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118TH CONGRESS
1ST SESSION

H. R. 1140

[Report No. 118-]

To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining a critical energy resource at a critical energy resource facility, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 2023

Mr. PENCE introduced the following bill; which was referred to the Committee on Energy and Commerce

MARCH --, 2023

Committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

A BILL

To authorize the Administrator of the Environmental Protection Agency to waive application of certain requirements with respect to processing and refining a critical energy resource at a critical energy resource facility, and for other purposes.

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. WAIVER FOR NATIONAL SECURITY OR ENERGY**
4 **SECURITY.**

5 (a) CLEAN AIR ACT REQUIREMENTS.—

6 (1) IN GENERAL.—If the Administrator of the
7 Environmental Protection Agency, in consultation
8 with the Secretary of Energy, determines that, by
9 reason of a sudden increase in demand for, or a
10 shortage of, a critical energy resource, or another
11 cause, the processing or refining of a critical energy
12 resource at a critical energy resource facility is nec-
13 essary to meet the national security or energy secu-
14 rity needs of the United States, then the Adminis-
15 trator may, with or without notice, hearing, or other
16 report, issue a temporary waiver of any requirement
17 under the Clean Air Act (42 U.S.C. 7401 et seq.)
18 with respect to such critical energy resource facility
19 that, in the judgment of the Administrator, will
20 allow for such processing or refining at such critical
21 energy resource facility as necessary to best meet
22 such needs and serve the public interest.

23 (2) CONFLICT WITH OTHER ENVIRONMENTAL
24 LAWS.—The Administrator shall ensure that any
25 waiver of a requirement under the Clean Air Act

1 under this subsection, to the maximum extent prac-
2 ticable, does not result in a conflict with a require-
3 ment of any other applicable Federal, State, or local
4 environmental law or regulation and minimizes any
5 adverse environmental impacts.

6 (3) VIOLATIONS OF OTHER ENVIRONMENTAL
7 LAWS.—To the extent any omission or action taken
8 by a party under a waiver issued under this sub-
9 section is in conflict with any requirement of a Fed-
10 eral, State, or local environmental law or regulation,
11 such omission or action shall not be considered a
12 violation of such environmental law or regulation, or
13 subject such party to any requirement, civil or crimi-
14 nal liability, or a citizen suit under such environ-
15 mental law or regulation.

16 (4) EXPIRATION AND RENEWAL OF WAIVERS.—
17 A waiver issued under this subsection shall expire
18 not later than 90 days after it is issued. The Admin-
19 istrator may renew or reissue such waiver pursuant
20 to paragraphs (1) and (2) for subsequent periods,
21 not to exceed 90 days for each period, as the Admin-
22 istrator determines necessary to meet the national
23 security or energy security needs described in para-
24 graph (1) and serve the public interest. In renewing
25 or reissuing a waiver under this paragraph, the Ad-

1 administrator shall include in any such renewed or re-
2 issued waiver such conditions as are necessary to
3 minimize any adverse environmental impacts to the
4 extent practicable.

5 (5) SUBSEQUENT ACTION BY COURT.—If a
6 waiver issued under this subsection is subsequently
7 stayed, modified, or set aside by a court pursuant a
8 provision of law, any omission or action previously
9 taken by a party under the waiver while the waiver
10 was in effect shall remain subject to paragraph (3).

11 (6) CRITICAL ENERGY RESOURCE; CRITICAL EN-
12 ERGY RESOURCE FACILITY DEFINED.—The terms
13 “critical energy resource” and “critical energy re-
14 source facility” have the meanings given such terms
15 in section 3025(f) of the Solid Waste Disposal Act
16 (as added by this section).

17 (b) SOLID WASTE DISPOSAL ACT REQUIREMENTS.—

18 (1) HAZARDOUS WASTE MANAGEMENT.—The
19 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)
20 is amended by inserting after section 3024 the fol-
21 lowing:

22 **“SEC. 3025. WAIVERS FOR CRITICAL ENERGY RESOURCE**
23 **FACILITIES.**

24 “(a) IN GENERAL.—If the Administrator, in con-
25 sultation with the Secretary of Energy, determines that,

1 by reason of a sudden increase in demand for, or a short-
2 age of, a critical energy resource, or another cause, the
3 processing or refining of a critical energy resource at a
4 critical energy resource facility is necessary to meet the
5 national security or energy security needs of the United
6 States, then the Administrator may, with or without no-
7 tice, hearing, or other report, issue a temporary waiver
8 of any covered requirement with respect to such critical
9 energy resource facility that, in the judgment of the Ad-
10 ministrator, will allow for such processing or refining at
11 such critical energy resource facility as necessary to best
12 meet such needs and serve the public interest.

13 “(b) CONFLICT WITH OTHER ENVIRONMENTAL
14 LAWS.—The Administrator shall ensure that any waiver
15 of a covered requirement under this section, to the max-
16 imum extent practicable, does not result in a conflict with
17 a requirement of any other applicable Federal, State, or
18 local environmental law or regulation and minimizes any
19 adverse environmental impacts.

20 “(c) VIOLATIONS OF OTHER ENVIRONMENTAL
21 LAWS.—To the extent any omission or action taken by
22 a party under a waiver issued under this section is in con-
23 flict with any requirement of a Federal, State, or local
24 environmental law or regulation, such omission or action
25 shall not be considered a violation of such environmental

1 law or regulation, or subject such party to any require-
2 ment, civil or criminal liability, or a citizen suit under such
3 environmental law or regulation.

4 “(d) EXPIRATION AND RENEWAL OF WAIVERS.—A
5 waiver issued under this section shall expire not later than
6 90 days after it is issued. The Administrator may renew
7 or reissue such waiver pursuant to subsections (a) and (b)
8 for subsequent periods, not to exceed 90 days for each pe-
9 riod, as the Administrator determines necessary to meet
10 the national security or energy security needs described
11 in subsection (a) and serve the public interest. In renewing
12 or reissuing a waiver under this subsection, the Adminis-
13 trator shall include in any such renewed or reissued waiver
14 such conditions as are necessary to minimize any adverse
15 environmental impacts to the extent practicable.

16 “(e) SUBSEQUENT ACTION BY COURT.—If a waiver
17 issued under this section is subsequently stayed, modified,
18 or set aside by a court pursuant a provision of law, any
19 omission or action previously taken by a party under the
20 waiver while the waiver was in effect shall remain subject
21 to subsection (c).

22 “(f) DEFINITIONS.—In this section:

23 “(1) COVERED REQUIREMENT.—The term ‘cov-
24 ered requirement’ means—

1 “(A) any standard established under sec-
2 tion 3002, 3003, or 3004;

3 “(B) the permit requirement under section
4 3005; or

5 “(C) any other requirement of this Act, as
6 the Administrator determines appropriate.

7 “(2) CRITICAL ENERGY RESOURCE.—The term
8 ‘critical energy resource’ means, as determined by
9 the Secretary of Energy, any energy resource—

10 “(A) that is essential to the energy sector
11 and energy systems of the United States; and

12 “(B) the supply chain of which is vulner-
13 able to disruption.

14 “(3) CRITICAL ENERGY RESOURCE FACILITY.—
15 The term ‘critical energy resource facility’ means a
16 facility that processes or refines a critical energy re-
17 source.”.

18 (2) TABLE OF CONTENTS.—The table of con-
19 tents of the Solid Waste Disposal Act is amended by
20 inserting after the item relating to section 3024 the
21 following:

“Sec. 3025. Waivers for critical energy resource facilities.”.