To amend the Federal Water Pollution Control Act to provide for an integrated planning and permitting process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 12, 2017

Mr. GIBBS (for himself and Mr. CHABOT) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to provide for an integrated planning and permitting process, 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 Improvement Act of 2017”.

SEC. 2. INTEGRATED PLANNING PROCESS.

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

“(s) INTEGRATED PLANNING AND PERMITTING.—
“(1) IN GENERAL.—The Administrator shall est-
establish a comprehensive and flexible integrated plan-
ning process and permitting process for municipal
wastewater and stormwater management that will
help municipalities comply with the requirements of
this Act by enabling municipalities to identify the
most cost-effective and protective approaches to
comply with such requirements, and prioritize their
investments in addressing such requirements.

“(2) PLANNING AND PERMITTING PROCESS.—
The Administrator shall ensure that, under the plan-
ning and permitting process established under para-
graph (1)—

“(A) actions taken by the municipality to
comply with the requirements of this Act are
implemented in a manner that—

“(i) considers alternative approaches
and actions for the municipality to comply
with such requirements;

“(ii) takes into consideration the tech-
nical feasibility and economic affordability
of the alternative approaches and actions
considered;
“(iii) accounts for the financial capability of the municipality to comply with such requirements;

“(iv) prioritizes such requirements in order to provide the greatest environmental and public health benefits for the resources expended;

“(v) accounts for both the municipality’s preexisting and reasonably anticipated future compliance requirements related to, as applicable—

“(I) a combined sewer overflow;

“(II) a sanitary sewer overflow;

“(III) a capacity, management, operation, and maintenance program for sanitary sewer collection systems;

“(IV) a municipal stormwater discharge;

“(V) a municipal wastewater discharge;

“(VI) a water quality-based effluent limitation to implement an applicable wasteload allocation in a total maximum daily load;
“(VII) source water protection efforts that protect surface water supplies; and

“(VIII) nonpoint source controls through proposed trading approaches or other mechanisms;

“(vi) allows a municipality to develop a schedule of compliance that sequences the implementation of effluent limitations and other control measures based on the priorities established under clause (iv), in accordance with paragraph (4);

“(vii) enables the municipality to implement innovative or sustainable technologies, approaches, and practices to comply with such requirements, including through the use of green infrastructure measures as set forth in the memorandum issued by the Administrator on April 20, 2011, entitled ‘Protecting Water Quality with Green Infrastructure in EPA Water Permitting and Enforcement Programs’;

“(viii) provides for meeting the requirements of this Act by using the existing flexibilities in this Act and its imple-
menting regulations, policies, and guidance; and

“(ix) reflects State requirements and planning efforts and incorporates State input on priority setting and other key implementation issues;

“(B) a municipality may develop an integrated plan, in consultation with the Administrator (or an authorized State, in the case of a permit program approved under subsection (b)), that—

“(i) identifies the compliance requirements of the municipality under this Act, including effluent limitations and other control measures to be implemented by the municipality;

“(ii) includes, as applicable, a schedule developed under subparagraph (A)(vi) for complying with such requirements; and

“(iii) includes documentation of the integrated planning and permitting process of the municipality under this section, including data and other information on which the integrated plan is based;
“(C) such an integrated plan (including as applicable, the schedule of compliance included in the plan) may be incorporated in whole or in part into a permit issued to the municipality under this section;

“(D) progress in implementing the integrated plan is tracked and evaluated;

“(E) a process for revising the integrated plan, using adaptive management processes, to account for adjustments and further actions that may be needed to comply with the requirements of this Act is incorporated into the integrated plan and the municipality’s permit issued under this section;

“(F) with respect to any permit issued under this subsection that includes effluent limitations and other control measures that are established as part of a schedule of compliance included in such an integrated plan, such effluent limitations and other control measures included in that permit shall be based on water quality and other requirements under this Act that are technically feasible and economically affordable, as described in paragraphs (6) and (7); and
“(G) an authorized State, in the case of a permit program approved under subsection (b), may implement the integrated planning process under this subsection.

