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HOUSE OF REPRESENTATIVES
REPORT
113–609

# REGULATORY CERTAINTY ACT OF 2014

NOVEMBER 12, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 4854]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4854) 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 such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

| | Page |
|---|---|
| Purpose of the Legislation | 2 |
| Background and Need for the Legislation | 2 |
| Hearings | 5 |
| Legislative History and Consideration | 5 |
| Committee Votes | 6 |
| Committee Oversight Findings | 10 |
| New Budget Authority and Tax Expenditures | 10 |
| Congressional Budget Office Cost Estimate | 10 |
| Performance Goals and Objectives | 11 |
| Advisory of Earmarks | 11 |
| Duplication of Federal Programs | 11 |
| Disclosure of Directed Rulemakings | 11 |
| Federal Mandates Statement | 12 |

49–006

Preemption Clarification ..... 12
Advisory Committee Statement ..... 12
Applicability to the Legislative Branch ..... 12
Section-by-Section Analysis of the Legislation ..... 12
Changes in Existing Law Made by the Bill, as Reported ..... 13

## PURPOSE OF THE LEGISLATION

H.R. 4854, the "Regulatory Certainty Act of 2014," amends the Federal Water Pollution Control Act to provide that the Administrator of the Environmental Protection Agency (EPA) does not have the authority to restrict or deny the use of a particular disposal site under section 404 of such Act before the U.S. Army Corps of Engineers (Corps) has completed its review of a 404 permit application or after the Corps has issued the permit.

## BACKGROUND AND NEED FOR THE LEGISLATION

### THE CLEAN WATER ACT

In 1972, Congress passed the Federal Water Pollution Control Act Amendments of 1972 (commonly known as the "Clean Water Act" or the "CWA"; 33 U.S.C. § 1251 *et seq.*). The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. The primary mechanisms for achieving this objective are the CWA's general prohibition against the discharge of pollutants into jurisdictional waterbodies, and the Act's permitting process for such discharges, either through a National Pollutant Discharge Elimination System (NPDES) permit (*see* CWA § 402), or through a separate permit program, for the discharge of dredged or fill material into jurisdictional waterbodies, including wetlands (*see* CWA § 404).

The U.S. Environmental Protection Agency (EPA) has the basic responsibility for administering and enforcing most of the CWA, including the NPDES permit program, and the U.S. Army Corps of Engineers (Corps) has lead responsibility for administering the dredge or fill (wetlands) permit program under section 404 of the CWA. However, the EPA does have a complementary role in administering section 404, both in the development of environmental guidelines (called the 404(b)(1) guidelines) to provide a means of evaluating whether any discharge of fill is environmentally acceptable, and through its review under section 404(c) (*discussed below*). Under the wetlands permitting program, the Corps has authority to issue dredge or fill permits (usually for a permit term of five years) for the discharge of materials into jurisdictional waterbodies at specified disposal sites. It is unlawful for a facility to discharge dredged or fill materials into a jurisdictional waterbody unless the discharge is authorized by and in compliance with a dredge or fill (section 404) permit issued by the Corps.

### EPA'S PERMIT VETO AUTHORITY UNDER CWA SECTION 404(C)

Even though the Corps has the lead responsibility to implement the CWA's section 404 permit program, the EPA retains residual authority under CWA section 404(c) to oversee, review, and object to the Corps' issuance of section 404 permits for the discharge of dredged or fill material into jurisdictional waters, to ensure that such permitting decisions meet the minimum requirements of the

CWA. Section 404(c) of the CWA confers the EPA authority, under specified procedures, to prevent the Corps from authorizing a particular disposal site:

> "(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection."

(CWA 404(c).)

To exercise this "veto" authority, the EPA must determine, after notice and opportunity for public hearings, that certain unacceptable adverse environmental effects on municipal water supplies, shellfish beds, and fishery areas, wildlife, or recreation areas would result. The EPA also must consult with the Corps and make public its written findings and reasons for any determinations it makes under section 404(c).

In general, once the EPA has approved a Corps section 404 permit, the implementation and interpretation of the permit is left to the Corps. However, according to the U.S. Court of Appeals for the D.C. Circuit, the EPA retains the authority to "prohibit, restrict, or withdraw the specification [of a disposal site under section 404(c)] *'whenever'* [the Administrator of the EPA] makes a determination that the statutory 'unacceptable adverse effect' will result." (*See Mingo Logan Coal Co.* v. *U.S. EPA,* 714 F.3d 608, 613 (D.C. Cir. 2013).)

### EPA REVOCATION OF A SECTION 404 PERMIT

In the *Mingo Logan Coal Co.* case before the D.C. Circuit Court of Appeals, the Mingo Logan Coal Company (Mingo Logan) applied to the Corps for a permit under CWA section 404 to discharge fill material in connection with the Spruce No. 1 surface mine project, located in Logan County, West Virginia. Prior to the issuance of the permit, the project applicant conducted a lengthy environmental review, in which the EPA participated.

In 2007, the Corps issued the section 404 permit to Mingo Logan. While the EPA expressed concerns with the terms of the permit prior to its issuance, the agency did not object to the permit at the time of its issuance. Subsequently, the mine operated pursuant to, and in compliance with, the section 404 permit.

In September 2009, almost two years after the Corps issued the section 404 permit, the EPA requested that the Corps use its discretionary authority to suspend, revoke, or modify the permit that it had issued to Mingo Logan. The Corps rejected the EPA's request, finding no grounds to suspend, revoke, or modify the permit.

In March 2010, the EPA then published a Proposed Determination to prohibit, restrict, or deny the authorized discharges to certain of the waters associated with the Spruce project site, without alleging any violation of the section 404 permit.

