

109TH CONGRESS
2^D SESSION

S. 4101

To amend the Federal Water Pollution Control Act to provide more effective permitting and enforcement mechanisms for stormwater discharges associated with residential construction activity.

IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2006

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

A BILL

To amend the Federal Water Pollution Control Act to provide more effective permitting and enforcement mechanisms for stormwater discharges associated with residential construction activity.

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 “Stormwater Enforce-
5 ment and Permitting Act of 2006”.

1 **SEC. 2. DEFINITIONS.**

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

5 “(25) **RESIDENTIAL CONSTRUCTION ACTIV-**
6 **ITY.**—The term ‘residential construction activity’
7 means a construction activity associated with the de-
8 velopment and construction of housing of any type
9 (including structures accessory or appurtenant to
10 the housing and any facilities or infrastructure nec-
11 essary to serve the housing).

12 “(26) **OPERATOR.**—The term ‘operator’ means,
13 with respect to a site at which a residential con-
14 struction activity is being or will be carried out, a
15 person (including a governmental entity) that—

16 “(A) has operational control over construc-
17 tion plans and specifications (including the abil-
18 ity to make modifications to those plans and
19 specifications); or

20 “(B) has day-to-day operational control
21 over the construction activity that is necessary
22 to ensure compliance with any applicable permit
23 conditions and other regulatory requirements
24 under this Act.”.

1 **SEC. 3. GREATER SPECIFICITY IN INFORMATION REQUESTS**
 2 **AND OPPORTUNITY FOR CORRECTIVE AC-**
 3 **TION.**

4 (a) INSPECTIONS, MONITORING, AND ENTRY.—Sec-
 5 tion 308(a)(4) of the Federal Water Pollution Control Act
 6 (33 U.S.C. 1318(a)(4)) is amended—

7 (1) in subparagraph (A), by striking “and” at
 8 the end;

9 (2) in subparagraph (B), by striking the period
 10 at the end and inserting “; and”; and

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

12 “(C) for purposes of obtaining information
 13 under subparagraph (A), the Administrator
 14 shall specify each point source for which infor-
 15 mation is sought if the point source is associ-
 16 ated with residential construction activity.”.

17 (b) CORRECTIVE ACTION FOR RESIDENTIAL CON-
 18 STRUCTION SITES.—Section 309 of the Federal Water
 19 Pollution Control Act (33 U.S.C. 1319) is amended by
 20 adding at the end the following:

21 “(h) CORRECTIVE ACTION FOR RESIDENTIAL CON-
 22 STRUCTION SITES.—

23 “(1) CORRECTIVE ACTION.—

24 “(A) IN GENERAL.—Except as provided in
 25 subparagraph (B), in the course of an inspec-
 26 tion of a site at which a residential construction

1 activity is being or will be carried out, or based
2 on information obtained relating to such a site,
3 under section 308(a), if the Administrator or
4 an authorized representative of the Adminis-
5 trator discovers any violation of a permit condi-
6 tion relating to the site that may be rectified by
7 modifying, revising, or supplementing records
8 or paperwork, the Administrator or representa-
9 tive shall provide the operator with written noti-
10 fication of the basis for the violation, including
11 specific measures to achieve compliance and a
12 reasonable opportunity to correct any identified
13 violation, before the exercise of any authority
14 under this section.

15 “(B) EXCEPTIONS.—An opportunity de-
16 scribed in subparagraph (A) shall not be pro-
17 vided to—

18 “(i) the operator of any residential
19 construction site that was required, and
20 subsequently failed, to obtain coverage
21 under a permit issued under section
22 402(a); or

23 “(ii) a record or paperwork violation
24 that resulted in a violation of a water qual-
25 ity standard adopted under section 303.

1 “(2) SUBSEQUENT VIOLATION.—If the Admin-
2 istrator or an authorized representative of the Ad-
3 ministrator subsequently inspects or requests infor-
4 mation regarding a residential construction site for
5 which an opportunity for corrective action was pro-
6 vided under paragraph (1)(A) and discovers a viola-
7 tion of the same permit condition that was corrected
8 under paragraph (1)(A) or for which an opportunity
9 to correct was provided, the operator of the site shall
10 not be provided a further opportunity to correct the
11 violation under this subsection before initiation of an
12 enforcement action.

13 “(3) LIMITATION ON AUTHORITY OF ADMINIS-
14 TRATOR.—If during any subsequent inspection, an
15 operator of a residential construction site is found to
16 not be in compliance after receiving a notification,
17 consultation, and order to comply from the Adminis-
18 trator in accordance with paragraph (1)(A), the Ad-
19 ministrator may exercise any authority under this
20 section with respect to the operator and construction
21 site.”.

