

113TH CONGRESS
2^D SESSION

H. R. 5077

To amend the Federal Water Pollution Control Act to provide guidance and clarification regarding issuing new and renewal permits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2014

Mrs. CAPITO introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to provide guidance and clarification regarding issuing new and renewal permits, 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 “Coal Jobs Protection
5 Act of 2014”.

1 **SEC. 2. NATIONAL POLLUTANT DISCHARGE ELIMINATION**
2 **SYSTEM.**

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

6 “(s) **APPLICABILITY OF GUIDANCE.**—

7 “(1) **DEFINITIONS.**—In this subsection:

8 “(A) **GUIDANCE.**—

9 “(i) **IN GENERAL.**—The term ‘guid-
10 ance’ means draft, interim, or final guid-
11 ance issued by the Administrator.

12 “(ii) **INCLUSIONS.**—The term ‘guid-
13 ance’ includes—

14 “(I) the interim guidance memo-
15 randum issued by the Administrator
16 on April 1, 2010, entitled ‘Detailed
17 Guidance: Improving EPA Review of
18 Appalachian Surface Coal Mining Op-
19 erations under the Clean Water Act,
20 National Environmental Policy Act,
21 and the Environmental Justice Execu-
22 tive Order’;

23 “(II) the proposed guidance de-
24 scribed in the notice of availability
25 and request for comments entitled
26 ‘EPA and Army Corps of Engineers

1 Guidance Regarding Identification of
2 Waters Protected by the Clean Water
3 Act’ (76 Fed. Reg. 24479 (May 2,
4 2011));

5 “(III) the final guidance memo-
6 randum issued by the Administrator
7 on July 21, 2011, entitled ‘Improving
8 EPA Review of Appalachian Surface
9 Coal Mining Operations Under the
10 Clean Water Act, National Environ-
11 mental Policy Act, and the Environ-
12 mental Justice Executive Order’;

13 “(IV) the proposed guidance sub-
14 mitted to the Office of Information
15 and Regulatory Affairs of the Office
16 of Management and Budget for regu-
17 latory review under Executive Order
18 12866 entitled ‘Guidance on Identi-
19 fying Waters Protected By the Clean
20 Water Act’ and dated February 17,
21 2012 (referred to as ‘Clean Water
22 Protection Guidance’, Regulatory
23 Identifier Number (RIN) 2040–ZA11,
24 received February 21, 2012);

1 “(V) any successor document to,
2 or any substantially similar guidance
3 based in whole or in part on, any of
4 the foregoing guidance documents;
5 and

6 “(VI) any other document or
7 paper proposed or issued by the Ad-
8 ministrator through any process other
9 than the notice and comment rule-
10 making process.

11 “(B) NEW PERMIT.—The term ‘new per-
12 mit’ means a permit covering discharges from a
13 point source—

14 “(i) that is issued under this section
15 by a permitting authority; and

16 “(ii) for which an application is—

17 “(I) pending as of the date of en-
18 actment of this subsection; or

19 “(II) filed on or after the date of
20 enactment of this subsection.

21 “(C) PERMITTING AUTHORITY.—The term
22 ‘permitting authority’ means—

23 “(i) the Administrator; or

24 “(ii) a State, acting pursuant to a
25 permit program under subsection (b).

1 “(2) PERMITS.—

2 “(A) IN GENERAL.—Notwithstanding any
3 other provision of law, in making a determina-
4 tion whether to approve a new permit or a re-
5 newed permit, the permitting authority—

6 “(i) shall base the determination only
7 on compliance with regulations issued by
8 the Administrator or the permitting au-
9 thority; and

10 “(ii) shall not base the determination
11 on the extent of adherence of the applicant
12 for the new permit or renewed permit to
13 guidance.

14 “(B) NEW PERMITS.—If the permitting
15 authority does not approve or deny an applica-
16 tion for a new permit by the date that is 270
17 days after the date of receipt of a substantially
18 complete application for the new permit, the ap-
19 plicant may discharge as if the application were
20 approved in accordance with Federal law for
21 the period of time for which a similar permit
22 would be approved.

