

112TH CONGRESS  
1ST SESSION

# S. 468

To amend the Federal Water Pollution Control Act to clarify the authority of the Administrator to disapprove specifications of disposal sites for the discharge of, dredged or fill material, and to clarify the procedure under which a higher review of specifications may be requested.

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## IN THE SENATE OF THE UNITED STATES

MARCH 3, 2011

Mr. MCCONNELL (for himself, Mr. PAUL, and Mr. INHOFE) 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 clarify the authority of the Administrator to disapprove specifications of disposal sites for the discharge of, dredged or fill material, and to clarify the procedure under which a higher review of specifications may be requested.

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 “Mining Jobs Protection  
5 Act”.

1 **SEC. 2. PERMITS FOR DREDGED OR FILL MATERIAL.**

2 Section 404 of the Federal Water Pollution Control  
3 Act (33 U.S.C. 1344) is amended by striking subsection  
4 (c) and inserting the following:

5 “(c) **AUTHORITY OF ADMINISTRATOR TO DIS-**  
6 **APPROVE SPECIFICATIONS.—**

7 “(1) **IN GENERAL.—**The Administrator, in ac-  
8 cordance with this subsection, may prohibit the spec-  
9 ification of any defined area as a disposal site, and  
10 may deny or restrict the use of any defined area for  
11 specification as a disposal site, in any case in which  
12 the Administrator determines, after notice and op-  
13 portunity for public hearings and consultation with  
14 the Secretary, that the discharge of those materials  
15 into the area will have an unacceptable adverse ef-  
16 fect on—

17 “(A) municipal water supplies;

18 “(B) shellfish beds and fishery areas (in-  
19 cluding spawning and breeding areas);

20 “(C) wildlife; or

21 “(D) recreational areas.

22 “(2) **DEADLINE FOR ACTION.—**

23 “(A) **IN GENERAL.—**The Administrator  
24 shall—

25 “(i) not later than 30 days after the  
26 date on which the Administrator receives

1 from the Secretary for review a specifica-  
2 tion proposed to be issued under sub-  
3 section (a), provide notice to the Secretary  
4 of, and publish in the Federal Register, a  
5 description of any potential concerns of the  
6 Administrator with respect to the specifica-  
7 tion, including a list of measures required  
8 to fully address those concerns; and

9 “(ii) if the Administrator intends to  
10 disapprove a specification, not later than  
11 60 days after the date on which the Ad-  
12 ministrator receives a proposed specifica-  
13 tion under subsection (a) from the Sec-  
14 retary, provide to the Secretary and the  
15 applicant, and publish in the Federal Reg-  
16 ister, a statement of disapproval of the  
17 specification pursuant to this subsection,  
18 including the reasons for the disapproval.

19 “(B) FAILURE TO ACT.—If the Adminis-  
20 trator fails to take any action or meet any  
21 deadline described in subparagraph (A) with re-  
22 spect to a proposed specification, the Adminis-  
23 trator shall have no further authority under  
24 this subsection to disapprove or prohibit  
25 issuance of the specification.

1 “(3) NO RETROACTIVE DISAPPROVAL.—

2 “(A) IN GENERAL.—The authority of the  
3 Administrator to disapprove or prohibit  
4 issuance of a specification under this sub-  
5 section—

6 “(i) terminates as of the date that is  
7 60 days after the date on which the Ad-  
8 ministrator receives the proposed specifica-  
9 tion from the Secretary for review; and

10 “(ii) shall not be used with respect to  
11 any specification after issuance of the spec-  
12 ification by the Secretary under subsection  
13 (a).

14 “(B) SPECIFICATIONS DISAPPROVED BE-  
15 FORE DATE OF ENACTMENT.—In any case in  
16 which, before the date of enactment of this sub-  
17 paragraph, the Administrator disapproved a  
18 specification under this subsection (as in effect  
19 on the day before the date of enactment of the  
20 Mining Jobs Protection Act) after the specifica-  
21 tion was issued by the Secretary pursuant to  
22 subsection (a)—

23 “(i) the Secretary may—

1                   “(I) reevaluate and reissue the  
2                   specification after making appropriate  
3                   modifications; or

4                   “(II) elect not to reissue the  
5                   specification; and

6                   “(ii) the Administrator shall have no  
7                   further authority to disapprove the modi-  
8                   fied specification or any reissuance of the  
9                   specification.

10                  “(C) FINALITY.—An election by the Sec-  
11                  retary under subparagraph (B)(i) shall con-  
12                  stitute final agency action.

13                  “(4) APPLICABILITY.—Except as provided in  
14                  paragraph (3), this subsection applies to each speci-  
15                  fication proposed to be issued under subsection (a)  
16                  that is pending as of, or requested or filed on or  
17                  after, the date of enactment of the Mining Jobs Pro-  
18                  tection Act”.

19 **SEC. 3. REVIEW OF PERMITS.**

20                  Section 404(q) of the Federal Water Pollution Con-  
21                  trol Act (33 U.S.C. 1344(q)) is amended—

22                  (1) in the first sentence, by striking “(q) Not  
23                  later than” and inserting the following:

24                  “(q) AGREEMENTS; HIGHER REVIEW OF PERMITS.—

25                  “(1) AGREEMENTS.—

1 “(A) IN GENERAL.—Not later than”;

2 (2) in the second sentence, by striking “Such  
3 agreements” and inserting the following:

4 “(B) DEADLINE.—Agreements described  
5 in subparagraph (A)”;

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

7 “(2) HIGHER REVIEW OF PERMITS.—

8 “(A) IN GENERAL.—Subject to subpara-  
9 graph (C), before the Administrator or the head  
10 of another Federal agency requests that a per-  
11 mit proposed to be issued under this section re-  
12 ceive a higher level of review by the Secretary,  
13 the Administrator or other head shall—

14 “(i) consult with the head of the State  
15 agency having jurisdiction over aquatic re-  
16 sources in each State in which activities  
17 under the requested permit would be car-  
18 ried out; and

19 “(ii) obtain official consent from the  
20 State agency (or, in the case of multiple  
21 States in which activities under the re-  
22 quested permit would be carried out, from  
23 each State agency) to designate areas cov-  
24 ered or affected by the proposed permit as  
25 aquatic resources of national importance.

1           “(B) FAILURE TO OBTAIN CONSENT.—If  
2           the Administrator or the head of another Fed-  
3           eral agency does not obtain State consent de-  
4           scribed in subparagraph (A) with respect to a  
5           permit proposed to be issued under this section,  
6           the Administrator or Federal agency may not  
7           proceed in seeking higher review of the permit.

8           “(C) LIMITATION ON ELEVATIONS.—The  
9           Administrator or the head of another Federal  
10          agency may request that a permit proposed to  
11          be issued under this section receive a higher  
12          level of review by the Secretary not more than  
13          once per permit.

14          “(D) EFFECTIVE DATE.—This paragraph  
15          applies to permits for which applications are  
16          submitted under this section on or after Janu-  
17          ary 1, 2010.”.

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