22 (c) LIMITATION ON ACTIONS DURING OPPORTUNITY
23 TO CORRECT.—Section 309(g)(6) of the Federal Water
24 Pollution Control Act (33 U.S.C. 1319(g)(6)) is amended
25 by striking subparagraph (A) and inserting the following:

1 “(A) LIMITATION ON ACTIONS UNDER
2 OTHER SECTIONS.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), action taken by the Ad-
5 ministrator or the Secretary, as the case
6 may be, under this subsection shall not af-
7 fect or limit the authority of the Adminis-
8 trator or Secretary to enforce any provi-
9 sion of this Act.

10 “(ii) EXCEPTIONS.—A violation shall
11 not be the subject of a civil penalty action
12 under subsection (d), section 311(b), or
13 section 505 if—

14 “(I) the Administrator or the
15 Secretary has commenced and is dili-
16 gently prosecuting an enforcement ac-
17 tion under this subsection with re-
18 spect to the violation;

19 “(II) a State has commenced and
20 is diligently prosecuting an enforce-
21 ment action under a State law com-
22 parable to this subsection with respect
23 to the violation;

24 “(III) the Administrator, the
25 Secretary, or the State has issued a

1 final order with respect to the viola-
 2 tion that is not subject to further ju-
 3 dicial review and the violator has paid
 4 a penalty assessed under this sub-
 5 section, or such comparable State law,
 6 as the case may be; or

7 “(IV) the Administrator or an
 8 authorized representative of the Ad-
 9 ministrator has provided the operator
 10 of a residential construction site an
 11 opportunity to correct the violation
 12 under subsection (h).”.

13 **SEC. 4. PAPERWORK LIMITATIONS FOR RESIDENTIAL CON-**
 14 **STRUCTION SITES.**

15 Section 402(l) of the Federal Water Pollution Control
 16 Act (33 U.S.C. 1342(l)) is amended by adding at the end
 17 the following:

18 “(3) STORMWATER RUNOFF FROM RESIDEN-
 19 TIAL CONSTRUCTION SITES.—

20 “(A) IN GENERAL.—The Administrator
 21 shall neither require a permit, nor directly or
 22 indirectly require any State to require a permit,
 23 under this section for stormwater runoff from
 24 any site at which a residential construction ac-
 25 tivity is being or will be carried out if—

1 “(i)(I) the runoff enters a municipal
2 separate storm sewer system that is cov-
3 ered by a permit to which subsection (p)
4 applies; and

5 “(II) the operator of the site is in
6 compliance with requirements imposed by
7 the permittee for the system to control
8 stormwater runoff; or

9 “(ii) the site, during the period of the
10 residential construction activity, has mini-
11 mal potential for soil erosion caused by
12 rainfall or overland flow because of soil
13 type, geology, quantity and force of pre-
14 cipitation, and other conditions as cal-
15 culated in accordance with subparagraph
16 (B).

17 “(B) MINIMAL POTENTIAL FOR SOIL ERO-
18 SION.—For the purpose of this paragraph, a
19 residential construction site shall be considered
20 to have minimal potential for soil erosion if the
21 erosivity factor for the site during the period of
22 residential construction activity is less than 5,
23 as calculated based on the latest version of the
24 revised universal soil loss equation developed by
25 the Department of Agriculture.”.

1 **SEC. 5. FEDERAL ENFORCEMENT; NOTIFICATION TO POINT**
 2 **SOURCE OPERATORS AT RESIDENTIAL CON-**
 3 **STRUCTION SITE.**

4 (a) FEDERAL ENFORCEMENT.—Section 402(p) of
 5 the Federal Water Pollution Control Act (33 U.S.C.
 6 1342(p)) is amended by adding at the end the following:

7 “(7) FEDERAL ENFORCEMENT OF STATE PER-
 8 MITS AUTHORIZING STORMWATER DISCHARGES
 9 FROM RESIDENTIAL CONSTRUCTION ACTIVITY.—

10 “(A) GOVERNING STATE PERMIT AND REG-
 11 ULATIONS.—With respect to a permit issued by
 12 a State under a program approved under sub-
 13 section (b) and authorizing a stormwater dis-
 14 charge from a site at which a residential con-
 15 struction activity is being or will be carried out,
 16 the exercise by the Administrator of authority
 17 under section 309 shall be—

18 “(i) in coordination with the State
 19 that issued the applicable permit to be en-
 20 forced; and

21 “(ii) limited to enforcement of—

22 “(I) the terms and conditions of
 23 the permit and any implementing reg-
 24 ulations promulgated by the State;
 25 and

1 “(II) any enforcement policy,
2 protocol, or practice adopted or imple-
3 mented by the State.

4 “(B) NO EFFECT ON AUTHORITY.—

5 “(i) IN GENERAL.—Nothing in this
6 section affects any authority of the Admin-
7 istrator under section 308, including the
8 authority to inspect and enter a site at
9 which a residential construction activity is
10 being or will be carried out, or otherwise
11 investigate a potential violation of a permit
12 issued under subsection (b).