23 “(C) SUBSTANTIAL COMPLETENESS.—In
24 determining whether an application for a new
25 permit or a renewed permit received under this

1 paragraph is substantially complete, the permit-
2 ting authority shall use standards for deter-
3 mining substantial completeness of similar per-
4 mits for similar facilities submitted in fiscal
5 year 2007.”.

6 (b) STATE PERMIT PROGRAMS.—

7 (1) IN GENERAL.—Section 402 of the Federal
8 Water Pollution Control Act (33 U.S.C. 1342) is
9 amended by striking subsection (b) and inserting the
10 following:

11 “(b) STATE PERMIT PROGRAMS.—

12 “(1) IN GENERAL.—At any time after the pro-
13 mulgation of the guidelines required by section
14 304(i)(2), the Governor of each State desiring to ad-
15 minister a permit program for discharges into navi-
16 gable waters within the jurisdiction of the State may
17 submit to the Administrator—

18 “(A) a full and complete description of the
19 program the State proposes to establish and ad-
20 minister under State law or under an interstate
21 compact; and

22 “(B) a statement from the attorney gen-
23 eral (or the attorney for those State water pol-
24 lution control agencies that have independent
25 legal counsel), or from the chief legal officer in

1 the case of an interstate agency, that the laws
2 of the State, or the interstate compact, as ap-
3 plicable, provide adequate authority to carry out
4 the described program.

5 “(2) APPROVAL.—The Administrator shall ap-
6 prove each program for which a description is sub-
7 mitted under paragraph (1) unless the Adminis-
8 trator determines that adequate authority does not
9 exist—

10 “(A) to issue permits that—

11 “(i) apply, and ensure compliance
12 with, any applicable requirements of sec-
13 tions 301, 302, 306, 307, and 403;

14 “(ii) are for fixed terms not exceeding
15 5 years;

16 “(iii) can be terminated or modified
17 for cause, including—

18 “(I) a violation of any condition
19 of the permit;

20 “(II) obtaining a permit by mis-
21 representation or failure to disclose
22 fully all relevant facts; and

23 “(III) a change in any condition
24 that requires either a temporary or

1 permanent reduction or elimination of
2 the permitted discharge; and

3 “(iv) control the disposal of pollutants
4 into wells;

5 “(B)(i) to issue permits that apply, and
6 ensure compliance with, all applicable require-
7 ments of section 308; or

8 “(ii) to inspect, monitor, enter, and require
9 reports to at least the same extent as required
10 in section 308;

11 “(C) to ensure that the public, and any
12 other State the waters of which may be af-
13 fected, receives notice of each application for a
14 permit and an opportunity for a public hearing
15 before a ruling on each application;

16 “(D) to ensure that the Administrator re-
17 ceives notice and a copy of each application for
18 a permit;

19 “(E) to ensure that any State (other than
20 the permitting State), the waters of which may
21 be affected by the issuance of a permit may
22 submit written recommendations to the permit-
23 ting State and the Administrator with respect
24 to any permit application and, if any part of
25 the written recommendations are not accepted

1 by the permitting State, that the permitting
2 State will notify the affected State and the Ad-
3 ministrator in writing of the failure of the per-
4 mitting State to accept the recommendations,
5 including the reasons for not accepting the rec-
6 ommendations;

7 “(F) to ensure that no permit will be
8 issued if, in the judgment of the Secretary of
9 the Army acting through the Chief of Engi-
10 neers, after consultation with the Secretary of
11 the department in which the Coast Guard is op-
12 erating, anchorage and navigation of any of the
13 navigable waters would be substantially im-
14 paired by the issuance of the permit;

15 “(G) to abate violations of the permit or
16 the permit program, including civil and criminal
17 penalties and other means of enforcement;

18 “(H) to ensure that any permit for a dis-
19 charge from a publicly owned treatment works
20 includes conditions to require the identification
21 in terms of character and volume of pollutants
22 of any significant source introducing pollutants
23 subject to pretreatment standards under section
24 307(b) into the treatment works and a program
25 to ensure compliance with those pretreatment

1 standards by each source, in addition to ade-
2 quate notice, which shall include information on
3 the quality and quantity of effluent to be intro-
4 duced into the treatment works and any antici-
5 pated impact of the change in the quantity or
6 quality of effluent to be discharged from the
7 publicly owned treatment works, to the permit-
8 ting agency of—

