED Act”.

5 SEC. 2. NEPA REFORM.

6 (a) PURPOSE.—Section 2 of the National Environ-
7 mental Policy Act of 1969 (42 U.S.C. 4321) is amended—

8 (1) by striking “The purposes” and inserting
9 the following:

10 “(a) The purposes”; and

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

12 “(b) This Act is a purely procedural statute intended
13 to ensure Federal agencies consider the environmental im-
14 pacts of their actions during the decisionmaking process.
15 This Act does not mandate particular results, and only
16 prescribes a process. Nothing in this Act shall be con-
17 strued to mandate any specific environmental outcome or
18 result, nor shall this Act be interpreted to confer sub-

1 substantive rights or impose substantive duties beyond proce-
2 dural requirements.”.

3 (b) PROCEDURE FOR DETERMINATION OF LEVEL OF
4 REVIEW.—Section 106 of the National Environmental
5 Policy Act of 1969 (42 U.S.C. 4336) is amended—

6 (1) in the heading, by inserting “; **SCOPE OF**
7 **REVIEW**” after “**LEVEL OF REVIEW**”;

8 (2) in subsection (a)—

9 (A) in paragraph (3), by striking “or”;

10 (B) in paragraph (4), by striking “action.”

11 and inserting “action;”; and

12 (C) by adding at the end the following:

13 “(5) the agency determines the proposed agency
14 action is an action for which such agency’s compli-
15 ance with another statute’s requirements serves the
16 function of agency compliance with this Act with re-
17 spect to such action; or

18 “(6) the proposed agency action relates to a
19 project or action that has already been reviewed pur-
20 suant to a State environmental review statute or a
21 Tribal environmental review statute, ordinance, reso-
22 lution, regulation, or formally adopted policy and the
23 lead agency determines such review serves the func-
24 tion of agency compliance with this Act.”;

25 (3) in subsection (b)—

1 (A) in paragraph (2), by striking “does
2 not” and inserting “is not likely to”; and

3 (B) in paragraph (3), by amending sub-
4 paragraph (B) to read as follows:

5 “(B) is not required to—

6 “(i) undertake new scientific or tech-
7 nical research unless the new scientific or
8 technical research is essential to a rea-
9 soned choice among alternatives, and the
10 overall costs and time frame of obtaining it
11 are not unreasonable; or

12 “(ii) undertake new scientific or tech-
13 nical research after the receipt of an appli-
14 cation, as applicable, with respect to a pro-
15 posed agency action.”; and

16 (4) by adding at the end the following:

17 “(c) SCOPE OF REVIEW.—In preparing an environ-
18 mental document for a proposed agency action, a Federal
19 agency—

20 “(1) may consider only those effects that share
21 a reasonably close causal relationship to, and are
22 proximately caused by, the immediate project or ac-
23 tion under consideration; and

24 “(2) may not consider effects that are specula-
25 tive, attenuated from the project or action, separate

1 in time or place from the project or action, or in re-
2 lation to separate existing or potential future
3 projects or actions.

4 “(d) CERTAINTY.—A Federal agency may not re-
5 scind, withdraw, amend, alter, or otherwise render ineffec-
6 tive any environmental document completed under this Act
7 for a project or action where there is an applicant unless
8 the Federal agency has been so ordered by a court or the
9 applicant has agreed in writing to such rescission, with-
10 drawal, amendment, or alteration.

11 “(e) PRESUMPTION OF NEGATIVE IMPACTS OF TAK-
12 ING NO ACTION RELATING TO TRIBAL TRUST RE-
13 SOURCES.—For any proposed agency action carried out
14 on, or directly affecting, tribal trust resources (including
15 lands and minerals) that is initiated by the federally recog-
16 nized Indian Tribe for which the United States holds the
17 affected resources in trust, and for which an environ-
18 mental document was prepared that included consider-
19 ation of a no action alternative, there shall be a presump-
20 tion that the effects of taking no action will be negative
21 for the federally recognized Indian Tribe.

22 “(f) EFFECT OF THRESHOLD DETERMINATIONS ON
23 OTHER AGENCIES.—If a lead agency determines an envi-
24 ronmental document is not required to be prepared with
25 respect to a proposed agency action under subsection (a),

1 another agency may not prepare an environmental docu-
2 ment with respect to such proposed agency action.”.

