112TH CONGRESS
2D SESSION

S. _____

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.

IN THE SENATE OF THE UNITED STATES

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

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Water Cooperative Federalism Act of 2011''.

SEC. 2. STATE WATER QUALITY STANDARDS.

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

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

(2) by striking ''(4)'' and inserting ''(4)(A)'';

(3) by striking ''The Administrator shall promulgate'' and inserting the following:

''(B) The Administrator shall promulgate''; and

(4) by adding at the end the following:

''(C) Notwithstanding subparagraph (A)(ii), the Administrator may not promulgate a revised or new standard for a pollutant in any case in which the State has submitted to the Administrator and the Administrator has approved a water quality standard for that pollutant, unless the State concurs with the Administrator's determination that the revised or new standard is necessary to meet the requirements of this Act.''.

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

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

charge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307, the Administrator may not take any action to supersede the determination.''.

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

''(5) LIMITATION ON AUTHORITY OF ADMINISTRATOR TO WITHDRAW APPROVAL OF STATE PROGRAMS.—The Administrator may not withdraw approval of a State program under paragraph (3) or (4), or limit Federal financial assistance for the State program, on the basis that the Administrator disagrees with the State regarding—

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

''(B) the implementation of any Federal guidance that directs the interpretation of the State's water quality standards.''.

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

''(5) The Administrator may not object under paragraph (2) to the issuance of a permit by a State on the basis of—

''(A) the Administrator's interpretation of a water quality standard that has been adopted by the State and approved by the Administrator under section 303(c); or

''(B) the implementation of any Federal guidance that directs the interpretation of the State's water quality standards.''.

SEC. 3. PERMITS FOR DREDGED OR FILL MATERIAL.

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

(1) by striking ''(c)'' and inserting ''(c)(1)''; and

(2) by adding at the end the following:

''(2) Paragraph (1) shall not apply to any permit if the State in which the discharge originates or will originate does not concur with the Administrator's determination that the discharge will result in an unacceptable adverse effect as described in paragraph (1).''.

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

ing to administer its own individual and general permit program for the discharge'' and inserting ''The Governor of any State desiring to administer its own individual and general permit program for some or all of the discharges''.

SEC. 4. DEADLINES FOR AGENCY COMMENTS.

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

(1) in subsection (m) by striking ''ninetieth day'' and inserting ''30th day (or the 60th day if additional time is requested)''; and

(2) in subsection (q)—

(A) by striking ''(q)'' and inserting ''(q)(1)''; and

(B) by adding at the end the following:

''(2) The Administrator and the head of a department or agency referred to in paragraph (1) shall each submit any comments with respect to an application for a permit under subsection (a) or (e) not later than the 30th day (or the 60th day if additional time is requested) after the date of receipt of an application for a permit under that subsection.''.

SEC. 5. APPLICABILITY OF AMENDMENTS.

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

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

SEC. 6. REPORTING ON HARMFUL POLLUTANTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administrator of the Environmental Protection Agency shall submit to Congress a report on any increase or reduction in waterborne pathogenic microorganisms (including protozoa, viruses, bacteria, and parasites), toxic chemicals, or toxic metals (such as lead and mercury) in waters regulated by a State under the provisions of this Act, including the amendments made by this Act.

SEC. 7. PIPELINES CROSSING STREAMBEDS.

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

SEC. 8. IMPACTS OF EPA REGULATORY ACTIVITY ON EMPLOYMENT AND ECONOMIC ACTIVITY.

(a) ANALYSIS OF IMPACTS OF ACTIONS ON EMPLOYMENT AND ECONOMIC ACTIVITY.—

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

disaggregated by State, of the covered action on employment levels and economic activity, including estimated job losses and decreased economic activity.

(2) ECONOMIC MODELS.—

(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall utilize the best available economic models.

(B) ANNUAL GAO REPORT.—Not later than December 31st of each year, the Comptroller General of the United States shall submit to Congress a report on the economic models used by the Administrator to carry out this subsection.

(3) AVAILABILITY OF INFORMATION.—With respect to any covered action, the Administrator shall—

(A) post the analysis under paragraph (1) as a link on the main page of the public Internet Web site of the Environmental Protection Agency; and

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

(b) PUBLIC HEARINGS.—

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

(2) TIME, LOCATION, AND SELECTION.—A public hearing required under paragraph (1) shall be held at a convenient time and location for impacted residents. In selecting a location for such a public hearing, the Administrator shall give priority to locations in the State that will experience the greatest number of job losses.

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

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) COVERED ACTION.—The term ''covered action'' means any of the following actions taken by the Administrator under the Federal Water Pollution Control Act (33 U.S.C. 1201 et seq.):

(A) Issuing a regulation, policy statement, guidance, response to a petition, or other requirement.

(B) Implementing a new or substantially altered program.

(3) MORE THAN A DE MINIMIS NEGATIVE IMPACT.—The term ''more than a de minimis negative impact'' means the following:

(A) With respect to employment levels, a loss of more than 100 jobs. Any offsetting job gains that result from the hypothetical creation of new jobs through new technologies or government employment may not be used in the job loss calculation.

(B) With respect to economic activity, a decrease in economic activity of more than $1,000,000 over any calendar year. Any offsetting economic activity that results from the hy-

pothetical creation of new economic activity through new technologies or government employment may not be used in the economic activity calculation.