



washington dc update

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Updates on HR 2018

The Report for HR 2018, the **Clean Water Cooperative Federalism Act of 2011**, has now been filed by the House Committee on Transportation and Infrastructure. This means that the bill is now eligible to move to the House floor for consideration. Here are some key passages from the House Report which provide a good idea of what HR 2018 is all about:

Page 4: *“Once EPA has approved a state standard or permit, or a Corps section 404 permit, the implementation and interpretation of that standard or permit is left to the state or the Corps, respectively.”*

Recently, however, 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. EPA also has inserted itself into the states and the Corps’ permit issuance decisions and is second-guessing state and Corps permitting decisions.

Page 5: *“By second-guessing and inserting itself into the states’ and the Corps’ standards and permitting decisions, EPA has upset the long-standing balance between federal and state partners in regulating the nation’s waters, and undermined the system of cooperative federalism established and the CWA in which the primary responsibilities for water pollution control are allocated to the states. EPA’s actions have created an atmosphere of regulatory uncertainty for the regulated community, and have had a chilling effect on the Nation’s economy and job creation.”*

The sponsors of HR 2018 introduced this legislation to halt these sorts of recent actions where EPA has gone beyond its appropriate role as the approver of programs and standards and instead has attempted to directly implement water quality programs, including standards and permits, in approved states, and second guess the judgment of the water quality professionals in these states.

HR 2018 aims to provide common sense protections for states’ EPA-approved water quality standards and permitting authorities under the CWA. Without these protections, state regulation, as approved by EPA, can still be usurped by EPA, creating a climate for regulatory uncertainty and delays.”

HR 2018 was introduced only in May and seems to be on a fast-track in the House. The issues addressed by this legislation are likely to grow ever more controversial as the impact of regulatory uncertainty on the economy becomes an ever-larger issue.

This is something that WESTCAS members need to think about. This is also an issue that WESTCAS will likely be asked to support as HR 2018 moves towards consideration before the full House of Representatives. The complete Committee Report is attached for your information.

Summary & Take-Away .

HR2018 Moving Forward

The Mica-Rahall bill, HR 2018, is now eligible for House floor action. The Bill sets markers for States to retain the right to implement and interpret CWA standards and permits approved by the EPA. The bill addresses “second guessing” by EPA that have generated regulatory uncertainty.

Take-Away:

Given the fast-track nature and the controversial nature of the bill and the potential for its common sense protections to the states, WESTCAS will likely be asked to consider support for this legislation in the near future. It is expected that there will be challenges in the Senate for HR2018 as a stand-alone bill.

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