3 (c) TIMELY AND UNIFIED FEDERAL REVIEWS.—

4 (1) LEAD AGENCY.—Section 107(a) of the Na-
5 tional Environmental Policy Act of 1969 (42 U.S.C.
6 4336a(a)) is amended—

7 (A) in paragraph (2)—

8 (i) in subparagraph (B), by striking
9 “at the earliest practicable time” and in-
10 serting “in accordance with subsection
11 (g)(2)”;

12 (ii) in subparagraph (D), by striking
13 “carry out the proposed agency action”
14 and inserting “carry out the proposed
15 agency action in compliance with the dead-
16 lines outlined in subsection (g)”;

17 (iii) in subparagraph (E)—

18 (I) by striking “a review” and in-
19 serting “an environmental review”;
20 and

21 (II) by striking “such review”
22 and inserting “such environmental re-
23 view”; and

24 (B) in paragraph (3)—

1 (i) by inserting “(including counties,
2 boroughs, parishes, and other political sub-
3 divisions of a State)” after “local agency”;
4 and

5 (ii) by adding at the end “Such com-
6 ments from Federal cooperating agencies
7 shall be limited to matters relating to the
8 proposed agency action with respect to
9 which such Federal cooperating agency has
10 jurisdiction by law.”.

11 (2) ONE DOCUMENT.—Section 107(b) of the
12 National Environmental Policy Act of 1969 (42
13 U.S.C. 4336a(b)) is amended—

14 (A) by striking “To the extent prac-
15 ticable,” and inserting the following:

16 “(1) DOCUMENT.—To the extent practicable,”;
17 and

18 (B) by adding at the end the following:

19 “(2) CONSIDERATION TIMING.—

20 “(A) IN GENERAL.—In preparing an envi-
21 ronmental document for a proposed agency ac-
22 tion, no Federal agency shall be required to
23 consider any scientific or technical research
24 that becomes publicly available after the earlier
25 of, as applicable—

1 “(i) the date of receipt of an applica-
2 tion with respect to such proposed agency
3 action; and

4 “(ii) the date of publication of a no-
5 tice of intent or decision to prepare such
6 environmental document for such proposed
7 agency action.

8 “(B) APPLICABILITY TO OTHER LAW.—
9 This paragraph does not affect any review of
10 information required under subchapter II of
11 chapter 5 of title 5, United States Code, with
12 respect to comments received during the public
13 comment period as applicable.

14 “(C) DELAY.—A Federal agency may not
15 delay the issuance of an environmental docu-
16 ment or a final agency action, including any de-
17 cision or determination, on the basis of awaiting
18 new scientific or technical research or informa-
19 tion that was not available as of the earlier of
20 the dates described in subparagraph (A).”.

21 (3) STATEMENT OF PURPOSE AND NEED.—Sec-
22 tion 107(d) of the National Environmental Policy
23 Act of 1969 (42 U.S.C. 4336a(d)) is amended by
24 striking “action.” and inserting “action. Where ap-

1 plicable, the statement of purpose and need shall
2 meet the goals of the applicant.”.

3 (4) DEADLINES.—Section 107(g) of the Na-
4 tional Environmental Policy Act of 1969 (42 U.S.C.
5 4336a(g)) is amended—

6 (A) by redesignating paragraphs (1), (2),
7 and (3) as paragraphs (3), (5), and (6), respec-
8 tively;

9 (B) by inserting before paragraph (3) (as
10 so redesignated) the following:

11 “(1) APPLICATIONS FOR AUTHORIZATIONS.—

12 “(A) NOTIFICATION OF COMPLETE OR IN-
13 COMPLETE APPLICATION.—Unless a shorter
14 deadline is specified by law, in connection with
15 a proposed agency action for which an applicant
16 submitted an application for an authorization to
17 an agency, not later than 60 days after the date
18 on which the applicant submits the application
19 to the agency, the agency shall document the
20 receipt of the application and—

21 “(i) notify the applicant that the ap-
22 plication is complete; or

23 “(ii) notify the applicant that the ap-
24 plication is incomplete and request in writ-
25 ing any additional information that the

1 agency needs to determine that the appli-
2 cation is complete and begin preparation of
3 an environmental document.

