

Senate GOP Bill Would Clarify Clean Water Act, Prevent Abuse by States

Four Republican senators have introduced a bill designed to clarify Section 401 of the Clean Water Act (CWA), which the oil and natural gas industry hopes will help prevent states from using the law to block or delay infrastructure projects, including interstate oil and gas pipelines.

The bill -- [S 3303](#), aka the Water Quality Certification Improvement Act -- would strike and insert language throughout the CWA, thereby amending the portions that address water quality certification.

S 3303 was introduced Tuesday by Sens. John Barrasso (R-WY), Shelley Moore Capito (R-WV), Steve Daines (R-MT) and Jim Inhofe (R-OK), and was immediately referred to the Senate Environment and Public Works Committee.

Interstate Natural Gas Association of America CEO Don Santa applauded lawmakers for introducing the bill.

"In recent years, a handful of states have used this provision of federal law to disrupt or delay infrastructure projects, sometimes using justifications unrelated to water quality," Santa said.

"Cooperative federalism is upset, interstate commerce is disrupted, and the interests of other states are undermined when individual states step outside the role defined by Congress in Section 401.

"Providing clarity regarding the appropriate federal and state roles under Section 401 can restore the cooperative federalism Congress intended in this section of the CWA."

Disputes between various state regulatory agencies and their federal counterparts, including FERC, have centered on Section 401. As a consequence, several pipeline projects remain in limbo.

Constitution Pipeline Co. LLC in June asked the Federal Energy Regulatory Commission for a [two-year extension](#) to build a proposed pipeline because of the New York State Department of Environmental Conservation's (DEC) denial of a Section 401 permit. One month earlier, Transcontinental Gas Pipe Line Co. LLC re-filed for a [401 permit](#) from the DEC for its Northeast Supply Enforcement Project.

Meanwhile, regulators in New Jersey have yet to issue a 401 permit for the PennEast Pipeline, and last May took the unusual step of [asking a federal court to review](#) FERC's certificate order authorizing the project.

Last month, a three-year battle over Millennium Pipeline Co. LLC's Valley Lateral project came to a close after FERC [gave final authorization](#) for the pipeline to enter service. Millennium and FERC had sparred with the DEC over the New York agency's [refusal](#) to issue a 401 permit for the project, with

FERC arguing that the DEC had [waived its authority](#) to issue one because it took longer than the one-year timeframe to make a decision.

But FERC in January found the DEC [had not waived its authority](#) in denying a 401 permit for the Constitution Pipeline. FERC denied Constitution's [request for a rehearing](#) last month.

The bitter dispute between FERC and the DEC caught the attention of the Trump administration. Department of Energy Secretary Rick Perry, during testimony before a House panel in May, [questioned whether states have the right](#) to block natural gas pipelines. Speculation rose that Trump could decide to issue an executive order that would rein in states opposed to pipelines, such as New Jersey and New York.

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