“(3) INTEGRATED PLANS.—

“(A) PLAN CONTENTS.—An integrated plan developed under this subsection shall include the elements described in Part III of the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated May 2012.

“(B) DISSEMINATION OF INFORMATION.—The Administrator shall—

“(i) inform municipalities of the opportunity to develop an integrated plan; and

“(ii) at the request of a municipality or a State, provide information and technical assistance to the municipality or State regarding developing an integrated plan.

“(4) COMPLIANCE SCHEDULES.—

“(A) DURATION.—A schedule of compliance developed under paragraph (2)(A)(vi) and
incorporated into a permit under this section may be implemented over more than 1 permit term.

“(B) SEQUENCING IMPLEMENTATION OF HIGH-PRIORITY CONTROL MEASURES.—A schedule of compliance under this subsection may allow a municipality to sequence the implementation of effluent limitations and other control measures that allow the municipality to implement, and assess the effectiveness of, the highest priority effluent limitations and other control measures before requiring implementation of other effluent limitations or control measures, if the schedule, once completed, would result in compliance with all requirements of this Act.

“(C) REASONABLE PROGRESS.—A schedule of compliance under this subsection shall provide for reasonable progress, including interim dates and milestones, as appropriate, to be made towards meeting the permit requirements subject to such schedule.

“(D) CONTROLS IDENTIFIED IN CURRENT AND SUBSEQUENT PERMITS.—Approved effluent limitations and other control measures to be
implemented by the municipality pursuant to this subsection—

“(i) during the term of the current permit shall be identified as such in the schedule of compliance and the current permit, and shall be requirements of the current permit; and

“(ii) subsequent to the term of the current permit shall be identified as such in the schedule of compliance and the current permit, and shall become requirements of an appropriate subsequent permit, but shall not be requirements of the current permit.

“(E) State authority to authorize schedules of compliance in state water quality standards.—

“(i) In general.—Nothing in section 301(b)(1)(C) shall preclude a State from authorizing in its water quality standards the issuance of a schedule of compliance to meet water quality-based effluent limitations in permits that incorporate provisions of an integrated plan pursuant to this subsection.
“(ii) Transition Rule.—In any case in which a discharge is subject to a judicial order or consent decree, as of the date of enactment of this subsection, resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard shall not revise or otherwise affect a schedule of compliance in that order or decree, unless the order or decree is modified by agreement of the parties and the court.

“(5) Integrated Plan and Permit Decisionmaking.—

“(A) Approval of Integrated Plans and Permits.—Integrated plans and permits incorporating such a plan developed under this subsection are subject to the approval of the Administrator (or an authorized State, in the case of a permit program approved under subsection (b)), which shall not be unreasonably withheld.

“(B) Renewal of Integrated Permit.—
“(i) In General.—At the time of renewal of a municipality’s integrated permit issued pursuant to this subsection, the Administrator (or an authorized State, in the case of a permit program approved under subsection (b)) shall review the schedule of compliance and other requirements included in the existing permit to determine whether the requirements should be continued or modified.

“(ii) Review Considerations.—The permit review shall assess whether changed circumstances warrant adjusting the actions to be taken by the municipality, including whether—

“(I) the effluent limitations and other control measures in the current permit are expected to result in the municipality complying with the requirements of this Act within the timeframes provided in the schedule of compliance;

“(II) the effluent limitations and other control measures continue to be technically feasible and economically
affordable under paragraphs (6) and (7);

“(III) new innovative treatment approaches are available that provide greater environmental and public health benefits or have fewer adverse environmental impacts for the resources expended;

“(IV) the municipality is subject to additional regulatory requirements;

“(V) the municipality’s financial capability has changed; and

“(VI) reasonable progress has been achieved, as provided for under paragraph (4)(C), including meeting interim dates and milestones, and if not, the reasons for such failure to achieve reasonable progress.

“(iii) Continuation of requirements in renewed permit.—The permit requirements in an existing permit shall be incorporated into the renewed permit, unless the Administrator (or the authorized State, in the case of a permit program approved under subsection (b)) determines
that a requirement should be modified or removed to help the municipality comply with the requirements of this Act through the implementation of technically feasible and economically affordable effluent limitations and other control measures.