4 “(B) AGENCY DETERMINATION.—

5 “(i) COMPLETE DETERMINATION.—If
6 an agency determines an application is
7 complete under subparagraph (A)(i), the
8 agency shall, not later than 60 days after
9 the date on which the agency makes such
10 determination—

11 “(I) notify the applicant that the
12 agency has determined that the pro-
13 posed agency action is excluded pur-
14 suant to one of the agency’s categor-
15 ical exclusions, is not a major Federal
16 action, or that no further agency ac-
17 tion is required;

18 “(II) issue a notice of intent to
19 prepare an environmental impact
20 statement for such proposed agency
21 action; or

22 “(III) notify the applicant that
23 the agency has determined that prepa-
24 ration of an environmental assessment
25 is necessary.

1 “(ii) INCOMPLETE DETERMINATION.—

2 If the agency requests additional informa-
3 tion under subparagraph (A)(ii), the dead-
4 line described in clause (i) shall be based
5 on the date on which the agency receives
6 the additional information instead of the
7 date on which the determination is made.

8 “(2) COOPERATING AGENCIES.—

9 “(A) IN GENERAL.—Not later than 21
10 days after a lead agency issues a notice of in-
11 tent under paragraph (1)(B)(i)(II) or notifies
12 an applicant under paragraph (1)(B)(i)(III)
13 with respect to a proposed agency action, the
14 lead agency shall—

15 “(i) identify all agencies that are like-
16 ly to have environmental review, authoriza-
17 tion, or other responsibilities with respect
18 to the proposed agency action; and

19 “(ii) invite each such agency to be-
20 come a cooperating agency.

21 “(B) DEADLINE TO ACCEPT INVITATION.—

22 Not later than 21 days after an agency receives
23 an invitation to become a cooperating agency
24 under subparagraph (A)(ii), such agency shall
25 accept or deny the invitation.

1 “(C) CONVENING OF COOPERATING AGEN-
2 CIES.—Not later than 7 days after the deadline
3 described in subparagraph (B) has passed for
4 each agency that received an invitation to be-
5 come a cooperating agency under subparagraph
6 (A)(ii), the lead agency that sent each such in-
7 vitation shall convene each agency that accepts
8 such an invitation to coordinate on developing
9 the schedule under subsection (a)(2)(D) for the
10 applicable proposed agency action.

11 “(D) UNIDENTIFIED AGENCIES.—In the
12 event that an agency that has jurisdiction by
13 law or special expertise with respect to any en-
14 vironmental impact involved in a proposed
15 agency action is not identified under subpara-
16 graph (A)(i), the lead agency with respect to
17 the proposed agency action shall—

18 “(i) invite such unidentified agency to
19 become a cooperating agency by not later
20 than 7 days after becoming aware that the
21 agency has jurisdiction by law or special
22 expertise; and

23 “(ii) if such agency accepts the invita-
24 tion, incorporate such agency into the
25 schedule developed under subsection

1 (a)(2)(D) and update such schedule ac-
2 cordingly by not later than 14 days after
3 the date on which such agency accepts the
4 invitation.”;

5 (C) in paragraph (3) (as so redesign-
6 nated)—

7 (i) by striking “IN GENERAL” and in-
8 serting “REVIEW TIMELINE”; and

9 (ii) by striking “(2)” and inserting
10 “(5)”;

11 (D) by inserting after paragraph (3) (as so
12 redesignated) the following:

13 “(4) DEADLINE FOR FINAL AGENCY ACTION.—

14 For any proposed agency action for which an appli-
15 cant submitted an application for an authorization
16 to an agency, not later than 30 days after com-
17 pleting an environmental impact statement or an en-
18 vironmental assessment for the proposed agency ac-
19 tion, the lead agency, and any cooperating agency,
20 shall issue a final agency action. The agency issuing
21 such final agency action shall include in the final
22 agency action a performance schedule for the com-
23 pletion of any other outstanding authorizations.”;

24 (E) in paragraph (5) (as so redesign-
25 nated)—

1 (i) by striking “the deadline described
2 in paragraph (1)” and inserting “a dead-
3 line described in this subsection”; and

