

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5558

To amend the Federal Water Pollution Control Act to provide more effective permitting and enforcement mechanisms for stormwater discharges associated with residential construction activity.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2006

Mr. DUNCAN (for himself, Mr. YOUNG of Alaska, Mr. MICA, Mr. BAKER, Mr. DEFazio, Mr. GARY G. MILLER of California, Ms. BERKLEY, Mr. SHUSTER, Mr. BOOZMAN, Mr. WESTMORELAND, Mr. BOUSTANY, Mr. PETERSON of Minnesota, Mr. AKIN, Mr. DAVIS of Tennessee, Mr. SCOTT of Georgia, Mr. NEUGEBAUER, Mrs. BLACKBURN, Ms. HARRIS, and Mr. SESSIONS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to provide more effective permitting and enforcement mechanisms for stormwater discharges associated with residential construction activity.

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 “Stormwater Enforce-  
5 ment and Permitting Act of 2006”.

1 **SEC. 2. GREATER SPECIFICITY IN INFORMATION REQUESTS**  
2 **AND OPPORTUNITY FOR CORRECTIVE AC-**  
3 **TION.**

4 (a) INSPECTIONS, MONITORING, AND ENTRY.—Sec-  
5 tion 308(a)(A)(v) of the Federal Water Pollution Act (33  
6 U.S.C. 1318(a)(A)(v)) is amended—

7 (1) by striking “other information as he” and  
8 inserting “other information pertaining to such point  
9 source as the Administrator”; and

10 (2) by striking “reasonably require” and insert-  
11 ing “reasonably request within 90 days of the date  
12 of the request or such shorter time period as the Ad-  
13 ministrator determines is necessary to address an  
14 imminent and substantial endangerment to public  
15 health or welfare or the environment”.

16 (b) CORRECTIVE ACTION FOR RESIDENTIAL CON-  
17 STRUCTION SITES.—Section 309 of such Act (33 U.S.C.  
18 1319) is amended by adding at the end the following:

19 “(h) CORRECTIVE ACTION FOR RESIDENTIAL CON-  
20 STRUCTION SITES.—

21 “(1) IN GENERAL.—In the course of an inspec-  
22 tion of a site at which a residential construction ac-  
23 tivity is being or will be carried out or based on in-  
24 formation obtained under section 308(a) relating to  
25 such a site, if the Administrator or the authorized  
26 representative of the Administrator discovers a viola-

1       tion of a permit condition relating to such site that  
2       has not resulted in a discharge of stormwater and  
3       provides written notice of such violation to the oper-  
4       ator of such site, the Administrator or such rep-  
5       resentative shall provide the operator a reasonable  
6       opportunity to correct the identified violation before  
7       initiation of an enforcement action.

8               “(2) SUBSEQUENT VIOLATION.—If the Admin-  
9       istrator or the authorized representative of the Ad-  
10      ministrator subsequently inspects or requests infor-  
11      mation regarding a residential construction site for  
12      which an opportunity for corrective action was pro-  
13      vided under paragraph (1) and discovers a violation  
14      of the same permit condition that was corrected  
15      under paragraph (1) or for which such opportunity  
16      to correct was provided, the operator of such site  
17      shall not be provided a further opportunity to cor-  
18      rect under this subsection before initiation of an en-  
19      forcement action.

20              “(3) LIMITATION ON AUTHORITY OF ADMINIS-  
21      TRATOR.—The Administrator shall not exercise any  
22      authority under this section (other than under this  
23      subsection) during the period that the operator of a  
24      residential construction site is provided an oppor-  
25      tunity to correct a violation of a permit condition

1 that has not resulted in the discharge of  
2 stormwater.”.

3 (c) LIMITATION ON ACTIONS DURING OPPORTUNITY  
4 TO CORRECT.—Section 309(g)(6)(A) of such Act (33  
5 U.S.C. 1319(g)(6)(A)) is amended—

6 (1) by striking “or” at the end of clause (ii);

7 (2) by inserting “or” after the comma at the  
8 end of clause (iii); and

9 (3) by inserting after clause (iii) the following:

10 “(iv) for which the Administrator or  
11 the authorized representative of the Ad-  
12 ministrator has provided the operator of a  
13 residential construction site an opportunity  
14 to correct under subsection (h),”.