In January 2011, the EPA issued a Final Determination to withdraw the discharge authorization, effectively revoking the permit and halting development of the mine. This action to revoke the permit was more than three years after the permit's issuance. The EPA stated that it had the ability under the CWA to initiate a section 404(c) action to retroactively withdraw a discharge site specification in a permit even after permit issuance. (*See* 75 Fed. Reg. 16788, 16790 (Apr. 2, 2010) (EPA Notice of *Proposed Determination To Prohibit, Restrict, or Deny the Specification, or the Use for Specification (Including Withdrawal of Specification), of an Area as a Disposal Site; Spruce No. 1 Surface Mine, Logan County, WV*).)

The permit holder challenged the EPA's revocation of the section 404 permit in federal district court. (See *Mingo Logan Coal Company Inc. v. U.S. EPA*, 850 F.Supp.2d 133 (D.D.C. 2012).) The district court issued an opinion in 2012 that overturned the EPA's retroactive withdrawal of the project's permit discharge site specification. (*See id.*) In April 2013, the U.S. Court of Appeals for the D.C. Circuit reversed the district court, ruling that the EPA had not exceeded its authority. (*See Mingo Logan Coal Co. v. U.S. EPA*, 714 F.3d 608 (D.C. Cir. 2013).) The permit holder then applied to the U.S. Supreme Court to review the case, but in March 2014, the Supreme Court announced it would not review the 2013 Appeals Court decision. (*See Mingo Logan Coal Co. v. U.S. EPA*, No. 13–599 (U.S. Mar 24, 2014) (cert. denied).)

EPA PREEMPTIVE VETO OF A SECTION 404 PERMIT

In January 2014, the EPA released an assessment of the Bristol Bay watershed in southwestern Alaska on how future development, and in particular large scale mining projects, may affect Bristol Bay's salmon fishery and water quality in the region. (*See* Final EPA Report, *An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska* (EPA 910–R–14–001A-C) (A Notice of Availability was published in the Federal Register at 79 Fed. Reg. 3369 (Jan. 21, 2014)).) The assessment questioned the future of salmon habitat should a large scale mine be opened in the region.

As a result of that assessment, the EPA initiated a regulatory process involving a possible mining project of the Pebble deposit, a large ore body in the Bristol Bay watershed in southwest Alaska. This regulatory process could lead to the first-ever "preemptive" section 404(c) "veto" of a development project, even though the mining project developer has yet to apply for a 404 permit. EPA has based its actions to preemptively restrict mining in the region on section 404(c) of the CWA.

In July 2014, the EPA issued a proposal that would place restrictive conditions on mine development in the Bristol Bay region. The EPA proposed to restrict all discharges of dredged or fill material related to mining that would result in specified losses of streams and connected wetlands, lakes, and ponds with documented salmon occurrence, and result in specified streamflow alterations. (*See* EPA, *Proposed Determination to Restrict the Use of an Area as a*

*Disposal Site; Pebble Deposit Area, Southwest Alaska* (A Notice of Availability and Public Hearing was published in the Federal Register at 79 Fed. Reg. 42314 (July 21, 2014)).) The EPA is currently soliciting public comments and holding public hearings on the proposed restrictive conditions, and will make a final determination.

The proposed restrictions, when finalized, would effectively dictate the terms of any mining project in the region—or deny the permitting by the Corps of Engineers of such project—before developers have proposed the project and applied for the permit—in effect "pre-emptively" vetoing such a project.

### LEGISLATION TO CLARIFY WHEN EPA CAN VETO A PROJECT UNDER CWA SECTION 404(c)

The EPA's moves under CWA section 404(c) to "preemptively" veto the prospective project in Alaska, along with the EPA's actions to revoke ("retroactively" veto) parts of the Spruce project's issued permit, both have raised concerns about the lack of finality and certainty of the CWA section 404 permit process, and the effect this lack of certainty could have on future investments in vital infrastructure and other development projects that require 404 permits. The CWA section 404 permit process is critical to a wide range of industries and projects.

In response to the EPA's recent actions to withdraw the discharge authorization for the Spruce project after issuance of the project's permit, and intent to preemptively veto the project in Alaska, the bill's sponsor introduced H.R. 4854 to clarify when the EPA has the authority to restrict or deny the use of a particular disposal site under section 404 of the CWA. The bill provides that the EPA has the authority under section 404(c) to withdraw a project's discharge site specification only after the Corps has completed its review of a 404 permit application and prior to the Corps' issuance of the 404 permit for the project. Under the bill, the EPA does not have the authority to disapprove a section 404 dredge or fill permit for a disposal site before the Corps has completed its review of a 404 permit application or after the Corps has issued the permit.

## HEARINGS

On July 15, 2014, the Subcommittee on Water Resources and Environment held an oversight hearing to receive testimony from representatives of private sector stakeholders and of the legal academic community on the EPA's interpretation of its permit veto authority under section 404 of the CWA.

## LEGISLATIVE HISTORY AND CONSIDERATION

On June 12, 2014, Subcommittee on Water Resources and Environment Chairman Bob Gibbs, along with 13 original co-sponsors, introduced H.R. 4854, the "Regulatory Certainty Act of 2014," to clarify when the Administrator of the EPA has the authority to restrict or deny the use of a particular disposal site under section 404 of the CWA.

On July l6, 2014, the Committee on Transportation and Infrastructure met in open session to consider H.R. 4854, and ordered

the bill reported favorably to the House by a roll call vote with a quorum present. The vote was 33 yeas to 22 nays.

