



Legislative Bulletin.....July 13, 2011

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H.R. 2018 — Clean Water Cooperative Federalism Act

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Order of Business: The bill is scheduled to be considered on July 13, 2011 under a structured rule that provides for one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Transportation and Infrastructure. The rule waives all points of order against consideration of the bill. The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. Lastly, the rule the rule provides one motion to recommit with or without instructions.

Summary: H.R. 2018 amends 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. The objective of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The bill transfers authority from the Environmental Protection Agency (EPA) to the states to allow the states to make its on determinations to their water quality. In order to transfer authority the legislation implements the following prohibitions on the EPA:

- The bill prohibits the EPA from promulgating a revised or new standard for a pollutant in any case in which the state has submitted to the EPA and the EPA has approved a water quality standard for that pollutant, unless the state concurs with the EPA's determination that the revised or new standard is necessary to meet the requirements of this Act.
- The bill prohibits the EPA from taking action to supersede a state's determination that a discharge will comply with effluent limitations, water quality standards, controls on the discharge of pollutants, and toxic and pretreatment effluent standards under such Act. The bill also prohibits the EPA from superseding any state or interstate agency determination related to water discharge resulting from construction or operation of facilities, if the state or agency determines that the discharge would comply with the Clean Water Act at the point it originates.

- The bill prohibits the EPA from withdrawing approval of a state program under the National Pollution Discharge Elimination System (NPDES), limiting federal financial assistance for a state NPDES program, or objecting to the issuance of a NPDES permit by a state on the basis that the EPA disagrees with the state regarding the implementation of an approved water quality standard or the implementation of any federal guidance that directs the interpretation of such standard. The bill also prohibits the EPA from objecting to individual water discharge permits issued by a state based on an EPA interpretation of an approved water quality standard adopted by a state, or on the implementation of any federal guidance that directs the interpretation of the state standard.
- The bill prohibits EPA from vetoing a permitting decision by the Army Corp of Engineers involving the specification of any defined area as a disposal site for the discharge of dredged or fill material into navigable waters. It also prohibits the EPA from denying or restricting the use of such area as a disposal site in a permit if the state where the discharge originates does not concur with the EPA's determination that the discharge will result in an unacceptable adverse effect on municipal water supplies, shellfish beds, and fishery areas.

In addition, H.R. 2018 shortens the period in which the Director of the United States Fish and Wildlife Service must submit comments with respect to a general dredge and fill permit application. Current law allows for 90 days, and this bill will require the Administrator and other agencies to submit comments on an application for a general permit or a permit to discharge into navigable waters at specified disposal sites within 30 days (or 60 days if additional time is requested) after the date of receipt of such application. Lastly, the bill applies to actions taken on or after the date of enactment, including actions taken with respect to permit applications that are pending or revised or new standards that are being promulgated.

Background: The goal of the Federal Water Pollution Control Act or Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Congress intended the states and EPA to serve as co-regulators in implementing the CWA as a federal-state partnership. According to the committee report, “the EPA has abandoned its proper role of approving state programs and ensuring that the standards that states adopt meet the minimum requirements of the CWA. Instead, EPA has decided to get involved in the implementation of state standards, and in second-guessing states with respect to how standards are to be implemented and even second-guessing EPA's own prior determinations that a state standard meets the minimum requirements of the CWA.” As result of this second guessing and insertion into the states’ and the Corps’ standards and permitting decisions, the EPA has disturbed the balance between the federal and state partnership.

Committee Action: H.R. 2018 was introduced on May 26, 2011, and referred to the House the Committee on Transportation and Infrastructure. The Committee on Transportation and Infrastructure amended H.R 2018 and favorably reported the legislation to the House on July 8, 2011.

Administration Position: According to the SAP, “the Administration strongly opposes H.R. 2018 because it would significantly undermine the Clean Water Act (CWA) and could adversely affect public health, the economy, and the environment.”

Cost to Taxpayers: According to CBO, “currently, the EPA usually spends more than \$2 billion each year on activities related to the CWA (including grants to states). However, many of the activities that would be precluded under H.R. 2018 occur infrequently under current law and have not accounted for a significant fraction of the annual resources devoted to implementing the CWA. Therefore, CBO estimates that enacting this legislation would not have a significant impact on EPA's budget to implement the CWA.”

Does the Bill Expand the Size and Scope of the Federal Government?: No, H.R. 2018 reduces the federal government’s control over the state’s authority to regulate water pollution.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: According to CBO, “H.R. 2018 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: H.R. 2018 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

Constitutional Authority: According to Representative Mica’s statement on constitutional authority, “Congress has the power to enact this legislation pursuant to the following: Article I, Section 8 of the United States Constitution, specifically Clause 3 (related to regulation of Commerce among the several States).”

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