15 **SEC. 3. PAPERWORK LIMITATIONS FOR RESIDENTIAL CON-**  
16 **STRUCTION SITES.**

17 Section 402(l) of the Federal Water Pollution Control  
18 Act (33 U.S.C. 1342(l)) is amended by adding at the end  
19 the following:

20 “(3) STORMWATER RUNOFF FROM RESIDEN-  
21 TIAL CONSTRUCTION SITES.—

22 “(A) IN GENERAL.—The Administrator  
23 shall not require a permit, nor shall the Admin-  
24 istrator directly or indirectly require any State  
25 to require a permit, under this section for

1 stormwater runoff from any site at which a res-  
2 idential construction activity is being or will be  
3 carried out if—

4 “(i) such runoff enters a municipal  
5 separate storm sewer system that is cov-  
6 ered by a permit to which subsection (p)  
7 applies and the operator of such site is in  
8 compliance with requirements imposed by  
9 the permittee for such system to control  
10 stormwater runoff; or

11 “(ii) such site, during the period of  
12 the residential construction activity, has  
13 minimal potential for soil erosion caused  
14 by rainfall or overland flow due to soil  
15 type, geology, amount and force of precipi-  
16 tation, and other conditions.

17 “(B) MINIMAL POTENTIAL FOR SOIL ERO-  
18 SION DEFINED.—For purposes of this para-  
19 graph, a residential construction site has mini-  
20 mal potential for soil erosion if the erosivity fac-  
21 tor for the site during the period of the residen-  
22 tial construction activity is less than 5 as cal-  
23 culated based on the latest version of the re-  
24 vised universal soil loss equation developed by  
25 the Department of Agriculture, unless the Ad-

1            administrator determines, after notice and an op-  
2            portunity for public comment, that some other  
3            technical standard is more appropriate to meas-  
4            ure the erosivity value of residential construc-  
5            tion sites and adopts, by regulation, such stand-  
6            ard for purposes of this paragraph.”.

7    **SEC. 4. FEDERAL ENFORCEMENT.**

8            Section 402(p) of the Federal Water Pollution Con-  
9            trol Act (33 U.S.C. 1342(p)) is amended by adding at the  
10           end the following:

11                    “(7) FEDERAL ENFORCEMENT OF STATE PER-  
12                    MITS AUTHORIZING STORMWATER DISCHARGES  
13                    FROM RESIDENTIAL CONSTRUCTION ACTIVITY.—

14                            “(A) IN GENERAL.—Notwithstanding sub-  
15                            section (i), the Administrator shall not exercise  
16                            authority under section 309 with respect to a  
17                            permit, issued by a State under a program ap-  
18                            proved under subsection (b) and authorizing a  
19                            stormwater discharge from a site at which a  
20                            residential construction activity is being or will  
21                            be carried out, unless one of the following con-  
22                            ditions applies:

23                                    “(i) The Administrator determines  
24                                    that such a discharge has flowed or will

1 flow across a State line or onto a Federal  
2 facility or Indian tribal lands.

3 “(ii) Such permit was issued under a  
4 State program that the Administrator has  
5 suspended or withdrawn under subsection  
6 (c).

7 “(iii) After taking into consideration  
8 all of the terms, conditions, and require-  
9 ments of such permit, the Administrator  
10 determines that—

11 “(I) a stormwater discharge from  
12 such site results in imminent and sub-  
13 stantial endangerment to public health  
14 or welfare or the environment; and

15 “(II) additional actions are likely  
16 to be necessary to remove such  
17 endangerment.

18 “(B) LIMITATION ON TRANSFERS TO  
19 STATES.—If the Administrator receives or is  
20 awarded a fine or penalty for violation of a per-  
21 mit issued under this section by a State for a  
22 site on which a residential construction activity  
23 is being or will be carried out through an action  
24 brought under section 309 based on any of the  
25 conditions set forth in clauses (i), (ii), and (iii)

1 of subparagraph (A), the Administrator may  
2 not transfer, disburse, allocate, or otherwise pay  
3 all or any part of such fine or penalty to the  
4 State that issued the permit.”.

5 **SEC. 5. NOTIFICATION TO POINT SOURCE OPERATORS AT**  
6 **RESIDENTIAL CONSTRUCTION SITES.**

7 Section 402(p) of the Federal Water Pollution Con-  
8 trol Act (33 U.S.C. 1342(p)) is further amended by add-  
9 ing at the end the following:

10 “(8) NOTIFICATION OF PERMIT REQUIREMENTS  
11 FOR STORMWATER DISCHARGES FROM RESIDENTIAL  
12 CONSTRUCTION SITES.—

13 “(A) STORMWATER INFORMATIONAL PAM-  
14 PHLET PROGRAM.—Not later than 180 days  
15 after the date of enactment of this paragraph,  
16 the Administrator shall establish, by regulation,  
17 a program that will provide for development,  
18 and distribution to operators of residential con-  
19 struction sites, of an informational pamphlet.