Representative Tim Bishop offered an amendment in Committee. The amendment would extend the time the EPA has to veto a section 404 permit from not fewer than 30 consecutive days to 365 consecutive days or such shorter period as the EPA determines is sufficient to conduct a review of a proposed disposal site. The amendment was defeated by voice vote with a quorum present. Representative Garamendi also offered an amendment in Committee. The amendment would retain authority in EPA to veto a disposal site if substantial new evidence is provided that indicates that the discharge of materials into the disposal site is having an unacceptable adverse effect on municipal water supplies, shellfish beds, fishery areas, wildlife, or recreational areas. The amendment was defeated by a roll call vote with a quorum present. The vote was 31 nays to 24 yeas.

## COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. During consideration of H.R. 4854, two record votes were taken.

The first record vote was taken on an amendment offered in Committee by Representative Garamendi. The Committee disposed of this amendment by record vote as follows:

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
FULL COMMITTEE – ROLL CALL
U.S. HOUSE OF REPRESENTATIVES – 113TH CONGRESS

**Number of Members: (33/27) Quorum: 31 Working Quorum: 20**
**Date: 07/16/2014 Presiding: Chairman Shuster**
**Amendment or matter voted on: H.R. 4854 – Garamendi Amendment**
**Vote: 24-31**

| | Yeas | Nays | Present | | Yeas | Nays | Present |
|---|---|---|---|---|---|---|---|
| Mr. Shuster | | X | | *Mr. Rahall* | | X | |
| Mr. Young | | X | | *Mr. DeFazio* | X | | |
| Mr. Petri | | X | | *Ms. Norton* | X | | |
| Mr. Coble | | | | *Mr. Nadler* | X | | |
| Mr. Duncan | | X | | *Ms. Brown* | X | | |
| Mr. Mica | | X | | *Ms. Johnson* | X | | |
| Mr. LoBiondo | | X | | *Mr. Cummings* | X | | |
| Mr. Miller | | | | *Mr. Larsen* | X | | |
| Mr. Graves | | X | | *Mr. Capuano* | X | | |
| Mrs. Capito | | X | | *Mr. Bishop* | X | | |
| Mrs. Miller | | | | *Mr. Michaud* | X | | |
| Mr. Hunter | | X | | *Mrs. Napolitano* | X | | |
| Mr. Crawford | | X | | *Mr. Lipinski* | X | | |
| Mr. Barletta | | X | | *Mr. Walz* | | | |
| Mr. Farenthold | | X | | *Mr. Cohen* | X | | |
| Dr. Bucshon | | X | | *Mr. Sires* | X | | |
| Mr. Gibbs | | X | | *Ms. Edwards* | X | | |
| Mr. Meehan | | X | | *Mr. Garamendi* | X | | |
| Mr. Hanna | | X | | *Mr. Carson* | X | | |
| Mr. Webster | | | | *Ms. Hahn* | X | | |
| Mr. Southerland | | X | | *Mr. Nolan* | | X | |
| Mr. Denham | | X | | *Mrs. Kirkpatrick* | X | | |
| Mr. Ribble | | X | | *Ms. Titus* | X | | |
| Mr. Massie | | X | | *Mr. Maloney* | X | | |
| Mr. Daines | | X | | *Ms. Esty* | X | | |
| Mr. Rice | | X | | *Ms. Frankel* | X | | |
| Mr. Mullin | | X | | *Mrs. Bustos* | X | | |
| Mr. Williams | | X | | | | | |
| Mr. Meadows | | X | | | | | |
| Mr. Perry | | X | | | | | |
| Mr. Davis | | X | | | | | |
| Mr. Sanford | | X | | | | | |
| Mr. Jolly | | X | | | | | |
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The other record vote was taken on reporting the bill to the House with a favorable recommendation. The bill was reported to the House with a favorable recommendation after a record vote which was disposed of as follows:

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
FULL COMMITTEE – ROLL CALL
U.S. HOUSE OF REPRESENTATIVES – 113TH CONGRESS

**Number of Members: (33/27) Quorum: 31 Working Quorum: 20**
**Date: 07-16-2014 Presiding: Chairman Shuster**
**Amendment or matter voted on: H.R. 4854 Reported**
**Vote: 33-22**

| | Yeas | Nays | Present | | Yeas | Nays | Present |
|---|---|---|---|---|---|---|---|
| Mr. Shuster | X | | | *Mr. Rahall* | X | | |
| Mr. Young | X | | | *Mr. DeFazio* | | X | |
| Mr. Petri | X | | | *Ms. Norton* | | X | |
| Mr. Coble | X | | | *Mr. Nadler* | | X | |
| Mr. Duncan | X | | | *Ms. Brown* | | X | |
| Mr. Mica | X | | | *Ms. Johnson* | | X | |
| Mr. LoBiondo | X | | | *Mr. Cummings* | | X | |
| Mr. Miller | | | | *Mr. Larsen* | | X | |
| Mr. Graves | X | | | *Mr. Capuano* | | X | |
| Mrs. Capito | X | | | *Mr. Bishop* | | X | |
| Mrs. Miller | | | | *Mr. Michaud* | | X | |
| Mr. Hunter | X | | | *Mrs. Napolitano* | | X | |
| Mr. Crawford | X | | | *Mr. Lipinski* | | X | |
| Mr. Barletta | X | | | *Mr. Walz* | | | |
| Mr. Farenthold | X | | | *Mr. Cohen* | | X | |
| Dr. Bucshon | X | | | *Mr. Sires* | | | |
| Mr. Gibbs | X | | | *Ms. Edwards* | | X | |
| Mr. Meehan | X | | | *Mr. Garamendi* | | X | |
| Mr. Hanna | X | | | *Mr. Carson* | | X | |
| Mr. Webster | | | | *Ms. Hahn* | | X | |
| Mr. Southerland | X | | | *Mr. Nolan* | X | | |
| Mr. Denham | X | | | *Mrs. Kirkpatrick* | X | | |
| Mr. Ribble | X | | | *Ms. Titus* | | X | |
| Mr. Massie | X | | | *Mr. Maloney* | | X | |
| Mr. Daines | X | | | *Ms. Esty* | | X | |
| Mr. Rice | X | | | *Ms. Frankel* | | X | |
| Mr. Mullin | X | | | *Mrs. Bustos* | | X | |
| Mr. Williams | X | | | | | | |
| Mr. Meadows | X | | | | | | |
| Mr. Perry | X | | | | | | |
| Mr. Davis | X | | | | | | |
| Mr. Sanford | X | | | | | | |
| Mr. Jolly | X | | | | | | |
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## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 4854 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 5, 2014.*