9 “(i) new introductions into the treat-
10 ment works of pollutants from any source
11 that would be a new source as defined in
12 section 306 if the source were discharging
13 pollutants;

14 “(ii) new introductions of pollutants
15 into the treatment works from a source
16 that would be subject to section 301 if the
17 source were discharging those pollutants;
18 or

19 “(iii) a substantial change in volume
20 or character of pollutants being introduced
21 into the treatment works by a source intro-
22 ducing pollutants into the treatment works
23 at the time of issuance of the permit; and

1 “(I) to ensure that any industrial user of
2 any publicly owned treatment works will comply
3 with sections 204(b), 307, and 308.”.

4 (2) CONFORMING AMENDMENTS.—

5 (A) FEDERAL ENFORCEMENT.—Section
6 309 of the Federal Water Pollution Control Act
7 (33 U.S.C. 1319) is amended—

8 (i) in subsection (c)—

9 (I) in paragraph (1)(A), by strik-
10 ing “402(b)(8)” and inserting
11 “402(b)(2)(H)”; and

12 (II) in paragraph (2)(A), by
13 striking “402(b)(8)” and inserting
14 “402(b)(2)(H)”; and

15 (ii) in subsection (d), in the first sen-
16 tence, by striking “402(b)(8)” and insert-
17 ing “402(b)(2)(H)”.

18 (B) ADDITIONAL PRETREATMENT.—Sec-
19 tion 402(m) of the Federal Water Pollution
20 Control Act (33 U.S.C. 1342(m)) is amended in
21 the first sentence by striking “subsection (b)(8)
22 of this section” and inserting “subsection
23 (b)(2)(H)”.

1 **SEC. 3. PERMITS FOR DREDGED OR FILL MATERIAL.**

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

5 (1) by striking “(a) The Secretary may issue”
6 and inserting the following:

7 “(a) PERMITS.—

8 “(1) IN GENERAL.—The Secretary may issue”;
9 and

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

11 “(2) DEADLINE FOR APPROVAL.—

12 “(A) PERMIT APPLICATIONS.—

13 “(i) IN GENERAL.—Except as pro-
14 vided in clause (ii), if an environmental as-
15 sessment or environmental impact state-
16 ment, as appropriate, is required under the
17 National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.), the Sec-
19 retary shall—

20 “(I) ensure that the environ-
21 mental review process begins not later
22 than 90 days after the date on which
23 the Secretary receives a permit appli-
24 cation; and

1 “(II) approve or deny an applica-
2 tion for a permit under this sub-
3 section not later than—

4 “(aa) if an agency carries
5 out an environmental assessment
6 that leads to a finding of no sig-
7 nificant impact, the date on
8 which the finding of no signifi-
9 cant impact is issued; or

10 “(bb) if an agency carries
11 out an environmental assessment
12 that leads to a record of decision,
13 15 days after the date on which
14 the record of decision on the en-
15 vironmental impact statement is
16 issued.

17 “(ii) PROCESSES.—Notwithstanding
18 clause (i), regardless of whether the Sec-
19 retary has commenced an environmental
20 assessment or environmental impact state-
21 ment by the date described in clause (i)(I),
22 the following deadlines shall apply:

23 “(I) An environmental assess-
24 ment carried out under the National
25 Environmental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) shall be com-
2 pleted not later than 1 year after the
3 deadline for commencing the environ-
4 mental review process under clause
5 (i)(I).

6 “(II) An environmental impact
7 statement carried out under the Na-
8 tional Environmental Policy Act of
9 1969 (42 U.S.C. 4321 et seq.) shall
10 be completed not later than 2 years
11 after the deadline for commencing the
12 environmental review process under
13 clause (i)(I).

14 “(B) FAILURE TO ACT.—If the Secretary
15 fails to act by the deadline specified in clause
16 (i) or (ii) of subparagraph (A)—

17 “(i) the application, and the permit
18 requested in the application, shall be con-
19 sidered to be approved;

20 “(ii) the Secretary shall issue a permit
21 to the applicant; and

22 “(iii) the permit shall not be subject
23 to judicial review.”.

