

112TH CONGRESS  
2D SESSION

# S. 3558

To amend the Federal Water Pollution Control Act to preserve the authority of each State to make determinations relating to the State's water quality standards, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2012

Mr. MANCHIN (for himself and Mr. TOOMEY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Federal Water Pollution Control Act to preserve the authority of each State to make determinations relating to the State's water quality standards, 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 "Clean Water Coopera-  
5 tive Federalism Act of 2011".

1 **SEC. 2. STATE WATER QUALITY STANDARDS.**

2 (a) STATE WATER QUALITY STANDARDS.—Section  
3 303(c)(4) of the Federal Water Pollution Control Act (33  
4 U.S.C. 1313(c)(4)) is amended—

5 (1) by redesignating subparagraphs (A) and  
6 (B) as clauses (i) and (ii), respectively;

7 (2) by striking “(4)” and inserting “(4)(A)”;

8 (3) by striking “The Administrator shall pro-  
9 mulgate” and inserting the following:

10 “(B) The Administrator shall promulgate”; and

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

12 “(C) Notwithstanding subparagraph (A)(ii), the Ad-  
13 ministrator may not promulgate a revised or new standard  
14 for a pollutant in any case in which the State has sub-  
15 mitted to the Administrator and the Administrator has ap-  
16 proved a water quality standard for that pollutant, unless  
17 the State concurs with the Administrator’s determination  
18 that the revised or new standard is necessary to meet the  
19 requirements of this Act.”.

20 (b) FEDERAL LICENSES AND PERMITS.—Section  
21 401(a) of such Act (33 U.S.C. 1341(a)) is amended by  
22 adding at the end the following:

23 “(7) With respect to any discharge, if a State or  
24 interstate agency having jurisdiction over the navigable  
25 waters at the point where the discharge originates or will  
26 originate determines under paragraph (1) that the dis-

1 charge will comply with the applicable provisions of sec-  
2 tions 301, 302, 303, 306, and 307, the Administrator may  
3 not take any action to supersede the determination.”.

4 (c) STATE NPDES PERMIT PROGRAMS.—Section  
5 402(c) of such Act (42 U.S.C. 1342(c)) is amended by  
6 adding at the end the following:

7 “(5) LIMITATION ON AUTHORITY OF ADMINIS-  
8 TRATOR TO WITHDRAW APPROVAL OF STATE PRO-  
9 GRAMS.—The Administrator may not withdraw ap-  
10 proval of a State program under paragraph (3) or  
11 (4), or limit Federal financial assistance for the  
12 State program, on the basis that the Administrator  
13 disagrees with the State regarding—

14 “(A) the implementation of any water  
15 quality standard that has been adopted by the  
16 State and approved by the Administrator under  
17 section 303(c); or

18 “(B) the implementation of any Federal  
19 guidance that directs the interpretation of the  
20 State’s water quality standards.”.

21 (d) LIMITATION ON AUTHORITY OF ADMINISTRATOR  
22 TO OBJECT TO INDIVIDUAL PERMITS.—Section 402(d) of  
23 such Act (33 U.S.C. 1342(d)) is amended by adding at  
24 the end the following:

1 “(5) The Administrator may not object under para-  
 2 graph (2) to the issuance of a permit by a State on the  
 3 basis of—

4 “(A) the Administrator’s interpretation of a  
 5 water quality standard that has been adopted by the  
 6 State and approved by the Administrator under sec-  
 7 tion 303(c); or

8 “(B) the implementation of any Federal guid-  
 9 ance that directs the interpretation of the State’s  
 10 water quality standards.”.

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

12 (a) **AUTHORITY OF EPA ADMINISTRATOR.**—Section  
 13 404(c) of the Federal Water Pollution Control Act (33  
 14 U.S.C. 1344(c)) is amended—

15 (1) by striking “(c)” and inserting “(c)(1)”;  
 16 and

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

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

23 (b) **STATE PERMIT PROGRAMS.**—The first sentence  
 24 of section 404(g)(1) of such Act (33 U.S.C. 1344(g)(1))  
 25 is amended by striking “The Governor of any State desir-

1 ing to administer its own individual and general permit  
2 program for the discharge” and inserting “The Governor  
3 of any State desiring to administer its own individual and  
4 general permit program for some or all of the discharges”.

5 **SEC. 4. DEADLINES FOR AGENCY COMMENTS.**

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

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

11 (2) in subsection (q)—

12 (A) by striking “(q)” and inserting  
13 “(q)(1)”; and

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

15 “(2) The Administrator and the head of a depart-  
16 ment or agency referred to in paragraph (1) shall each  
17 submit any comments with respect to an application for  
18 a permit under subsection (a) or (e) not later than the  
19 30th day (or the 60th day if additional time is requested)  
20 after the date of receipt of an application for a permit  
21 under that subsection.”.