Hon. BILL SHUSTER,
*Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4854, the Regulatory Certainty Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 4854—Regulatory Certainty Act of 2014*

Section 404 of the Clean Water Act (CWA) established a program to regulate the discharge of dredged or fill material (for example, rock, sand, soil, clay, plastics, construction debris, wood chips, or waste from mining or other excavation activities) into the nation's waters and wetlands. Proposed activities that could result in such discharges are regulated through a permit and review process wherein the U.S. Army Corps of Engineers (Corps) is responsible for making permitting decisions. The Environmental Protection Agency (EPA), under section 404(c) of the CWA, has the authority to restrict, prohibit, deny, or withdraw areas specified in permits before or after the permits are issued by the Corps.

H.R. 4854 would amend the CWA to restrict the time during which EPA may modify those permits. Specifically, H.R. 4854 would require the Corps to issue a notice to EPA that they have completed all procedures for processing an application for a permit; EPA would then have 30 days to revoke or modify the permit.

Under current law, EPA seldom modifies or revokes permits issued by the Corps—since 1972 EPA has used this authority 13 times. Based on information from EPA, CBO expects that a shortened review period as proposed by this legislation would probably not significantly reduce EPA's expenses to review permits. Under the bill, EPA would retain its authorities under section 404(c) of the CWA during the 30-day period following processing of a permit application by the Corps. CBO expects that, for projects posing the most concern for EPA, it is likely that EPA would incur permit review costs whether or not H.R. 4854 is enacted.

Pay-as-you-go procedures do not apply to H.R. 4854 because enacting the bill would not affect direct spending or revenues.

H.R. 4854 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide that the Administrator of the EPA does not have the authority to disapprove a permit before the Corps has completed processing a CWA section 404 permit or after it has been issued by the Corps.

## ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 4854 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that enacting H.R. 4854 does not specifically direct the completion of any specific rulemakings within the meaning of section 551 of title 5, United States Code.

## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104–4).

## PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that H.R. 4854 does not preempt any state, local, or tribal law.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

## APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1).

## SECTION-BY-SECTION ANALYSIS OF LEGISLATION

*Section 1. Short title*

Section 1 of H.R. 4854 designates the title of the bill as the "Regulatory Certainty Act of 2014."

*Section 2. Permits for dredged or fill material*

Section 2 of the bill amends section 404(c) of the CWA to clarify when the EPA has the authority to restrict or deny the use of a particular dredge or fill disposal site under section 404 of the Act.

The period during which the EPA may prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, or deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, is limited to the time period that (i) begins on the date that the Corps provides notice to the EPA that the Corps has completed all procedures for processing an application for a section 404 permit relating to the specification and is ready to determine, in accordance with the record and applicable regulations, whether the permit should be issued; and (ii) ends on the date that the Corps issues the permit. Under the bill, the EPA does not have the authority to disapprove or revoke a permit under CWA section 404(c) before the Corps has completed its review of a section 404 permit application or after the Corps has issued the section 404 permit.

The bill begins the period during which the EPA can "veto" a project when the Corps has completed processing a section 404 permit application and is ready to make a permit issuance determination, to ensure that a project applicant has had a reasonable opportunity to apply for a permit. Starting the clock at this point would help to ensure that the EPA bases its decision of whether to ap-

prove of or "veto" a permit on a complete, project-specific administrative record (including the environmental review) for the project in question. By ending the period during which the EPA can "veto" a project when the Corps issues a permit, the bill aims to ensure that a project applicant can rely on the finality of the issued permit.

To help ensure that the EPA is sufficiently knowledgeable of a project and has adequate time to make a decision of whether to approve of or "veto" a section 404 permit, the bill requires the Corps to give the EPA notice that the Corps has completed all procedures for processing a permit application and is ready to determine whether the permit should be issued. The Corps also is required to ensure that the period the EPA has to make a permit "veto" decision consists of not fewer than 30 consecutive days.

The Corps has the discretion to provide the EPA with more time than the 30 consecutive day minimum provided in the bill. The bill does not mandate a longer minimum period of time in order to minimize delays in issuing section 404 permits.

The bill does not alter the authority of the Corps to issue a section 404 permit, or to modify, suspend, or revoke a section 404 permit should it find a violation of the permit. The bill also does not change the requirements that the EPA must satisfy in order to exercise its "veto" authority under CWA section 404(c).