4 (ii) by striking “, in consultation with
5 the applicant, to” and inserting “if the ap-
6 plicant approves such extension. If the ap-
7 plicant approves such extension, the lead
8 agency shall”;

9 (F) in paragraph (6) (as so redesign-
10 nated)—

11 (i) by striking “A project sponsor
12 may” and inserting “Except as provided in
13 subparagraph (C), a project sponsor may”;
14 and

15 (ii) by adding at the end the fol-
16 lowing:

17 “(C) EXCEPTION.—A project sponsor that
18 approved an extension of a deadline under para-
19 graph (5) may not obtain judicial review of a
20 failure to act in accordance with such deadline
21 under subparagraph (A) unless the lead agency
22 fails to meet the new deadline or is delaying for
23 reasons other than those necessary to complete
24 its review.”; and

25 (G) by adding at the end the following:

1 “(7) CONCURRENT REVIEW.—In carrying out
2 an environmental review, the lead agency and each
3 cooperating agency shall carry out the obligations of
4 that agency under other applicable laws concu-
5 rently, and in conjunction, with other required re-
6 views for the proposed agency action, pursuant to
7 the requirements of applicable law, including, if ap-
8 plicable, under this Act.”.

9 (d) PROGRAMMATIC ENVIRONMENTAL DOCU-
10 MENTS.—Section 108 of the National Environmental Pol-
11 icy Act of 1969 (42 U.S.C. 4336b) is amended—

12 (1) by striking “When an agency prepares” and
13 inserting the following:

14 “(a) PROGRAMMATIC ENVIRONMENTAL DOCU-
15 MENTS.—When an agency prepares”;

16 (2) in paragraph (1), by striking “5” and in-
17 serting “10”;

18 (3) in paragraph (2), by striking “5” and in-
19 serting “10”; and

20 (4) by adding at the end the following:

21 “(b) RELIANCE ON PREVIOUSLY COMPLETED ENVI-
22 RONMENTAL REVIEWS.—

23 “(1) ACTIONS THAT ARE SUBSTANTIALLY THE
24 SAME.—A lead agency may satisfy the requirements
25 of this Act with respect to a major Federal action

1 by relying on an environmental assessment, environ-
2 mental impact statement, or a categorical exclusion
3 determination that the lead agency, another Federal
4 agency, or a project sponsor under the supervision of
5 a Federal agency completed for another major Fed-
6 eral action if the lead agency determines that—

7 “(A) the new major Federal action is sub-
8 stantially the same as the other major Federal
9 action or, if applicable, an alternative analyzed
10 in such environmental assessment or environ-
11 mental impact statement; and

12 “(B) if applicable, the effects of the new
13 major Federal action are substantially the same
14 as the effects analyzed in such environmental
15 assessment or environmental impact statement.

16 “(2) ACTIONS THAT ARE NOT SUBSTANTIALLY
17 THE SAME.—If a new major Federal action is not
18 substantially the same as another major Federal ac-
19 tion or an alternative analyzed in an environmental
20 assessment or environmental impact statement com-
21 pleted by the lead agency, another Federal agency,
22 or a project sponsor under the supervision of a Fed-
23 eral agency, the lead agency may modify or augment
24 any such previously completed environmental assess-
25 ment or environmental impact statement as nec-

1 essary to satisfy the requirements of this Act with
2 respect to the new major Federal action. The lead
3 agency shall make such modified environmental as-
4 sessment or environmental impact statement publicly
5 available as a new environmental assessment or envi-
6 ronmental impact statement.”.

7 (e) ADOPTION OF CATEGORICAL EXCLUSIONS.—Sec-
8 tion 109 of the National Environmental Policy Act of
9 1969 (42 U.S.C. 4336c) is amended in the text preceding
10 paragraph (1), by inserting “, or that was legislatively en-
11 acted by Congress,” after “procedures”.

