

115TH CONGRESS
2D SESSION

S. _____

To amend the Federal Water Pollution Control Act to clarify when the Administrator of the Environmental Protection Agency has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, as a disposal site under section 404 of that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CAPITO (for herself, Mr. BARRASSO, Mr. BOOZMAN, and Mr. INHOFE) 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 clarify when the Administrator of the Environmental Protection Agency has the authority to prohibit the specification of a defined area, or deny or restrict the use of a defined area for specification, as a disposal site under section 404 of that Act, 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. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Certainty
5 Act of 2018”.

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

2 (a) IN GENERAL.—Section 404(c) of the Federal
3 Water Pollution Control Act (33 U.S.C. 1344(c)) is
4 amended—

5 (1) by striking subsection (c) and inserting the
6 following:

7 “(c) AUTHORIZATION TO PROHIBIT SPECIFICATION
8 OF DEFINED AREA.—

9 “(1) IN GENERAL.—In accordance with this
10 subsection, the Administrator may—

11 “(A) prohibit the specification (including
12 the withdrawal of specification) of any defined
13 area as a disposal site; and

14 “(B) deny or restrict the use of any de-
15 fined area for specification (including the with-
16 drawal of specification) as a disposal site.

17 “(2) DETERMINATION BY ADMINISTRATOR.—
18 Before carrying out any action under paragraph (1),
19 the Administrator shall—

20 “(A) provide notice and an opportunity for
21 a public hearing on the action; and

22 “(B) determine, in consultation with the
23 Secretary, that the discharge of a material into
24 a defined area will have an unacceptable ad-
25 verse effect on—

26 “(i) a municipal water supply;

1 “(ii) a shellfish bed or fishery area,
2 including a spawning and breeding area;

3 “(iii) wildlife; or

4 “(iv) a recreational area.

5 “(3) PUBLISHING OF FINDINGS.—The Adminis-
6 trator shall make publicly available a written state-
7 ment that provides the findings and reasons for
8 making any determination under this subsection.

9 “(4) TIME PERIOD OF SPECIFICATION.—

10 “(A) IN GENERAL.—The period during
11 which the Administrator may undertake any ac-
12 tion under paragraph (1) shall—

13 “(i) begin on the date that the Sec-
14 retary provides notice to the Administrator
15 that the Secretary has completed all proce-
16 dures for processing an application for a
17 permit under this section relating to the
18 specification and is ready to determine, in
19 accordance with the record and applicable
20 regulations, whether the permit should be
21 issued; and

22 “(ii) end on the date that the Sec-
23 retary issues the permit.

1 “(B) LENGTH OF TIME PERIOD.—The pe-
2 riod described in subparagraph (A) shall consist
3 of not fewer than 30 consecutive days.

4 “(C) PERMIT ISSUED BY SECRETARY.—
5 The Secretary may issue a permit under this
6 section only after the Secretary provides notice
7 to the Administrator in accordance with this
8 paragraph.”.

9 (b) APPLICABILITY.—The amendments made by sub-
10 section (a) shall apply to a permit application submitted
11 under section 404(a) of the Federal Water Pollution Con-
12 trol Act (33 U.S.C. 1344(a)) after the date of enactment
13 of this Act.