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by H.R. 4854, as reported, are shown as follows:

## FEDERAL WATER POLLUTION CONTROL ACT

* * * * * * *

## TITLE IV—PERMITS AND LICENSES

* * * * * * *

### PERMITS FOR DREDGED OR FILL MATERIAL

SEC. 404. (a) * * *

* * * * * * *

**[**(c)**]** *(c)(1)* The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, *during the period described in paragraph (2) and* after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

*(2)(A) The period during which the Administrator may prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, or deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, under paragraph (1) shall—*

*(i) begin on the date that the Secretary provides notice to the Administrator that the Secretary has completed all procedures for processing an application for a permit under this section relating to the specification and is ready to determine, in accordance with the record and applicable regulations, whether the permit should be issued; and*

*(ii) end on the date that the Secretary issues the permit.*

*(B) The Secretary shall ensure that the period described in subparagraph (A) consists of not fewer than 30 consecutive days.*

*(C) The Secretary may issue a permit under this section only after the Secretary provides notice to the Administrator in accordance with this paragraph.*

* * * * * * *

## DISSENTING VIEWS

I recognize the difference of opinion among Members of Congress on the activities of Executive branch to protect public health and the environment. Yet, I remain troubled by the all-too-common tone taken by the Republican majority in carrying out its oversight activities of the current administration, especially as it pertains to implementation of the Clean Water Act.

Too often, this Republican majority has elevated the rhetoric surrounding controversial issues over the reality. Take the record surrounding H.R. 4854 as an example.

On the day before the Committee markup of H.R. 4854, the Subcommittee on Water Resources and Environment held a hearing, entitled "EPA's *Expanded Interpretation* of its Permit Authority Veto under the Clean Water Act"—as though the U.S. Environmental Protection Agency has created some new authority by its actions where none previously existed. Similarly, throughout this Committee report to accompany H.R. 4854, there are references to EPA's "first-ever 'preemptive' veto," as well as suggestions that EPA has arbitrarily or capriciously exercised its 404(c) authority.[1]

As the former-Senator of New York, Daniel Patrick Moynihan, once said, "Everyone is entitled to his own opinion, but not his own facts."

Therefore, it is important that we evaluate H.R. 4854 we all use the same set of facts to understand this legislation in its historical context.

Here are the facts.

*Fact number 1*—Congress enacted the Clean Water Act in 1972, and provided the U.S. Army Corps of Engineers and EPA complimentary roles in the implementation of the Federal section 404 permit authority over discharges of dredged or fill material at specified sites in waters of the United States, including the adoption of EPA's 404(c) oversight responsibility.

*Fact number 2*—Since enactment of the Clean Water Act, the Corps has processed, on average, 60,000 section 404 permit actions per year—resulting in over 2.5 million approved permit actions since 1972. During that same period, EPA has exercised its section 404(c) authority a total of 13 times. That is 13 permits in 42 years.

*Fact number 3*—Of the 13 times EPA has previously exercised its 404(c) authority, three of these 404(c) actions were taken *after* a Corps of Engineers permits were already issued—two under Republican administrations, and once under a Democratic administration. An additional 2 404(c) actions were taken in the time period *before*

[1] On September 30, 2014, the United States District Court for the District of Columbia ruled that EPA's *Final Determination of the U.S. Environmental Protection Agency Pursuant to § 404(c) of the Clean Water Act Concerning Spruce No. 1 Mine, Logan County, West Virginia* was "reasonable, supported by the record, and based on considerations within the agency's purview." *See* Mingo Logan Coal Company, Inc v. U.S. EPA, U.S. Dist. Court. Dist. of Columbia (2014) (Civil Action No. 10–0541 (ABJ)).

a Clean Water Act permit was issued by the Corps—both under a Republican administration.

I am enclosing, as part of these dissenting views, the written testimony of Professor Patrick Parenteau, a law professor who testified at the July 15, 2014 hearing on this issue. This testimony summarizes the history and use of the 404(c) authority by both Republican and Democratic administrations over the decades.

As history has shown, the EPA under the leadership of both Republican and Democratic administrations have used its Congressionally-authorized oversight authority over the section 404 program in a limited, and relatively-consistent manner. To characterize the agency's recent actions related to section 404(c) as an "expanded interpretation" is simply not supported by the facts.

It is fair for Members of Congress to have a difference of opinion on how the Corps and EPA have carried out their Clean Water Act responsibilities. However, when we use that difference of opinion to mischaracterize or worse, to demonize, the actions of these agencies, I believe we fail to uphold our larger Congressional responsibilities.

While I recognize that those who projects and industries may have been directly affected by these actions may have a different view, I believe that these groups will have a difficult time in arguing that the Federal agencies have "abused" this authority over the years.

In my view, EPA seems to have exercised its 404(c) authority with restraint, acting only when the activities would have an "unacceptable adverse effect" on the local environment—the test that Congress established for the agencies back in 1972. I do not believe a legitimate case has been made to warrant the changes called for in H.R. 4854.

Accordingly, I respectfully oppose passage of H.R. 4854.

TIM BISHOP,
*Ranking Member,*
*Subcommittee on Water Resources and Environment.*

**Committee of Transportation and Infrastructure**

**Subcommittee on Water Resources and Environment**

**Oversight Hearing**

**"EPA's Expanded Interpretation of Its Permit Authority Veto under the Clean Water Act"**

**July 15 2014**

**Statement of Patrick Parenteau**

**Professor of Law Vermont Law School**

Chairman Gibbs, Representative Bishop and members of the Subcommittee, my name is Patrick Parenteau and I want to start by thanking you for the opportunity to present these views on one of the important tools provided by the Clean Water Act (CWA) to protect the quality, biological integrity, and economic productivity of our nations' waters.

By way of background I have been involved in various ways with the CWA for over forty years. While working at the National Wildlife Federation from 1976-1984 I participated in many of the legislative debates, judicial actions, rulemakings, and other administrative proceedings during the formative stages of the Act's programs including in particular the section 404 permit program that is the subject of today's hearing. During the Reagan Administration I served as Regional Counsel for EPA's New England office and was directly involved in the Attleboro Mall 404 (c) action. Following that I served as Commissioner of the Vermont Department of Environmental Conservation with responsibility for implementing the CWA at the state level. After that I was with the Perkins Coie law firm in Oregon providing advice and representation to business interests on permitting, compliance, enforcement and other regulatory matters. For the past 21 years I have been on the faculty of the Vermont Law School, the top ranked environmental law program in the nation, where I teach the CWA, conduct training programs for judges and practitioners, research and publish articles, write amicus briefs in cases before the Supreme Court and other courts, and frequently give presentations and media interviews on the latest developments under the Act.