“(C) TRANSPARENCY OF PERMIT DECISIONS.—Prior to approving a plan developed under this subsection and issuing or renewing a permit incorporating such a plan pursuant to this subsection, or denying a request from a municipality for approval of a plan and issuance or renewal of a permit incorporating such a plan under this subsection, the Administrator (or an authorized State, in the case of a permit program approved under subsection (b)) shall—

“(i) prepare a report explaining the rationale for the proposed decision; and

“(ii) make the report publicly available for review and comment by the municipality and other interested parties.

“(D) ADMINISTRATOR REVIEW OF STATE PERMITTING DECISIONS.—When the Administrator provides his or her views to a State concerning a proposed integrated plan or permit
incorporating such a plan that is to be issued by the State pursuant to this subsection, the Administrator shall make those views available in a written document that is publicly available for review and comment by the municipality and other interested parties.

“(6) TECHNICAL FEASIBILITY CRITERIA.—In making a determination of technical feasibility under this subsection, the Administrator (or the State) shall consider—

“(A) naturally occurring pollutant concentrations;

“(B) natural, ephemeral, intermittent, or low flow conditions or water levels;

“(C) human-caused conditions or sources of pollution that cannot be remedied or would cause more environmental damage to correct than to leave in place;

“(D) dams, diversions, or other types of hydrologic modifications that make it not feasible to restore the water body to its original condition or to operate such modification in a way that would comply with the requirements of this Act; and
“(E) physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, that may preclude compliance with the requirements of this Act.

“(7) **ECONOMIC AFFORDABILITY CRITERIA.**—

“(A) **IN GENERAL.**—In making a determination of economic affordability under this subsection, the Administrator (or the authorized State, in the case of a permit program approved under subsection (b)) shall consider preexisting and potential future costs, including of debt service, to the municipality for implementing effluent limitations and other control measures necessary to comply with the requirements of this Act would result in substantial and widespread economic and social impact in the service area of the municipality.

“(B) **BASIS FOR DETERMINING IMPACTS.**—

In determining whether the economic and social impacts of preexisting and potential future costs under subparagraph (A) are substantial and widespread, the Administrator (or the State) shall consider the financial condition
both of the municipality and of persons in the
service area of the municipality, taking into
consideration factors including—

“(i) socioeconomic indicators, includ-
ing income and unemployment data for the
service area of the municipality;

“(ii) population trends in the service
area of the municipality;

“(iii) impacts on low-income house-
holds in the service area, including the
ability of such households to pay basic
shelter costs;

“(iv) whether there is a local industry
that is failing or relocating out of the serv-
vice area of the municipality, or if a local
industry might fail or relocate if higher
taxes or fees are imposed on it;

“(v) the municipality’s capital im-
provement plan and whether the munici-
pality would, in order to finance improve-
ments to comply with the requirements of
this Act, have to divert resources that
would otherwise be used for investment in
essential capital projects that provide core
public services to the community;
“(vi) the ability of the municipality to
incur more debt, including its ability to
issue, and find a market for, additional
municipal bonds;

“(vii) whether the debt incurred to
implement the effluent limitations and
other control measures has or will result in
a lowering of the municipality’s bond rat-
ing;

“(viii) whether the municipality has
limited legal authority to pass increased
costs through to ratepayers and increased
costs of water quality programs must be
paid from its general fund;

“(ix) the legally adopted rate struc-
ture for provision of water- and waste-
water-related services in the service area in
effect at the time that a determination of
economic affordability is made;

“(x) the cumulative costs paid by per-
sons in the service area to an entity for
provision of water- and wastewater-related
services; and

“(xi) other information determined to
be relevant by the Administrator (or the
authorized State, in the case of a permit program approved under subsection (b)), including whether the municipality is located in an area eligible for assistance under section 201 or 209 of the Public Works and Development Act of 1965 (42 U.S.C. 3141, 3149), as described in section 301 of that Act (42 U.S.C. 3161).