1 (b) STATE PERMITTING PROGRAMS.—Section 404(c)
2 of the Federal Water Pollution Control Act (33 U.S.C.
3 1344(c)) is amended—

4 (1) by striking “(c)” and inserting “(c)(1)”;
5 and

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

7 “(2) Paragraph (1) shall not apply to any permit if
8 the State in which the discharge originates or will origi-
9 nate does not concur with the Administrator’s determina-
10 tion that the discharge will result in an unacceptable ad-
11 verse effect as described in paragraph (1).”.

12 (c) STATE PROGRAMS.—The first sentence of section
13 404(g)(1) of such Act (33 U.S.C. 1344(g)(1)) is amended
14 by striking “for the discharge” and inserting “for some
15 or all of the discharges”.

16 (d) DEADLINE FOR AGENCY COMMENTS.—Section
17 404 of such Act (33 U.S.C. 1344) is amended—

18 (1) in subsection (m) by striking “ninetieth
19 day” and inserting “30th day (or the 60th day if ad-
20 ditional time is requested)”; and

21 (2) in subsection (q)—

22 (A) by striking “(q)” and inserting
23 “(q)(1)”; and

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

1 els used by the Administrator to carry out this
2 subsection.

3 (3) AVAILABILITY OF INFORMATION.—With re-
4 spect to any covered action, the Administrator
5 shall—

6 (A) post the analysis under paragraph (1)
7 as a link on the main page of the public Inter-
8 net Web site of the Environmental Protection
9 Agency; and

10 (B) request that the Governor of any State
11 experiencing more than a de minimis negative
12 impact post such analysis in the Capitol of such
13 State.

14 (b) PUBLIC HEARINGS.—

15 (1) IN GENERAL.—If the Administrator con-
16 cludes under subsection (a)(1) that a covered action
17 will have more than a de minimis negative impact on
18 employment levels or economic activity in a State,
19 the Administrator shall hold a public hearing in the
20 State at least 30 days prior to the effective date of
21 the covered action.

22 (2) TIME, LOCATION, AND SELECTION.—A pub-
23 lic hearing required under paragraph (1) shall be
24 held at a convenient time and location for impacted
25 residents. In selecting a location for such a public

1 hearing, the Administrator shall give priority to loca-
2 tions in the State that will experience the greatest
3 number of job losses.

4 (c) NOTIFICATION.—If the Administrator concludes
5 under subsection (a)(1) that a covered action will have
6 more than a de minimis negative impact on employment
7 levels or economic activity in a State, the Administrator
8 shall give notice of such impact to the State’s congres-
9 sional delegation, Governor, and legislature at least 45
10 days before the effective date of the covered action.

11 (d) DEFINITIONS.—In this section, the following defi-
12 nitions apply:

13 (1) ADMINISTRATOR.—The term “Adminis-
14 trator” means the Administrator of the Environ-
15 mental Protection Agency.

16 (2) COVERED ACTION.—The term “covered ac-
17 tion” means any of the following actions taken by
18 the Administrator under the Federal Water Pollu-
19 tion Control Act (33 U.S.C. 1201 et seq.):

20 (A) Issuing a regulation, policy statement,
21 guidance, response to a petition, or other re-
22 quirement.

23 (B) Implementing a new or substantially
24 altered program.

1 (3) MORE THAN A DE MINIMIS NEGATIVE IM-
2 PACT.—The term “more than a de minimis negative
3 impact” means either of the following:

4 (A) With respect to employment levels, a
5 loss of more than 100 jobs. Any offsetting job
6 gains that result from the hypothetical creation
7 of new jobs through new technologies or govern-
8 ment employment may not be used in the job
9 loss calculation.

10 (B) With respect to economic activity, a
11 decrease in economic activity of more than
12 \$1,000,000 over any calendar year. Any offset-
13 ting economic activity that results from the hy-
14 pothetical creation of new economic activity
15 through new technologies or government em-
16 ployment may not be used in the economic ac-
17 tivity calculation.