There are four points I'd like to share with the subcommittee.

1. <u>EPA has not expanded its interpretation of its authority under section 404 (c)</u>

With respect, I believe the title of this hearing is based on a misunderstanding of how EPA has interpreted and applied its authority under section 404(c) since the beginning. First, the statute grants EPA very broad authority to "prohibit, deny, restrict or withdraw" any "defined area" as a disposal site for dredged or fill material "whenever" the Administrator determines that the discharge of such materials would have an "unacceptable adverse impact" on specified resources such as municipal water supplies, fisheries and wildlife. EPA's regulations have always provided that this authority can be exercised either before or after a permit is issued by the Corps of Engineers. 40 CFR §231.1 states:

> "Under section 404(c), the Administrator may exercise a veto over the specification by the U.S. Army Corps of Engineers or by a state of a site for the discharge of dredged or fill material. The Administrator may also prohibit the specification of a site under section 404(c) with regard to any existing or potential disposal site before a permit application has been submitted to or approved by the Corps or a state."

The regulations further define the terms withdraw, prohibit, and deny as follows

> "(a) Withdraw specification means to remove from designation any area already specified as a disposal site by the U.S. Army Corps of Engineers or by a state which has assumed the section 404 program, or any portion of such area.
>
> (b) Prohibit specification means to prevent the designation of an area as a present or future disposal site.
>
> (c) Deny or restrict the use of any defined area for specification is to deny or restrict the use of any area for the present or future discharge of any dredged or fill material."
>
> 40 CFR §231.2

In its recent decision upholding EPA's use of section 404 (c) authority to veto the permit for the Spruce Mine in West Virginia the DC Circuit stated:

> "Section 404 imposes no temporal limit on the Administrator's authority to withdraw the Corps' specification but instead expressly empowers him to prohibit, restrict or withdraw the specification "whenever" he makes a determination that the statutory "unacceptable adverse effect" will result. Using the expansive conjunction "whenever," the Congress made plain its intent to grant the Administrator authority to prohibit/deny/restrict/withdraw a specification at *any* time. (emphasis original)[1]

[1] Mingo Logan Coal Company v USEPA, 714 F.3d 608, 615 (D.C. Cir. 2013); cert denied, _US_, March 14 2014. The case has been remanded to the District Court for a hearing on the merits of EPA's decision.

In an earlier case involving a challenge to EPA's veto of a permit for a dam in Georgia the court said that EPA may exercise its authority "before a permit is applied for, while the application is pending or after the permit is issued."[2]

With the Supreme Court's denial of certiorari in *Mingo Logan*, it is fair to say that the issue of EPA's authority to exercise the 404 (c) authority whenever the Administrator determines that there will be "unacceptable adverse effects" on the designated resources is settled law. That still leaves important policy questions of whether and how the Administrator should exercise this authority but there can no longer be any doubt that EPA has had this authority since the 1972 CWA amendments and has consistently interpreted the statute as granting that authority since the first regulations were written.

Further, assertions that EPA has "never" used 404 (c) in advance of a permit application are simply wrong. In 1988, during the Reagan administration, EPA used its authority to restrict the designation of three separately owned wetland properties totaling 432 acres in the Everglades as disposal sites in order to protect endangered wildlife including the Florida Panther.[3] Nor is it true that EPA has "never" vetoed a Corps permit after the fact. Also in 1988, in the Russo Development Corporation case, EPA vetoed Corps permits for disposal of fill into the Hackensack Meadowlands of New Jersey. The developer sued and EPA's after the fact veto was upheld by the New Jersey Federal District Court.[4]

What is certainly true is that EPA rarely exercises its 404 (c) authority at all (only thirteen times in over 40 years) and even more rarely does it do so either before permit applications have been filed or after permits have been issued. But to say that it has never done so in the past is factually incorrect and to suggest that it should not have the authority to do so in the future could lead to unnecessary damage to aquatic resources that the CWA is supposed to protect. Forcing EPA to make decisions within artificial time constraints that cannot take account of the unique situations presented by the wide variety of projects that must be evaluated will inevitably lead to less informed decisions that will not serve the purposes of the law or the public good.

2. The 404(c) process is apolitical, science based, and transparent.

Eleven of the thirteen 404 (c) vetoes to date were issued by Republican administrations. President Ronald Reagan holds the record for the largest number of vetoes at seven, more than all of the other administrations combined. Point being this is not a liberal or conservative issue.

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[2] City of Alma v United States, 744 F.Supp.1546, 1588 (S.D. Ga. 1990)
[3] In Re Henry Rem Estate, 53 Federal Register 30093, August 10, 1988. In this case EPA vetoed two permits that had been issued and also acted proactively to restrict any further disposal on the properties.
[4] Russo Development Corp. v. EPA, 20 ELR 20938, 39 (D. N.J. 1990)

This is a tool designed to protect water quality and special places for everybody. Pollution does not respect political affiliation. When drinking water supplies are contaminated, when breeding and spawning habitat is destroyed, when wetlands that nurture wildlife and protect communities from storms and floods are filled, when rivers and lakes used by millions are polluted by poorly designed developments, everyone suffers. The reason that 404 (c) exists is that the prescient framers of the landmark 1972 legislation thought it was important to provide a backstop, a safety net, to ensure that permits to dispose of dredged and fill material, which can encompass everything from plain dirt to toxic mine tailings, did not result in unacceptable impacts on a select list of critical resources. Edmund Muskie, considered by many to be the father of the Clean Water Act and who saw firsthand the environmental degradation that results from poorly regulated industrial discharges to his beloved Androscoggin River, explained why Congress decided to vest EPA rather than the Corps with final authority on 404 permits affecting these special resources:

> "[T]he[Conference] Committee did not believe there could be any justification for permitting the Secretary of the Army to make determination as to the environmental implications of either the site to be selected or the specific soil to be disposed of in a site. Thus the conferees agreed that the Administrator of the Environmental Protection Agency should have the veto power over the selection of the site for dredge spoil disposal and over any specific spoil to be disposed of at any specific site."[5]

With no disrespect to the dedicated professionals in the Corps that administer the 404 permit program, Congress chose EPA to be the final arbiter in those few cases where important resources were at stake and special expertise was required to judge whether the impacts to water quality were "unacceptable." This is inherently a value judgment that must be informed by the best available science through a fair and open process. As the principal agency of the federal government whose mission is to protect the environment Congress wisely chose to vest this important function in EPA. The safety net concept that underlies 404 (c) remains critical in today's world where water resources are under even greater stress from polluted runoff, atmospheric deposition, nutrient enrichment, dead zones, and looming threats of climate change and ocean acidification. Maintaining the resilience of natural systems in the face of these daunting challenges should be of paramount concern to members of Congress.

3. <u>The 404(c) authority has been used judiciously, with extensive public involvement, development of strong science-based administrative records that have withstood every legal challenge, and with positive results for water quality and society as a whole—exactly as Congress intended.</u>

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[5] Congressional Research Service, 93d Cong., "A legislative History of the Water Pollution Control Act Amendments of 1972" (Comm. Print 1973) at 177

There have been 13 actions under 404(c). No two are exactly alike. The cases run the gamut from small commercial developments to major dams and mining operations. I will discuss three that I am most familiar with to illustrate how the process has worked to successfully accomplish the goals of the law.

Attleboro Mall/Sweedens Swamp (1986)

As mentioned I was Regional Counsel for Region One with responsibility for overseeing the legal work on this case. It involved a proposed shopping mall in in Attleboro Massachusetts. The Pyramid Corporation proposed to build the mall in a 50 acre wetland known as Sweedens Swamp. After a long permit process that took over two years the New England District of the Corps proposed to deny the permit but was overruled by HQ and the permit was issued. Region One initiated the veto process which took another year and featured several public hearings, two rounds of public comments, development of an extensive administrative record, meetings with the applicant, consultations with EPA headquarters and many site visits to gather data on the functions and values of the wetland. In the end the decision to veto the permit was based on a combination of the value of the wetland in a watershed that had seen a huge loss of wetland functions and the fact that there were other upland sites available to Pyramid when it first began looking for a place to build the mall. One of the key policy issues raised by the case was whether an applicant for a 404 permit had duty to avoid filling a wetland where there were practicable alternatives available. EPA and the Corps disagreed on the role of avoidance in the permit process. The Corps took the position that applicants could mitigate impacts without going through a practicable alternatives analysis. EPA took the position that avoidance should be the first priority. After three years of litigation the Second Circuit upheld the veto and endorsed EPA's avoidance first rationale.[6] Having lost in court Pyramid did what EPA had recommended all along which was to negotiate a deal with another mall developer who had acquired an alternative upland site that would serve the same market. The upshot is that the mall was built and Sweedens Swamp was saved.

Perhaps the most important outcome of this veto action was what happened afterwards. EPA and the Corps finally resolved their differences through a Memorandum of Understanding setting forth a new "sequencing" approach to mitigation that incorporated the avoidance first principle. In due course this MOU became the full blown Compensatory Wetland Mitigation Rule that we have today.[7]

Two Forks Dam (1989)

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[6] Bersani v Deland, 850 F.2d 36 (2d Cir. 1988)
[7] 40 CFR Part 230

This is one of the more well-known 404 (c) vetoes. It was initiated during the administration of George HW Bush and was personally overseen by Administrator Bill Reilly. Briefly, it involved the proposed construction of a water supply dam in Cheesman Canyon in the headwaters of the South Plate River high in the Rocky Mountains of Colorado. Cheesman was a wilderness canyon with a "gold medal" trout fishery. The dam, as big as Hoover Dam, would flood six towns as well as much of Cheesman Canyon, and would have turned the canyon into a 7,300-acre reservoir, creating the largest lake in Colorado. Reilly cited the fact that the stretch of the South Platte flowing through the canyon was unsurpassed in the West as a natural habitat and recreation area, and that far less expensive and destructive alternatives were available. His prediction ultimately came true as the Denver Water Board (DWB) the primary sponsor of the project, turned to more aggressive water conservation and groundwater management alternatives that addressed the water supply needs of the Denver metropolitan area in a more cost effective and environmentally sound way. In 1990, the DWB served 890,000 people within Denver and its surrounding suburbs. In 1999, it served an additional 95,000 people with the same amount of water. Monte Pascoe, head of the DWB at that time, recalls: "One of the good things about the Two Forks discussions was that it created cooperation. That was when we got the cultural facilities tax passed, and a large number of other cooperative arrangements."[8]

Once again the 404 (c) process led to a change in policy that resulted in more environmentally and economically sound use of water resources.

