

116TH CONGRESS
2D SESSION

S. 4402

To amend the Federal Water Pollution Control Act to clarify certain activities that would have been authorized under Nationwide Permit 12 and other Nationwide Permits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2020

Mr. CORNYN (for himself, Mr. BARRASSO, Mrs. CAPITO, Mr. CRAMER, Mr. CRUZ, Mr. DAINES, Mr. HOEVEN, Mr. INHOFE, Mr. LANKFORD, Ms. MURKOWSKI, and Mr. TILLIS) 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 clarify certain activities that would have been authorized under Nationwide Permit 12 and other Nationwide 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. ACTIVITIES UNDER NATIONWIDE PERMIT 12**
4 **AND OTHER NATIONWIDE PERMITS.**

5 Section 404(e) of the Federal Water Pollution Con-
6 trol Act (33 U.S.C. 1344(e)) is amended by adding at the
7 end the following:

1 “(3) AUTHORIZED ACTIVITIES.—

2 “(A) IN GENERAL.—Subject to subpara-
3 graph (B) and notwithstanding the consultation
4 requirements under section 7 of the Endan-
5 gered Species Act of 1973 (16 U.S.C. 1536),
6 each activity authorized by the Secretary under
7 the Nationwide Permits, as reissued in the final
8 rule of the Secretary entitled ‘Issuance and
9 Reissuance of Nationwide Permits’ (82 Fed.
10 Reg. 1860 (January 6, 2017)), and any subse-
11 quent reissuances of the Nationwide Permits,
12 shall be considered authorized if—

13 “(i) the Secretary and the non-Fed-
14 eral applicant seeking to carry out the ac-
15 tivity comply with all other applicable Na-
16 tionwide Permit requirements; and

17 “(ii) for activities for which the sub-
18 mission of a pre-construction notification is
19 required pursuant to general condition 18,
20 as described in the final rule or any subse-
21 quent reissuance of the Nationwide Per-
22 mits, the Secretary—

23 “(I) makes a written determina-
24 tion that the activity will have no ef-
25 fect on—

1 “(aa) a species listed as a
2 threatened species or an endan-
3 gered species under section 4 of
4 that Act (16 U.S.C. 1533); or

5 “(bb) land designated as a
6 critical habitat under that Act
7 (16 U.S.C. 1531 et seq.); or

8 “(II) documents that the Sec-
9 retary relied on and incorporated all
10 applicable species- and activity-specific
11 conditions and measures determined
12 to be appropriate by the Secretary
13 from any consultation carried out
14 under section 7 of that Act (16
15 U.S.C. 1536).

16 “(B) TERMINATION.—The authority pro-
17 vided under this paragraph terminates on
18 March 18, 2026.”.

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