20 “(B) PAMPHLET CONTENTS.—Under the  
21 program, operators of residential construction  
22 sites shall receive an informational pamphlet ex-  
23 plaining, at a minimum, permitting require-  
24 ments under this section for stormwater dis-  
25 charges from a site at which a residential con-

1 construction activity is being or will be carried out  
2 (including the permitting requirements of sub-  
3 sections (a) and (b) and this subsection and any  
4 applicable regulations issued to carry out this  
5 section) and fines and penalties that may arise  
6 from violations of such requirements. The pam-  
7 phlet shall also include contact information for  
8 appropriate permitting authorities.

9 “(C) DEADLINE FOR PAMPHLET DEVELOP-  
10 MENT.—Under the program—

11 “(i) the pamphlet or pamphlets shall  
12 be developed for distribution not later than  
13 180 days after the date of the issuance of  
14 the regulation establishing the program;

15 “(ii) operators of residential construc-  
16 tion sites shall be informed of the avail-  
17 ability of the pamphlets; and

18 “(iii) a pamphlet shall be given to an  
19 operator of a residential construction site  
20 at the earliest appropriate point in the  
21 process under which the operator is seek-  
22 ing approval from a local government to  
23 carry out the residential construction activ-  
24 ity.

1           “(D) CONSULTATION.—The Administrator  
2           shall consult with State and interstate water  
3           pollution control administrators and other af-  
4           fected interests in establishing the program.”.

5 **SEC. 6. GENERAL PERMITS.**

6           Section 402 of the Federal Water Pollution Control  
7 Act (33 U.S.C. 1342) is further amended by adding at  
8 the end the following:

9           “(r) GENERAL PERMITS ON A STATE, REGIONAL, OR  
10 NATIONWIDE BASIS.—

11           “(1) IN GENERAL.—In carrying out responsibil-  
12 ities and functions of the Administrator or a State  
13 under a program approved under subsection (b) re-  
14 lating to the discharge of pollutants under this sec-  
15 tion, the Administrator or the State may issue a  
16 general permit on a State, regional, or nationwide  
17 basis to cover any category of discharges, sludge use,  
18 disposal practices, or facilities.

19           “(2) GENERAL PERMIT TERM.—No general per-  
20 mit issued under this section shall be for a period  
21 of more than 5 years after the date of its issuance.

22           “(3) NOTICE.—Before issuing a general permit  
23 under this section, the Administrator or State shall  
24 provide to the public notice and opportunity to com-  
25 ment on such permit for a period of 45 days.

1           “(4) REVIEW NOT REQUIRED.—The Adminis-  
2           trator or State is not required to specifically review,  
3           approve, or provide notice and an opportunity for a  
4           public hearing and comment on, any application for  
5           a discharge under a general permit issued under this  
6           section.

7           “(5) EFFECTIVE PERIOD FOR PREEXISTING  
8           GENERAL PERMITS.—Any general permit issued  
9           under this section by the Administrator or a State  
10          before the date of enactment of this subsection shall  
11          remain in effect under the terms and conditions in  
12          effect on the date of its issuance.”.

13 **SEC. 7. DEFINITIONS.**

14          Section 502 of the Federal Water Pollution Control  
15          Act (33 U.S.C. 1362) is amended by adding at the end  
16          the following:

17                 “(25) RESIDENTIAL CONSTRUCTION ACTIV-  
18                 ITY.—The term ‘residential construction activity’  
19                 means a construction activity associated with the de-  
20                 velopment and construction of housing of any type,  
21                 including structures accessory or appurtenant there-  
22                 to and any facilities or infrastructure necessary to  
23                 serve such housing.

24                 “(26) OPERATOR.—The term ‘operator’ means,  
25                 as used with respect to a site at which a residential

1 construction activity is being or will be carried out,  
2 a person, including a governmental entity, that—

3 “(A) has operational control over construc-  
4 tion plans and specifications, including the abil-  
5 ity to make modifications to those plans and  
6 specifications; or

7 “(B) has day-to-day operational control  
8 over the construction activity that is necessary  
9 to ensure compliance with any applicable permit  
10 conditions and other regulatory requirements  
11 under this Act.”.

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