Yazoo Pumps (2008)

This veto occurred during the George W Bush administration. It involves a flood control project that would have destroyed between 67,000 and 200,000 acres of bottomland hardwood wetlands in the Lower Mississippi River Watershed. Located near the confluence of the Yazoo and Big Sunflower Rivers north of Jackson, Mississippi, the Yazoo Backwater Area contains some of the richest wetland and aquatic resources in the nation, and serves as critical fish and wildlife habitat. After an extensive evaluation, EPA concluded that the project would result in "unacceptable damage to these valuable resources that are used for wildlife, economic, and recreational purposes." The Project would have cost more than $220 million for construction, with an annual operational cost of more than $2 million. The Mississippi Levee Board sued arguing the project was exempt under 404 (r) but the Fifth Circuit disagreed and upheld EPA's veto ruling that the exemption did not apply.[9]

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[8] High Country News, "Water Pressure "Nov. 20, 2000, uploaded 7/12/14 from http://www.hcn.org/issues/191/10100

[9] Board of Mississippi Levee Commissioners v EPA _F3d _ No. 11-60302 (March 6, 2012); http://www.ca5.uscourts.gov/opinions%5Cpub%5C11/11-60302-CV0.wpd.pdf

EPA's veto wasn't heavy-handed, nor did it come out of the blue. EPA engaged in protracted negotiations with the Corps of Engineers over ten years, trying to reach agreement on a less environmentally damaging alternative. Finally in 2008, after inviting comment, holding a local public hearing, informing members of the state's congressional delegation, and consulting one last time with the Corps and local officials, EPA vetoed the Corps' approval of the project. The veto not only saved a priceless complex of unique wetlands generating millions of dollars' worth of ecosystem services each and every year, it also saved the American taxpayer well over $200 million.

EPA has been sued multiple times over the use of its 404(c) veto and it has won every case. This is a remarkable record, almost unheard of in the annals of environmental law, and it speaks to the care with which the agency chooses to exercise this last resort measure and builds administrative records that have been vindicated by the judiciary all the way to the Supreme Court.

4. The controversy over the Pebble Mine 404 (c) action is misdirected at EPA which is proceeding exactly as the law envisions instead of at the project proponents who for whatever reason have failed to follow through on their promises to file a permit application.

In the current controversy over the Pebble Mine in Alaska the charge has been leveled that EPA has launched a "preemptive veto" before an application for a 404 permit has been submitted. Pebble Limited Partnership (PLP) the project proponent has even filed a lawsuit seeking to block EPA from proceeding with its detailed review of the impacts of potential mining scenarios in the Bristol Bay Watershed, one of the most biologically rich fisheries on earth, the source of over half of the world's supply of sockeye salmon, and a vital subsistence, cultural and economic asset for Native Alaskan communities and many others. The suit is groundless and should be dismissed as premature.[10]

First, PLP can file an application for a permit anytime it wants. Instead as pointed out by Senator Murkowski in a letter dated July 1, 2013 PLP has been promising to file an application and mining plan for over eight years.[11] Senator Murkowski notes that "For nearly a decade Alaskans have been told that these actions are imminent. Yet today after years of waiting it is anxiety frustration and confusion that have become the norm in many communities..." There is nothing preventing PLP from filing its application and having the Corps process it at the same time EPA is conducting its 404 (c) review. As mentioned the statute and regulations give EPA

[10] Newport Galleria v Deland, 618 F. Supp. 1179 (D.D.C., 09/25/1985) (The court dismissed Pyramid's attempt to enjoin the 404 (c) veto process on the ground that there was no final agency action.)

[11] http://www.energy.senate.gov/public/index.cfm/2013/7/sen-murkowski-calls-on-pebble-partnership-to-release-mining-plan

the authority to initiate 404 (c) before, during or after the permit process. Indeed the work that EPA is doing will facilitate the ultimate resolution of this matter. Rather than creating uncertainty as PLP is doing through its foot-dragging, EPA is actually working to provide greater certainty about what is and is not acceptable mining in this pristine watershed.

Second, EPA did not act unilaterally here. Alaska Native tribes, Native Corporations, commercial and recreational fisher organizations, and local officials formally petitioned EPA to initiate the 404 (c) process as a way of removing the uncertainty created by PLP's failure to move forward with its proposal. According to Bob Waldrop, executive director of the Bristol Bay Regional Seafood Development Association, "The Bristol Bay fishermen are weary and exasperated by the economic cloud of uncertainty that Pebble brings to our world-class fishery."[12]

Third, EPA has not vetoed anything at this point. In fact EPA is at step one of a four step process that will take many months to complete. EPA has a broad array of options, including "restricting" mining through detailed performance standards governing what kind of mining could take place without doing unacceptable harm to a resource that supports the subsistence and cultural practices of indigenous peoples, a $1 +billion fishery and its 14,000 jobs, and a world class sport fishery. In this process EPA must consider such things as what is the toxicity of the mining wastes from various kinds of ore deposits, where will this material be dumped in relation to where the salmon runs go and what kind of long term monitoring, management and seepage controls will be needed to ensure not future harm once the mining is over. This should be viewed as a positive step to ensure that whatever mining takes place does not jeopardize an irreplaceable natural resource of immense value to Alaskans and the nation as whole.

I also would like to say that it is unfortunate that the committee does not have a witness from the Bristol Bay region, as they are the ones that asked EPA to help protect the waters in their region and they know the most about what is stake there.

Conclusion

Vermonters have a saying: "If it ain't broke don't fix it." Section 404(c) is not broken. It is doing what Congress intended. And so is EPA. Rather than shooting the messenger I would submit that a more productive approach would be to address the merits of each project that falls under the aegis of the 404 permit program and find ways to "maintain and restore the chemical, physical and biological integrity of the nation's waters" in keeping with the common sense objectives of the Clean Water Act.

Thank you.

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[12] Commercial Fishermen for Bristol Bay http://fishermenforbristolbay.org/2014/01/final-epa-bristol-bay-assessment-concludes-pebble-wrong-mine-wrong-place/

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