12 (f) DEFINITIONS.—Section 111 of the National Envi-
13 ronmental Policy Act of 1969 (42 U.S.C. 4336e) is
14 amended—

15 (1) by redesignating paragraphs (1) through
16 (13) as paragraphs (2) through (14), respectively;

17 (2) by inserting before paragraph (2) (as so re-
18 designated) the following:

19 “(1) AUTHORIZATION.—The term ‘authoriza-
20 tion’ means any lease, right-of-way, easement, li-
21 cense, permit, approval, finding, determination, or
22 other administrative decision issued by an agency or
23 any interagency consultation that is required or au-
24 thorized under Federal law in order to construct,
25 modify, or operate a project.”;

1 (3) in paragraph (2) (as so redesignated), by
2 inserting “, or Congress deems by statute,” after
3 “Federal agency has determined”;

4 (4) in paragraph (11) (as so redesignated)—

5 (A) in subparagraph (B)—

6 (i) in clause (iii)—

7 (I) by inserting “grants (includ-
8 ing capitalization grants), cost share
9 awards,” after “loan guarantees,”;

10 (II) by striking “sufficient” and
11 inserting “complete”; and

12 (III) by striking “subsequent use
13 of such financial assistance or the”;

14 (ii) by redesignating clauses (iv)
15 through (vii) as clauses (vi) through (ix),
16 respectively; and

17 (iii) by inserting after clause (iii) the
18 following:

19 “(iv) farm ownership loans and oper-
20 ating loan guarantees by the Farm Service
21 Agency pursuant to sections 305 and 311
22 through 319 of the Consolidated Farm and
23 Rural Development Act;

24 “(v) the issuance of an authorization
25 by an agency where the effects of the ac-

1 tion or project being permitted or author-
2 ized were previously evaluated by another
3 agency in compliance with this Act;” and
4 (B) by adding at the end the following:

5 “(C) ADDITIONAL EXCLUSIONS.—An agen-
6 cy action may not be determined to be a major
7 Federal action solely on the basis of the provi-
8 sion of Federal funds, including a grant, loan,
9 loan guarantee, and funding assistance.”; and
10 (5) by adding at the end the following:

11 “(15) REASONABLY FORESEEABLE.—The term
12 ‘reasonably foreseeable’, with respect to environ-
13 mental effects of a proposed agency action—

14 “(A) means effects that share a reasonably
15 close causal relationship to, and are proximately
16 caused by, the immediate project or action
17 under consideration; and

18 “(B) does not include effects that are—

19 “(i) speculative;

20 “(ii) attenuated from the proposed
21 agency action;

22 “(iii) separate in time or place from
23 the proposed agency action; or

24 “(iv) in relation to separate existing
25 or potential future projects.”.

1 (g) DUTIES.—Section 204 of the National Environ-
2 mental Policy Act of 1969 (42 U.S.C. 4344) is amended
3 in paragraph (4) by inserting “energy,” after “health,”.

4 **SEC. 3. JUDICIAL REVIEW.**

5 Title I of the National Environmental Policy Act of
6 1969 (42 U.S.C. 4331 et seq.) is amended—

7 (1) by redesignating section 112 as section
8 110A and moving such section so as to appear after
9 section 109; and

10 (2) by inserting before section 111 the fol-
11 lowing:

12 **“SEC. 110B. JUDICIAL REVIEW.**

13 “(a) ROLE OF THE COURT.—In reviewing a claim of
14 whether a final agency action complies with the require-
15 ments of this Act, a court—

16 “(1) shall afford substantial deference to the
17 agency; and

18 “(2) may not substitute its judgment for that
19 of the agency regarding the environmental effects in-
20 cluded in the final agency action or included in the
21 environmental document.

22 “(b) REMAND.—

23 “(1) IN GENERAL.—If a court holds, under sec-
24 tion 706(2)(A) of title 5, United States Code, that
25 a final agency action does not comply with the re-

1 quirements of this Act, the only remedy the court
2 may order, notwithstanding chapter 7 of title 5,
3 United States Code, is to remand, without vacatur
4 or injunction, the final agency action to the agency
5 with—

6 “(A) specific instruction to correct the er-
7 rors or deficiencies found by the court; and

8 “(B) a reasonable schedule and deadline to
9 correct such errors or deficiencies, which such
10 deadline may not exceed—

11 “(i) with regard to an order entered
12 on or after the date of enactment of this
13 section, the date that is 180 days after the
14 date on which the order was entered; and

15 “(ii) with regard to an order entered
16 before the date of enactment of this sec-
17 tion, the date that is 180 days after the
18 date of enactment of this section.