“(C) CUMULATIVE COSTS FOR WATER- AND WASTEWATER-RELATED SERVICES.—

“(i) INCLUSIONS.—Cumulative costs for the provision of water- and wastewater-related services to be considered under subparagraph (B)(xi) shall include the municipality’s preexisting and reasonably anticipated future costs paid by a person, including through taxes and fees, for the municipality’s cost of—

“(I) compliance with Federal and State water- and wastewater-related and other regulatory requirements;

“(II) operation and maintenance of water and wastewater systems;

“(III) asset management; and
“(IV) servicing any debt incurred
or to be incurred to finance the other
costs referred to in this clause.

“(ii) SUBSTANTIAL IMPACT.—In mak-
ing a determination of economic impact
under subparagraph (B), the Adminis-
trator (or the State) shall consider the im-
 pact on a person to be substantial if the
cumulative costs paid by the person ex-
ceeds, or is projected to exceed, 2 percent
of the person’s annual household income.

“(iii) WIDESPREAD IMPACT.—In mak-
ing a determination of economic impact
under subparagraph (B), the Adminis-
trator (or the State) shall consider the im-
pact to be widespread if 20 percent or
more of persons in the service area of the
municipality face a substantial impact de-
scribed in clause (ii).

“(D) ADDITIONAL REQUIREMENTS.—In
making a determination of economic afford-
ability under this subsection, the Administrator
(or the State) shall not base the determination
on—
“(i) median household income in the service area of the municipality; or

“(ii) an expected minimum level of expenditure on the provision of water and wastewater services by a municipality.

“(8) FLEXIBILITY.—

“(A) IN GENERAL.—Nothing in this subsection reduces or eliminates any flexibility available under this Act, including the authority of a State to—

“(i) revise a water quality standard after a use attainability analysis under section 131.10(g) of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection); or

“(ii) adopt a water quality standards variance under section 131.14 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

“(B) APPROVALS.—Such a revision of a standard or adoption of a variance by a State under subparagraph (A)(i) is subject to the approval of the Administrator under section
SEC. 3. UPDATING FINANCIAL CAPABILITY ASSESSMENT GUIDANCE.

(a) IN GENERAL.—

(1) UPDATE.—Not later than 15 months after the date of enactment of this Act, the Administrator shall update the financial capability assessment guidance published by the Administrator entitled “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (EPA 832–B–97–004), dated February 1997.

(2) SCOPE.—In updating the financial capability assessment guidance developed under subparagraph (1), the Administrator shall ensure that the guidance may be used for assessing the financial capability of municipalities to implement effluent limitations and other control measures under the Federal Water Pollution Control Act.

(b) REQUIREMENTS FOR UPDATING.—In updating the financial capability assessment guidance under subsection (a), the Administrator shall—

(1) consult with, and solicit advice and recommendations from, representative municipal and State officials (including their representative re-
gional or national organizations), stakeholders, and
other interested parties regarding how to assess the
financial capability of municipalities to implement
effluent limitations and other control measures
under the Federal Water Pollution Control Act;

(2) ensure transparency in the consultation
process, including promptly making accessible to the
public all communications, records, and other docu-
ments of all meetings that are part of the consulta-
tion process;

(3) ensure that the updated guidance takes into
consideration relevant studies, reports, and other in-
formation related to assessing the financial capa-
bility of municipalities to implement effluent limita-
tions and other control measures, including—

(A) the reports of recommendations to the
Environmental Protection Agency from the En-
vironmental Financial Advisory Board related
to financial capability assessments of munici-
palities; and

(B) the memorandum of the Environ-
mental Protection Agency entitled “Financial
Capability Assessment Framework for Munic-
ipal Clean Water Act Requirements”, dated No-
vember 24, 2014, and the accompanying guid-

(4) ensure the evaluations by the Administrator of financial capability assessment and schedule of compliance development under subsection (s) of section 402 of the Federal Water Pollution Control Act reflect the economic affordability criteria described in subsection (s)(7) of that section;

(5) ensure the updated guidance provides a consistent reference point to aid parties in negotiating reasonable and effective schedules for implementing effluent limitations and other control measures under the Federal Water Pollution Control Act;