18 **SEC. 5. STATE AUTHORITY TO IDENTIFY WATERS WITHIN**
19 **ITS BOUNDARIES.**

20 Section 303 of the Federal Water Pollution Control
21 Act (33 U.S.C. 1313) is amended by striking subsection
22 (d)(2) and inserting the following:

23 “(2)(A) Each State shall submit to the Administrator
24 from time to time, with the first such submission not later
25 than 180 days after the date of publication of the first

1 identification of pollutants under section 304(a)(2)(D),
2 the waters identified and the loads established under para-
3 graphs (1)(A), (1)(B), (1)(C), and (1)(D) of this sub-
4 section. The Administrator shall approve the State identi-
5 fication and load or announce his disagreement with the
6 State identification and load not later than 30 days after
7 the date of submission, and if—

8 “(i) the Administrator approves the identifica-
9 tion and load submitted by the State in accordance
10 with this subsection, such State shall incorporate
11 them into its current plan under subsection (e); and

12 “(ii) the Administrator announces his disagree-
13 ment with the identification and load submitted by
14 the State in accordance with this subsection, the Ad-
15 ministrator shall submit, not later than 30 days
16 after the date on which such announcement is made,
17 to the State his written recommendation of those ad-
18 ditional waters that he identifies and such loads for
19 such waters as he believes are necessary to imple-
20 ment the water quality standards applicable to such
21 waters.

22 “(B) Upon receipt of the Administrator’s rec-
23 ommendation the State shall within 30 days either—

1 “(i) disregard the Administrator’s recommenda-
2 tion in full and incorporate its own identification
3 and load into its current plan under subsection (e);

4 “(ii) accept the Administrator’s recommenda-
5 tion in full and incorporate its identification and
6 load as amended by the Administrator’s rec-
7 ommendation into its current plan under subsection
8 (e); or

9 “(iii) accept the Administrator’s recommenda-
10 tion in part, identifying certain additional waters
11 and certain additional loads proposed by the Admin-
12 istrator to be added to such State’s identification
13 and load and incorporate such State’s identification
14 and load as amended into its current plan under
15 subsection (e).

16 “(C)(i) If the Administrator fails to either approve
17 the State identification and load or announce his disagree-
18 ment with the State identification and load within the time
19 specified in this subsection, then such State’s identifica-
20 tion and load is deemed approved and such State shall
21 incorporate the identification and load that it submitted
22 into its current plan under subsection (e).

23 “(ii) If the Administrator announces his disagree-
24 ment with the State identification and load but fails to
25 submit his written recommendation to the State within 30

1 days as required by subparagraph (A)(ii) then such
2 State’s identification and load is deemed approved and
3 such State shall incorporate the identification and load
4 that it submitted into its current plan under subsection
5 (e).

6 “(D) This paragraph shall apply to any decision
7 made by the Administrator under this subsection issued
8 on or after March 1, 2013.”.

9 **SEC. 6. DEFINITION OF FILL MATERIAL.**

10 Section 502 of the Federal Water Pollution Control
11 Act (33 U.S.C. 1362) is amended by adding at the end
12 the following:

13 “(27) FILL MATERIAL.—

14 “(A) IN GENERAL.—The term ‘fill mate-
15 rial’ means any material placed in waters of the
16 United States where the material has the effect
17 of—

18 “(i) replacing any portion of a water
19 of the United States with dry land; or

20 “(ii) changing the bottom elevation of
21 any portion of a water of the United
22 States.

23 “(B) INCLUSIONS.—The term ‘fill mate-
24 rial’ includes—

25 “(i) rock;

- 1 “(ii) sand;
2 “(iii) soil;
3 “(iv) clay;
4 “(v) plastics;
5 “(vi) construction debris;
6 “(vii) wood chips;
7 “(viii) overburden from mining or
8 other excavation activities; and
9 “(ix) materials used to create any
10 structure or infrastructure in the waters of
11 the United States.

12 “(C) EXCLUSIONS.—The term ‘fill mate-
13 rial’ does not apply to trash or garbage.”.

14 **SEC. 7. APPLICABILITY OF AMENDMENTS.**

15 Except as otherwise specifically provided, the amend-
16 ments made by this Act shall apply to actions taken on
17 or after the date of enactment of this Act, including ac-
18 tions taken with respect to permit applications pending,
19 or revised or new standards in the process of being pro-
20 mulgated, on such date of enactment.

○