19 “(2) CONTINUED EFFECT OF FINAL AGENCY
20 ACTION.—A final agency action remanded under
21 paragraph (1) shall remain in effect while the Fed-
22 eral agency corrects any errors or deficiencies found
23 by the court.

24 “(c) LIMITATIONS ON CLAIMS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law (except as provided in subparagraph
3 (A) with respect to a shorter deadline), a claim de-
4 scribed in subsection (a) shall be barred unless—

5 “(A) such claim is filed not later than 150
6 days after the final agency action is made pub-
7 lic, unless a shorter deadline is specified under
8 law;

9 “(B) in the case of a final agency action
10 for which there was a public comment period on
11 an environmental document, such claim—

12 “(i) is filed by a party that submitted
13 a substantive and unique comment during
14 such public comment period by the noticed
15 comment deadline for the environmental
16 document and such comment was suffi-
17 ciently detailed to put the applicable Fed-
18 eral agency on notice of the issue upon
19 which the party seeks review; and

20 “(ii) concerns the same subject matter
21 raised in the comment submitted during
22 the public comment period;

23 “(C) such claim is filed by a party that has
24 suffered or imminently will suffer direct harm
25 from the final agency action; and

1 “(D) such claim does not challenge the es-
2 tablishment of a categorical exclusion.

3 “(2) SUPPLEMENTAL ENVIRONMENTAL DOCU-
4 MENTS.—If an agency issues a supplemental envi-
5 ronmental document in response to a court order re-
6 manding a final agency action, the deadline de-
7 scribed in paragraph (1)(A) shall be the date on
8 which the agency makes public the agency action for
9 which the supplemental environmental document is
10 prepared. A claim for review of such final agency ac-
11 tion shall be limited to information contained in the
12 final supplemental environmental document that was
13 not contained in a previous environmental document
14 for the final agency action.

15 “(3) ACTIONS FOR USE OF TRIBAL TRUST RE-
16 SOURCES.—For any final agency action that author-
17 izes or affects the use of lands, minerals, or other
18 resources held in trust by the United States for the
19 benefit of a federally recognized Indian Tribe—

20 “(A) except as provided in subparagraph
21 (B), there shall be no administrative or judicial
22 review of such final agency action based on a
23 claim of failure to comply with the requirements
24 of this Act; and

1 “(B) subparagraph (A) shall not apply to
2 actions for administrative or judicial review—

3 “(i) brought by the federally recog-
4 nized Indian Tribe for which the United
5 States holds the lands, minerals, or other
6 resources in trust; or

7 “(ii) that involve reasonably foresee-
8 able effects of the final agency action that
9 occur outside the lands, minerals, or other
10 resources held in trust by the United
11 States for the benefit of a federally recog-
12 nized Indian Tribe.

13 “(d) DEADLINE FOR RESOLUTION.—

14 “(1) IN GENERAL.—A court shall issue a final
15 judgment on a claim described in subsection (a)—

16 “(A) as expeditiously as practicable; and

17 “(B) unless a shorter deadline is specified
18 under Federal law, not later than the date that
19 is 180 days after the date on which the agency
20 record for the review is filed with the reviewing
21 court, which shall not be more than 60 days
22 after the filing of the claim.

23 “(2) ACCELERATED DEADLINES.—Nothing in
24 this subsection may be construed to prevent a court

1 from further expediting review of a claim described
2 in subsection (a).

3 “(3) APPEALS.—

4 “(A) FILING.—A notice of appeal of a
5 final judgment described in this subsection shall
6 be filed not later than 60 days after such final
7 judgment is issued. In the case of a final agen-
8 cy action remanded under subsection (b), the
9 agency and, if applicable, the applicant, shall
10 have the right to appeal during the pendency of
11 the remand.

12 “(B) DEADLINE FOR REVIEW.—A court
13 shall issue a final decision on an appeal filed
14 under subparagraph (A)—

15 “(i) as expeditiously as practicable;
16 and

17 “(ii) not later than the date that is
18 180 days after the date on which the ap-
19 peal is filed.

20 “(e) NO EFFECT ON REVIEW OF COMPLIANCE WITH
21 OTHER DEADLINES.—This section shall not affect the
22 right to obtain review under section 107(g)(3).”.

