117TH CONGRESS
1ST SESSION

S._____

To amend the Federal Water Pollution Control Act to make changes with respect to water quality certification, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BARRASSO (for himself, Mr. DAINES, Mr. CRAMER, Mrs. CAPITO, Mr. TOOMEY, Ms. LUMAIS, 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 make changes with respect to water quality certification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Water Quality Certification Improvement Act of 2021”.

SEC. 2. CERTIFICATION.

Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341) is amended—

(1) in subsection (a)—
(A) in paragraph (1)—

(i) in the first sentence—

(I) by inserting “by the applicant” after “any discharge”; and

(II) by inserting “as a result of the federally licensed or permitted activity” after “into the navigable waters”;

(ii) in the second sentence, by striking “activity” and inserting “discharge”;  

(iii) in the third sentence, by striking “applications” each place it appears and inserting “requests”;  

(iv) in the fifth sentence, by striking “act on” and inserting “grant or deny”; and

(v) by inserting after the fourth sentence the following: “The certifying State, interstate agency, or Administrator shall publish the requirements for certification that meet the applicable provisions of sections 301, 302, 303, 306, and 307. The decision to grant or deny a request shall be based only on the applicable provisions of sections 301, 302, 303, 306, and 307 and
the grounds for a decision shall be set forth in writing to the applicant.";

(B) in paragraph (2)—

(i) in the second sentence—

(I) by striking "such a discharge" and inserting "a discharge made into the navigable waters by the applicant as described in paragraph (1)";

(II) by inserting "receipt of the" before "notice"; and

(III) by striking "of application for such Federal license or permit" and inserting "under the preceding sentence";

(ii) in the third sentence—

(I) by striking "such discharge" and inserting "any discharge made into the navigable waters by the applicant as described in paragraph (1)";

and

(II) by striking "any water quality requirement" and inserting "the applicable provisions of sections 301, 302, 303, 306, and 307";
(iii) in the fifth sentence, by striking "insure compliance with applicable water quality requirements." and inserting "ensure any discharge into the navigable waters by the applicant as described in paragraph (1) will comply with the applicable provisions of sections 301, 302, 303, 306, and 307."; and

(iv) by striking the first sentence and inserting "Not later than 90 days after receipt of a request for certification, the certifying State, interstate agency, or Administrator shall identify in writing all specific additional materials or information that are necessary to make a final decision on a request for certification. On receipt of a request for certification, the certifying State or interstate agency, as applicable, shall immediately notify the Administrator of the request."

(C) in paragraph (3)—

(i) in the first sentence, by striking "there will be compliance" and inserting "a discharge made into the navigable
waters by the applicant as described in paragraph (1) will comply”; and

(ii) in the second sentence—

(I) by striking “section” and inserting “the applicable provisions of sections”; and

(II) by striking “or 307 of this Act” and inserting “and 307”;

(D) in paragraph (4)—

(i) in the first sentence, by striking “applicable effluent limitations” and all that follows through the period at the end and inserting “any discharge made by the applicant into the navigable waters as described in paragraph (1) will not violate the applicable provisions of sections 301, 302, 303, 306, and 307.”;

(ii) in the second sentence, by striking “will violate applicable effluent limitations or other limitations or other water quality requirements such Federal” and inserting “will result in a discharge made into the navigable waters by the applicant as described in paragraph (1) that violates the
applicable provisions of sections 301, 302, 303, 306, and 307, the Federal”; and

(iii) in the third sentence—

(I) by striking “such facility or activity” and inserting “a discharge made by the applicant into the navigable waters as described in paragraph (1)”; and

(II) by striking “section 301, 302, 303, 306, or 307 of this Act” and inserting “sections 301, 302, 303, 306, and 307”; and

(E) in paragraph (5)—

(i) by striking “such facility or activity has been operated in” and inserting “any discharge made by the applicant into the navigable waters as described in paragraph (1) is in”; and

(ii) by striking “section 301, 302, 303, 306, or 307 of this Act” and inserting “sections 301, 302, 303, 306, and 307”;

(2) in subsection (d), by striking “assure that any applicant for a Federal license or permit will comply with any applicable” and inserting the fol-
lowing: "ensure that any discharge made by the applicant into the navigable waters as described in subsection (a)(1) shall comply with the applicable provisions of sections 301, 302, 303, 306, and 307. Any limitations or requirements in the preceding sentence shall become a condition on any Federal license or permit subject to the provisions of this section.

"(e) DEFINITION OF APPLICABLE PROVISIONS OF SECTIONS 301, 302, 303, 306, AND 307.—In this section, the term 'aplicable provisions of sections 301, 302, 303, 306, and 307' means, as applicable,”; and

(3) in subsection (e) (as so redesignated)—

(A) by striking “with”;

(B) by striking “other appropriate”; and

(C) by striking “set forth” and all that follows through the period at the end and inserting “implementing water quality criteria under section 303 necessary to support the specified designated use or uses of the receiving navigable water.”.