(6) publish in the Federal Register proposed updated financial capability assessment guidance under this section, and provide a period for public comment of not less than 60 days;

(7) prepare final updated financial capability assessment guidance, taking into account—

(A) the advice and recommendations obtained from the municipal and State officials (including their representative regional or national organizations), stakeholders, and other interested parties; and
(B) the public comments received during
the public comment period; and

(8) publish in the Federal Register, and submit
to the Committee on Transportation and Infrastruc-
ture of the House of Representatives and the Com-
mittee on Environment and Public Works of the
Senate, the final updated financial capability assess-
ment guidance.

SEC. 4. INTEGRATED PERMIT PILOT PROJECTS.

(a) In General.—In the first 5 fiscal years begin-
ning after the date of enactment of this Act, the Adminis-
trator, in coordination with appropriate State, local, and
regional authorities, shall work cooperatively with, and fa-
cilitate the efforts of, not fewer than 15 municipalities to
develop and implement integrated plans and permits to
meet the requirements of the Federal Water Pollution
Control Act (33 U.S.C. 1342) in a manner consistent with
section 402(s) of that Act.

(b) Selection of Municipalities.—

(1) Eligibility of Municipalities.—A mu-
unicipality shall be eligible to participate in the pilot
program under subsection (a) if the municipality—

(A) has a permit issued under section 402
of the Federal Water Pollution Control Act; or
(B) is operating under an administrative order, administrative consent agreement, or judicial consent decree to comply with the requirements of that Act.

(2) FACTORS.—In selecting municipalities eligible under paragraph (1), the Administrator shall—

(A) give priority to municipalities—

(i) that are operating under an administrative order, administrative consent agreement, or judicial consent decree to comply with the requirements of the Federal Water Pollution Control Act;

(ii) having difficulties complying with the Federal Water Pollution Control Act, in addition to the municipalities described in clause (i); or

(iii) that are affected by affordability constraints in planning and implementing effluent limitations and other control measures under the Federal Water Pollution Control Act to address wet weather discharges or other water pollution issues from their wastewater and stormwater facilities;
(B) give further priority to those munici-
palities under subparagraph (A)—

(i) with knowledge and experience in
developing integrated and adaptive clean
water management practices, without re-
gard to the status of the municipality in
the process of planning or implementing
such practices; and

(ii) that are seeking to develop and
implement an integrated plan that includes
adaptive approaches to account for
changed or future uncertain circumstances;
and

(C) seek to select municipalities—

(i) from different geographical regions
of the United States; and

(ii) of various population sizes.

(3) ADDITIONAL AUTHORITY.—In carrying out
this section, the Administrator may, with the agree-
ment of and in coordination with a municipality and
the applicable State—

(A) modify the implementation terms of an
existing administrative order or administrative
consent agreement, or seek to modify a judicial
consent decree entered into by the municipality
with the Administrator pursuant to the Federal Water Pollution Control Act; and

(B) incorporate such modified implementation terms, including the municipality’s integrated plan, into an integrated permit issued pursuant to section 402(s) of the Federal Water Pollution Control Act.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and each year thereafter for 5 years, the Administrator shall prepare and submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the implementation of this section and issuance of integrated permits pursuant to section 402(s) of the Federal Water Pollution Control Act, including—

(1) identification of the municipalities selected under this section;

(2) an evaluation of the specific outcomes achieved with respect to—

(A) reducing the costs of complying with the requirements of the Federal Water Pollution Control Act for the municipalities selected under this section; and
(B) making reasonable progress towards achieving the applicable water quality and human health objectives of the Federal Water Pollution Control Act; and

(3) recommendations of any proposed legislative or administrative changes to improve the effectiveness and efficiency of the integrated planning and permitting process under section 402(s) of the Federal Water Pollution Control Act.

SEC. 5. DEFINITIONS.

In this Act:

(1) MUNICIPALITY.—The term “municipality” has the meaning given that term in section 502(4) of the Federal Water Pollution Control Act (33 U.S.C. 1362(4)).

(2) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.