13 “(ii) VIOLATION OF PERMIT.—Viola-
14 tion of a permit authorizing a stormwater
15 discharge from a site described in clause
16 (i) based on information obtained by the
17 Administrator under section 308 may re-
18 sult in the exercise of any authority of the
19 Administrator under section 309.

20 “(C) LIMITATION ON TRANSFERS TO
21 STATES.—If, as a result of any action brought
22 under section 309, the Administrator receives
23 or is awarded a fine or penalty for violation of
24 a permit issued under this section by a State
25 for a site on which a residential construction

1 activity is being or will be carried out and for
2 which the exercise of authority under section
3 309 was in accordance with subparagraph (A),
4 and if the State that issued the permit does not
5 participate in the action, the Administrator may
6 not transfer, disburse, allocate, or otherwise pay
7 all or any part of the fine or penalty to the
8 State.”.

9 (b) NOTIFICATION TO POINT SOURCE OPERATORS AT
10 RESIDENTIAL CONSTRUCTION SITES.—Section 402(p) of
11 the Federal Water Pollution Control Act (33 U.S.C.
12 1342(p)) (as amended by subsection (a)) is amended by
13 adding at the end the following:

14 “(8) NOTIFICATION OF PERMIT REQUIREMENTS
15 FOR STORMWATER DISCHARGES FROM RESIDENTIAL
16 CONSTRUCTION SITES.—

17 “(A) STORMWATER INFORMATIONAL PAM-
18 PHLET PROGRAM.—Not later than 180 days
19 after the date of enactment of this paragraph,
20 the Administrator shall establish, by regulation,
21 a program that will provide for development,
22 and distribution to operators of residential con-
23 struction sites, of an informational pamphlet.

24 “(B) PAMPHLET CONTENTS.—Under the
25 program, operators of residential construction

1 sites shall receive an informational pamphlet
2 that—

3 “(i) explains, at a minimum, permit-
4 ting requirements under this section for
5 stormwater discharges from a site at which
6 a residential construction activity is being
7 or will be carried out, including—

8 “(I) the permitting requirements
9 of subsections (a) and (b) and this
10 subsection and any applicable regula-
11 tions promulgated to carry out this
12 section; and

13 “(II) fines and penalties that
14 may arise from violations of those re-
15 quirements; and

16 “(ii) includes contact information for
17 appropriate permitting authorities.

18 “(C) DEADLINE FOR PAMPHLET DEVELOP-
19 MENT.—Under the program—

20 “(i) a pamphlet shall be developed for
21 distribution not later than 180 days after
22 the date of promulgation of the regulations
23 establishing the program;

1 “(ii) operators of residential construc-
2 tion sites shall be informed of the avail-
3 ability of the pamphlets; and

4 “(iii) a pamphlet shall be given to an
5 operator of a residential construction site
6 at the earliest appropriate point in the
7 process under which the operator is seek-
8 ing approval from a local government to
9 carry out a residential construction activ-
10 ity.

11 “(D) CONSULTATION.—The Administrator
12 shall consult with State and interstate water
13 pollution control administrators and other af-
14 fected interests in establishing the program.”.

15 **SEC. 6. GENERAL PERMITS.**

16 Section 402 of the Federal Water Pollution Control
17 Act (33 U.S.C. 1342) is amended by adding at the end
18 the following:

19 “(r) GENERAL PERMITS ON A STATE, REGIONAL, OR
20 NATIONWIDE BASIS.—

21 “(1) IN GENERAL.—In carrying out responsibil-
22 ities and functions of the Administrator or a State
23 under a program approved under subsection (b) re-
24 lating to the discharge of pollutants under this sec-
25 tion, the Administrator or the State may issue a

1 general permit on a State, regional, or nationwide
2 basis to cover any category of discharges, sludge use,
3 disposal practices, or facilities.

4 “(2) GENERAL PERMIT TERM.—No general per-
5 mit issued under this section shall be for a period
6 of more than 5 years beginning on the date of
7 issuance of the general permit.

8 “(3) NOTICE.—Before issuing a general permit
9 under this section, the Administrator or a State
10 shall provide to the public notice and opportunity to
11 comment on the general permit for a period of not
12 less than 45 days.

13 “(4) REVIEW NOT REQUIRED.—The Adminis-
14 trator or a State shall not be required to specifically
15 review, approve, or provide notice and an oppor-
16 tunity for a public hearing and comment on any ap-
17 plication for a discharge under a general permit
18 issued under this section.

19 “(5) EFFECTIVE PERIOD FOR PREEXISTING
20 GENERAL PERMITS.—Any general permit issued
21 under this section by the Administrator or a State
22 before the date of enactment of this subsection shall
23 remain in effect under the terms and conditions in

1 effect on the date of issuance of the general per-
2 mit.”.

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