22 **SEC. 5. APPLICABILITY OF AMENDMENTS.**

23 The amendments made by this Act shall apply to ac-  
24 tions taken on or after the date of enactment of this Act,  
25 including actions taken with respect to permit applications

1 that are pending or revised or new standards that are  
2 being promulgated as of such date of enactment.

3 **SEC. 6. REPORTING ON HARMFUL POLLUTANTS.**

4 Not later than 1 year after the date of enactment  
5 of this Act, and annually thereafter, the Administrator of  
6 the Environmental Protection Agency shall submit to Con-  
7 gress a report on any increase or reduction in waterborne  
8 pathogenic microorganisms (including protozoa, viruses,  
9 bacteria, and parasites), toxic chemicals, or toxic metals  
10 (such as lead and mercury) in waters regulated by a State  
11 under the provisions of this Act, including the amend-  
12 ments made by this Act.

13 **SEC. 7. PIPELINES CROSSING STREAMBEDS.**

14 None of the provisions of this Act, including the  
15 amendments made by this Act, shall be construed to limit  
16 the authority of the Administrator of the Environmental  
17 Protection Agency, as in effect on the day before the date  
18 of enactment of this Act, to regulate a pipeline that  
19 crosses a streambed.

20 **SEC. 8. IMPACTS OF EPA REGULATORY ACTIVITY ON EM-**  
21 **PLOYMENT AND ECONOMIC ACTIVITY.**

22 (a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOY-  
23 MENT AND ECONOMIC ACTIVITY.—

24 (1) ANALYSIS.—Before taking a covered action,  
25 the Administrator shall analyze the impact,

1 disaggregated by State, of the covered action on em-  
2 ployment levels and economic activity, including esti-  
3 mated job losses and decreased economic activity.

4 (2) ECONOMIC MODELS.—

5 (A) IN GENERAL.—In carrying out para-  
6 graph (1), the Administrator shall utilize the  
7 best available economic models.

8 (B) ANNUAL GAO REPORT.—Not later  
9 than December 31st of each year, the Comp-  
10 troller General of the United States shall sub-  
11 mit to Congress a report on the economic mod-  
12 els used by the Administrator to carry out this  
13 subsection.

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

17 (A) post the analysis under paragraph (1)  
18 as a link on the main page of the public Inter-  
19 net Web site of the Environmental Protection  
20 Agency; and

21 (B) request that the Governor of any State  
22 experiencing more than a de minimis negative  
23 impact post such analysis in the Capitol of such  
24 State.

25 (b) PUBLIC HEARINGS.—

1           (1) IN GENERAL.—If the Administrator con-  
2           cludes under subsection (a)(1) that a covered action  
3           will have more than a de minimis negative impact on  
4           employment levels or economic activity in a State,  
5           the Administrator shall hold a public hearing in each  
6           such State at least 30 days prior to the effective  
7           date of the covered action.

8           (2) TIME, LOCATION, AND SELECTION.—A pub-  
9           lic hearing required under paragraph (1) shall be  
10          held at a convenient time and location for impacted  
11          residents. In selecting a location for such a public  
12          hearing, the Administrator shall give priority to loca-  
13          tions in the State that will experience the greatest  
14          number of job losses.

15          (c) NOTIFICATION.—If the Administrator concludes  
16          under subsection (a)(1) that a covered action will have  
17          more than a de minimis negative impact on employment  
18          levels or economic activity in any State, the Administrator  
19          shall give notice of such impact to the State’s Congres-  
20          sional delegation, Governor, and Legislature at least 45  
21          days before the effective date of the covered action.

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



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

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

8                   (A) Issuing a regulation, policy statement,  
9                   guidance, response to a petition, or other re-  
10                  quirement.

11                  (B) Implementing a new or substantially  
12                  altered program.

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

16                   (A) With respect to employment levels, a  
17                   loss of more than 100 jobs. Any offsetting job  
18                   gains that result from the hypothetical creation  
19                   of new jobs through new technologies or govern-  
20                   ment employment may not be used in the job  
21                   loss calculation.

22                   (B) With respect to economic activity, a  
23                   decrease in economic activity of more than  
24                   \$1,000,000 over any calendar year. Any offset-  
25                   ting economic activity that results from the hy-

1           pothetical creation of new economic activity  
2           through new technologies or government em-  
3           ployment may not be used in the economic ac-  
4           tivity calculation.

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